IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE

| In re: | Chapter 11 |
|-------------------------------------|----------------------------------|
| F21 OPCO, LLC, et al., ¹ | Case No. 25-10469 () |
| Debtors. | (Joint Administration Requested) |

DEBTORS' MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS (I) AUTHORIZING PAYMENT OF CERTAIN PREPETITION SHIPPING, WAREHOUSE, AND DELIVERY CHARGES, AND (II) GRANTING RELATED RELIEF

F21 OpCo, LLC and its debtor affiliates, as debtors and debtors in possession (collectively, the "Debtors") in the above-captioned chapter 11 cases (these "Chapter 11 Cases"), hereby submit this motion (this "Motion") for entry of interim and final orders, substantially in the forms attached hereto as Exhibit A (the "Interim Order") and Exhibit B (the "Final Order" and, together with the Interim Order, the "Proposed Orders"), (a) authorizing, but not directing, the Debtors to pay certain prepetition claims for shipping, freight forwarding, warehouseman, lien claimants, and customs duties, as applicable; (b) authorizing banks and financial institutions (collectively, the "Banks") to receive, process, honor, and pay all checks and electronic funds transfers related thereto; and (c) granting related relief. In support of this Motion, the Debtors rely upon, and incorporate by reference, the Declaration of Stephen Coulombe in Support of Chapter 11 Petitions and First Day Pleadings (the "First Day Declaration"), filed contemporaneously herewith. In further support of this Motion, the Debtors respectfully state as follows:

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



The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: F21 OpCo, LLC (8773); F21 Puerto Rico, LLC (5906); and F21 GiftCo Management, LLC (6412). The Debtors' address for purposes of service in these Chapter 11 Cases is 110 East 9th Street, Suite A500, Los Angeles, CA 90079.

JURISDICTION AND VENUE

- 1. The United States Bankruptcy Court for the District of Delaware (the "Court") has jurisdiction to consider this Motion under 28 U.S.C. § 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. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Under Rule 9013-1(f) of the Local Rules of the United States Bankruptcy Court for the District of Delaware (the "Local Rules"), the Debtors consent to the entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.
- 2. Venue of these Chapter 11 Cases and this Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409.
- 3. The statutory and legal predicates for the relief requested herein are sections 105(a) and 363(b) 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

I. GENERAL BACKGROUND

4. On the date hereof (the "<u>Petition Date</u>"), the Debtors filed voluntary petitions in the Court commencing these Chapter 11 Cases. The Debtors continue to manage and operate their businesses as debtors in possession under sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been requested and no committee has been appointed in these Chapter 11 Cases.

5. The factual background regarding the Debtors, including their business operations, their capital and debt structures, and the events leading to the filing of these Chapter 11 Cases, is set forth in detail in the First Day Declaration. Simultaneously herewith, the Debtors have filed a motion seeking to have these Chapter 11 Cases jointly administered for procedural purposes only pursuant to Bankruptcy Rule 1015(b).

II. BACKGROUND REGARDING DISTRIBUTION NETWORK

- 6. In the ordinary course of business, the Debtors historically received merchandise sold at their retail locations and through their e-commerce platform, in the first instance, into their distribution warehouse facility located in Perris, California (the "<u>Distribution Facility</u>"). The Distribution Facility will be used, on a go forward basis while the Debtors are operating, to store inventory (the "<u>Merchandise</u>") to be sold through the Debtors' e-commerce platforms and at the Debtors' stores and, as applicable, to be distributed directly to online purchasers. In addition, the Debtors use the services of certain other third-party distribution facilities, distributors, and logistics providers as part of their distribution network (the "<u>Warehousemen</u>").
- 7. The Debtors also utilize a number of third-party shippers, freight forwarders, consolidators, and similar critical transportation vendors (such parties, the "Shippers") to receive shipments into the Distribution Facility and ship purchased Merchandise to online buyers. In addition, the Debtors use both ocean and air freight forwarders for imported merchandise.
- 8. Under some nonbankruptcy laws, Shippers and Warehousemen may have a lien, or may be able to assert liens, on the goods in their possession to secure payment of the charges or

expenses incurred in connection with their claims.³ In the event that these claims remain unpaid, the Shippers and Warehousemen could attempt to assert liens or otherwise impede the Debtors' use of property until their claims are satisfied and their liens redeemed.

- 9. Even absent a valid lien, a Shipper's or Warehouseman's mere possession (and retention) of the Merchandise could severely disrupt the Debtors' operations. Additionally, pursuant to section 363(e) of the Bankruptcy Code, the Shippers and Warehousemen may be entitled to adequate protection of any valid possessory lien, which would drain estate assets.
- 10. The Shippers and Warehousemen are owed approximately \$2,000,000.00 in the aggregate on account of prepetition claims, absent the immediate payment of which such Shippers may refuse to make ongoing deliveries to the Distribution Facility and, ultimately, to the Debtors' consumers, and such Warehouseman may assert a lien or refuse to relinquish possession of the Merchandise.
- 11. To maximize profits from their store closing sales and maintain brand value during their going concern sale process, the Debtors may require the continued cooperation of, and assistance from, the Shippers, the Warehousemen, customs agencies, and related parties (collectively, the "**Transporters**"), in some shape or form, for the reasons set forth herein.

RELIEF REQUESTED

12. By this Motion, the Debtors seek entry of the Interim Order and the Final Order:

(a) authorizing, but not directing, the Debtors to pay certain prepetition claims of the Transporters

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 for charges subsequent to the date of its 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(1) (2003).

(collectively, the "<u>Transporter Claims</u>"); (b) authorizing the Banks to receive, process, honor, and pay all checks and electronic funds transfers related thereto; and (c) granting related relief.

- 13. As of the Petition Date, the Debtors estimate that approximately \$2,000,000.00 in the aggregate is owed on account of Transporter Claims, all of which may come due in the first thirty days following the Petition Date.
- 14. Although the Debtors believe that the above aggregate amount of Transporter Claims is accurate based on invoices received and historical practice, to the extent that additional amounts are found to be outstanding (most likely due to delayed invoicing or the timing of certain shipments), the Debtors submit that they should be able to pay such amounts to avoid any disruption in the Debtors' shipping scheme and, consequently, the Debtors' chapter 11 efforts.
- 15. As such, the Debtors request authority, but not direction, to pay Transporter Claims as and when the Debtors determine that payment is necessary or appropriate to prevent immediate and irreparable harm to the estates in an amount not to exceed \$2,000,000.00 on an interim and final basis.
- 16. The Debtors further request that applicable Banks be authorized to receive, process, honor, and pay all checks presented for payment and to honor all electronic payment requests made by the Debtors related to the prepetition obligations described herein, whether such checks were presented or electronic requests were submitted prior to or after the Petition Date. The Debtors further request that the Banks be authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved pursuant to this Motion.

BASIS FOR RELIEF

I. PAYMENT OF THE PREPETITION CLAIMS DESCRIBED HEREIN IS WARRANTED UNDER SECTION 363(b) OF THE BANKRUPTCY CODE

17. The Court may authorize the Debtors to pay shipping and warehouse charges under section 363(b) of the Bankruptcy Code, which provides that "[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(l). Under section 363(b), a court may authorize a debtor to pay certain prepetition claims. *See In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) (authorizing payment of prepetition wages pursuant to section 363(b) of the Bankruptcy Code); *In re UAL Corp.*, Case No. 02-48191, 2002 WL 34344254, at *1 (Bankr. N.D. Ill. Dec. 9, 2002) (authorizing payment of prepetition claims under section 363 of the Bankruptcy Code as an out-of-ordinary-course transaction). To do so, "the debtor must articulate some business justification, other than mere appeasement of major creditors." *In re Ionosphere Clubs, Inc.*, 98 B.R. at 175. As discussed more fully herein, the Debtors' request to pay the Transporter Claims meets this standard because, given the nature of the Debtors' business, the failure to satisfy such claims could have a material adverse effect on the Debtors' ability to maximize the value of their estates.

II. PAYMENT OF THE PREPETITION CLAIMS IS WARRANTED UNDER THE "DOCTRINE OF NECESSITY"

- 18. The Debtors believe that it is in the best interests of the Debtors' estates that they have the ability to satisfy the Transporter Claims, and the Court has the authority under the Bankruptcy Code to permit the Debtors to satisfy such obligations. The Court's authority to approve the satisfaction of prepetition obligations derives from both the Bankruptcy Code and the common law "doctrine of necessity."
- 19. Courts have repeatedly recognized "the existence of the judicial power to authorize a debtor . . . to pay pre-petition claims where such payment is essential to the continued operation

of the debtor." In re Ionosphere Clubs, Inc., 98 B.R. at 176; see also In re Columbia Gas Sys., Inc., 171 B.R. 189, 191-92 (Bankr. D. Del. 1994) (finding that a debtor is entitled to pay certain prepetition creditors upon a showing that the payment is "essential to the continued operation of the business") (citations omitted). The United States Supreme Court first articulated the equitable common law principle commonly referred to as the "doctrine of necessity" over 125 years ago in Miltenberger v. Logansport Railway Company, 106 U.S. 286, 311 (1882). "The Supreme Court, the Third Circuit and the District of Delaware all recognize the court's power to authorize payment of pre-petition claims when such payment is necessary for the debtor's survival during chapter 11." In re Just for Feet, Inc., 242 B.R. 821, 825 (D. Del. 1999).

- 20. Under the doctrine of necessity, a bankruptcy court may exercise its equitable power to authorize a debtor to pay critical prepetition claims, even though such payment is not explicitly authorized under the Bankruptcy Code. *See In re Columbia Gas Sys., Inc.*, 136 B.R. 930, 939 (Bankr. D. Del. 1992) (*citing In re Lehigh & New England Ry. Co.*, 657 F.2d 570, 581 (3d Cir. 1981) (recognizing that "[i]f payment of a prepetition claim 'is essential to the continued operation of [the debtor], payment may be authorized"").
- 21. The Court's exercise of its authority under the "doctrine of necessity" is appropriate to carry out specific statutory provisions of chapter 11, specifically sections 1107(a), 1108 and 363(b)(1) of the Bankruptcy Code, which collectively authorize a debtor-in-possession to maintain and operate the debtor's business and use estate property outside of the ordinary course of business, even if the debtor ultimately seeks to sell or liquidate its business. Indeed, a debtor-in-possession operating a business under section 1108 of the Bankruptcy Code has a duty to protect and preserve the value of its business, and prepetition claims may be paid if necessary to perform the debtor's duty. *See In re Just for Feet, Inc.*, 242 B.R. at 825 (authorizing, under the doctrine of necessity,

payment of prepetition claims of critical vendors because such claims were "essential to the continued operation of the debtor.").

- 22. The Debtors submit that paying the Transporter Claims is critical to their efforts to not only maximize the value of their estates for the benefit of their creditors, but also to ensure that consumer demand is met during the ongoing store closing sales. Absent such payment, the Debtors will be unable to move Merchandise within the distribution network, making it difficult—if not impossible—to reach online buyers and loyal customers who shop for the Debtors' merchandise at their stores and who will be most interested in purchasing inventory during the store closing sales.
- 23. Prior to the Petition Date, the Debtors considered reasonable alternatives to reduce, or perhaps eliminate, the need to satisfy Transporter Claims on a postpetition basis, but given the nature of the services provided by the Transporters, and a dearth of available or willing replacements to distribute the merchandise from the Distribution Facility to the Debtors' stores and online buyers, the Debtors determined, in their business judgment, that they require authority to pay the Transporter Claims to ensure that an operable, efficient, and effective distribution scheme remains in place while the Debtors conduct these Chapter 11 Cases and continue to sell merchandise. Moreover, the Debtors determined that they will suffer immediate and irreparable harm if they do not obtain authority to satisfy the Transporter claims immediately following the Petition Date since, absent such relief, the Debtors will, among other things, be unable to meet demands during the ongoing liquidation. Simply stated, to ensure that these Chapter 11 Cases succeed, the Debtors submit that they must be able to maintain their storage, transportation and shipping network in place prior to the Petition Date.

24. Based on the foregoing and the First Day Declaration, the Debtors submit that the relief requested is necessary and appropriate, is in the best interests of their estates and creditors, and should be granted.

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

25. The Debtors further request 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 Debtors have sufficient funds on deposit in their 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 Debtors' 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 Debtors' instructions. The Debtors anticipate having sufficient funds to pay the amounts described herein. In addition, under the Debtors' existing cash management system, the Debtors can readily identify whether checks or wire transfer requests are payments authorized by the relief requested herein. Accordingly, the Debtors believe 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

26. 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 Debtors believe an immediate and orderly transition into chapter 11 is critical to the success of these Chapter 11 Cases. 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. Accordingly, the Debtors submit that they have 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.

27. The Debtors also request 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 Debtors to operate their business under the facts and circumstances of these proceedings, thereby preserving value for their estates. Accordingly, the Debtors respectfully request 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

28. Nothing in this Motion shall be deemed: (a) an implication or admission as to the amount of, basis for, or validity of any claim against the Debtors under the Bankruptcy Code or other applicable non-bankruptcy law; (b) a waiver of the Debtors' or any other party in interest's right to dispute any claim; (c) a promise or requirement to pay any particular claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Motion; (e) a concession by the Debtors that any lien (contractual, common, statutory or otherwise) satisfied pursuant to this Motion is valid (and all rights to contest the extent, validity, or perfection or seek avoidance of all such liens are expressly reserved); (f) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (g) an admission as to the validity, priority, enforceability, or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates; (h) a waiver of the obligation

of any party in interest to file a proof of claim; or (i) a waiver of any claims or causes of action which may exist against any entity under the Bankruptcy Code or any other applicable law. If the Court enters any order granting the relief sought herein, any payment made pursuant to such order is not intended and should not be construed as an admission as to the validity of any particular claim or a waiver of the Debtors' rights to subsequently dispute such claim.

NOTICE

29. Notice of this Motion will be given to: (a) the Office of the United States Trustee for the District of Delaware; (b) counsel to Wells Fargo Bank, N.A. as Prepetition ABL Administrative Agent; (c) counsel to Pathlight Capital LP as Prepetition Term Loan Agent; (d) counsel to Simon Blackjack Consolidated Holdings, LLC as Prepetition Subordinated Loan Agent; (e) the creditors listed on the Debtors' consolidated list of thirty (30) creditors holding the largest unsecured claims against the Debtors; (f) the Banks; (g) the United States Attorney for the District of Delaware; (h) the Internal Revenue Service; (i) the state attorneys general for states in which the Debtors conduct business; 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 Debtors submit that, under the circumstances, no other or further notice is required.

[Remainder of page intentionally left blank.]

WHEREFORE, the Debtors respectfully request 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: March 17, 2025 YOUNG CONAWAY STARGATT & TAYLOR, LLP

/s/ Andrew M. Lee

Andrew L. Magaziner (No. 5426) Robert F. Poppiti, Jr. (No. 5052) Ashley E. Jacobs (No. 5635) S. Alexander Faris (No. 6278) Kristin L. McElroy (No. 6871) Andrew M. Lee (No. 7078) Sarah Gawrysiak (No. 7403) Rodney Square 1000 North King Street Wilmington, DE 19801 Telephone: (302) 571-6600 Email: amagaziner@ycst.com rpoppiti@ycst.com ajacobs@ycst.com afaris@ycst.com kmcelroy@ycst.com alee@ycst.com sgawrysiak@ycst.com

Proposed Counsel to the Debtors and Debtors in Possession

EXHIBIT A

Proposed Interim Order

IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE

| | Ref: Docket No |
|-------------------------------------|------------------------|
| Debtors. | (Jointly Administered) |
| F21 OPCO, LLC, et al., ¹ | Case No. 25-10469 () |
| In re: | Chapter 11 |

INTERIM ORDER (II) AUTHORIZING PAYMENT OF CERTAIN PREPETITION SHIPPING, WAREHOUSE, AND DELIVERY CHARGES, AND (III) GRANTING RELATED RELIEF

Upon the motion (the "Motion")² of the Debtors for entry of an interim order (this "Interim Order") (a) authorizing, but not directing, the Debtors to pay the Transporter Claims, (b) authorizing the Banks to receive, process, honor, and pay all checks and electronic funds transfers related thereto, and (c) granting related relief, all as more fully set forth in the Motion; and this Court having reviewed the Motion and the First Day Declaration; and this Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 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 February 29, 2012; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and that this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that proper and adequate notice of the Motion has been given and

The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: F21 OpCo, LLC (8773); F21 Puerto Rico, LLC (5906); and F21 GiftCo Management, LLC (6412). The Debtors' address for purposes of service in these Chapter 11 Cases is 110 East 9th Street, Suite A500, Los Angeles, CA 90079.

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

that no other or further notice is necessary; and upon the record herein; and after due deliberation thereon; and this Court having determined that the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors, and other parties in interest, it is hereby

ORDERED, ADJUDGED, AND DECREED THAT:

- 1. The Motion is GRANTED on an interim basis, as set forth herein.
- 2. Pending entry of a final order, the Debtors are authorized, but not directed, to pay the Transporter Claims in the ordinary course of business up to an aggregate amount of \$2,000,000.00 as the Debtors, in their business judgment, determine is necessary and appropriate under the facts and circumstances of these proceedings.
- 3. Nothing herein shall be deemed to constitute the postpetition assumption of any executory contract or prepetition agreement between the Debtors and any Transporter, and nothing herein shall change the nature and priority of the underlying claims held by the Transporters.
- 4. All objections to the entry of this Interim Order, to the extent not withdrawn or settled, are overruled.
- 5. The final hearing (the "Final Hearing") on the Motion shall be held on [________, 2025, at___:____.m] (prevailing Eastern Time). On or before [__:____.m.] (prevailing Eastern Time) on [________, 2025], any objections or responses to entry of a final order on the Motion shall be filed with this Court and served on: (a) the Debtors, 110 East 9th Street, Suite A500, Los Angeles, CA 90079, Attn: Michael Brown (mbrown@thinkbrg.com); (b) the Debtors' proposed counsel, Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, DE 19801, Attn: Andrew L. Magaziner, Esq. (amagaziner@ycst.com) and S. Alexander Faris, Esq. (afaris@ycst.com); (c) counsel to Wells Fargo Bank, N.A. in its capacity as Prepetition ABL Administrative Agent, Otterbourg P.C., 230 Park Avenue, New York, NY 10169,

Attn: (csimon@otterbourg.com) Chad Simon. Esq. and Daniel Fiorillo. Esa. (dfiorillo@otterbourg.com); (d) counsel to Pathlight Capital LP in its capacity as Prepetition Term Loan Agent, Riemer & Braunstein LLP, Times Square Tower, Suite 2506, Seven Times Square, New York, NY 10036, Attn: Steven E. Fox, Esq. (sfox@riemerlaw.com) and Paul D. Bekker, Esq. (pbekker@riemerlaw.com); (e) counsel to Simon Blackjack Consolidated Holdings, LLC in its capacity as Prepetition Subordinated Loan Agent, (i) Choate Hall & Stewart LLP, Two International Place, Boston, MA 02110, Attn: Mark D. Silva, Esq. (msilva@choate.com), Rick Thide, Esq. (rthide@choate.com), and Hampton Foushee, Esq. (hfoushee@choate.com); and (ii) Pashman Stein Walder Hayden, P.C., 824 North Market Street, Suite 800, Wilmington, DE 19801, Attn: Joseph C. Barsalona, Esq. (jbarsalona@pashmanstein.com); and (f) the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Wilmington, DE 19801, Attn: Jane M. Leamy, Esq. (jane.m.leamy@usdoj.gov). In the event no objections to entry of the Final Order on the Motion are timely received, this Court may enter such Final Order without need for the Final Hearing.

6. Nothing in the Motion or this Interim Order, or the relief granted herein (including any actions taken or payments made by the Debtors), is to be construed as: (a) an implication or admission as to the amount of, basis for, or validity of any claim against the Debtors under the Bankruptcy Code or other applicable non-bankruptcy law; (b) a waiver of the Debtors' or any other party in interest's right to dispute any claim; (c) a promise or requirement to pay any particular claim; (d) an implication or admission that any particular claim is of a type specified or defined in the Motion; (e) a concession by the Debtors that any lien (contractual, common, statutory or otherwise) satisfied pursuant to the Motion is valid (and all rights to contest the extent, validity or perfection or seek avoidance of all such liens are expressly reserved); (f) a request or authorization

to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (g) an admission as to the validity, priority, enforceability, or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates; (h) a waiver of the obligation of any party in interest to file a proof of claim; or (i) a waiver of any claims or causes of action which may exist against any entity under the Bankruptcy Code or any other applicable law. Nothing contained in this Interim Order shall be deemed to increase, reclassify, elevate to an administrative expense status, or otherwise affect any claim to the extent it is not paid.

- 7. The Banks shall be, and are, hereby authorized, when requested by the Debtors, 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 Debtors reissue or re-request postpetition, drawn on the Debtors' accounts to pay Transporter Claims, whether those checks were presented before or after the Petition Date, provided that sufficient funds are available in such accounts to make the payments.
- 8. The Banks may rely on the Debtors' representations with respect to whether any check or other transfer drawn or issued by the Debtors 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 Debtors as provided for in this Interim Order.
- 9. The Debtors are authorized, but not directed, to issue new postpetition checks, or effect new electronic funds transfers, and to replace any prepetition checks or electronic fund transfer requests that may be lost or dishonored as a result of the commencement of these Chapter 11 Cases on account of Transporter Claims.

- 10. Notwithstanding Bankruptcy Rule 6004(h), to the extent applicable, this Interim Order shall be effective and enforceable immediately upon entry hereof.
- 11. The requirements set forth in Bankruptcy Rule 6003(b) are satisfied because the relief set forth in this Interim Order is necessary to avoid immediate and irreparable harm.
- 12. The Debtors are authorized and empowered to take all actions necessary or appropriate to implement the relief granted in this Interim Order.
- 13. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation, interpretation or enforcement of this Interim Order.

EXHIBIT B

Proposed Final Order

IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE

| | Ref: Docket Nos & |
|-------------------------------------|------------------------|
| Debtors. | (Jointly Administered) |
| F21 OPCO, LLC, et al., ¹ | Case No. 25-10469 () |
| In re: | Chapter 11 |

FINAL ORDER (I) AUTHORIZING PAYMENT OF CERTAIN PREPETITION SHIPPING, WAREHOUSE, AND DELIVERY CHARGES, AND (II) GRANTING RELATED RELIEF

Upon the motion (the "Motion")² of the Debtors for entry of a final order (this "Final Order") (a) authorizing, but not directing, the Debtors to pay the Transporter Claims, (b) authorizing the Banks to receive, process, honor, and pay all checks and electronic funds transfers related thereto, and (c) granting related relief, all as more fully set forth in the Motion; and this Court having reviewed the Motion and the First Day Declaration; and this Court having previously entered that certain *Interim Order (I) Authorizing Payment of Certain Prepetition Shipping, Warehouse, and Delivery Charges, and (II) Granting Related Relief* [D.I. __] (the "Interim Order"); and this Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 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 February 29, 2012; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and that this Court may enter a final order consistent with Article III of the United States

The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: F21 OpCo, LLC (8773); F21 Puerto Rico, LLC (5906); and F21 GiftCo Management, LLC (6412). The Debtors' address for purposes of service in these Chapter 11 Cases is 110 East 9th Street, Suite A500, Los Angeles, CA 90079.

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

Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and upon the record herein; and after due deliberation thereon; and this Court having determined that the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors, and other parties in interest, it is hereby

ORDERED, ADJUDGED, AND DECREED THAT:

- 1. The Motion is GRANTED on a final basis, as set forth herein.
- 2. The Debtors are authorized, but not directed, to pay the Transporter Claims, up to an aggregate amount of \$2,000,000.00, inclusive of any amounts paid pursuant to the Interim Order.
- 3. Nothing herein shall be deemed to constitute the postpetition assumption of any executory contract or prepetition agreement between the Debtors and any Transporter, and nothing herein shall change the nature and priority of the underlying claims held by the Transporters.
- 4. All objections to the entry of this Final Order, to the extent not withdrawn or settled, are overruled.
- 5. Nothing in the Motion, the Interim Order, or this Final Order, or the relief granted herein (including any actions taken or payments made by the Debtors), is to be construed as: (a) an implication or admission as to the amount of, basis for, or validity of any claim against the Debtors under the Bankruptcy Code or other applicable non-bankruptcy law; (b) a waiver of the Debtors' or any other party in interest's right to dispute any claim; (c) a promise or requirement to pay any particular claim; (d) an implication or admission that any particular claim is of a type specified or defined in the Motion; (e) a concession by the Debtors that any lien (contractual, common,

statutory or otherwise) satisfied pursuant to the Motion are valid (and all rights to contest the extent, validity or perfection or seek avoidance of all such liens are expressly reserved); (f) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (g) an admission as to the validity, priority, enforceability, or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates; (h) a waiver of the obligation of any party in interest to file a proof of claim; or (i) a waiver of any claims or causes of action which may exist against any entity under the Bankruptcy Code or any other applicable law. Nothing contained in this Final Order shall be deemed to increase, reclassify, elevate to an administrative expense status, or otherwise affect any claim to the extent it is not paid.

- 6. The Banks shall be, and are, hereby authorized, when requested by the Debtors, 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 Debtors reissue or re-request postpetition, drawn on the Debtors' accounts to pay Transporter Claims, whether those checks were presented before or after the Petition Date, provided that sufficient funds are available in such accounts to make the payments.
- 7. The Banks may rely on the Debtors' representations with respect to whether any check or other transfer drawn or issued by the Debtors 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 Debtors as provided for in this Final Order.
- 8. The Debtors are authorized, but not directed, to issue new postpetition checks, or effect new electronic funds transfers, and to replace any prepetition checks or electronic fund

transfer requests that may be lost or dishonored as a result of the commencement of these Chapter 11 Cases on account of Transporter Claims.

- 9. Notwithstanding Bankruptcy Rule 6004(h), to the extent applicable, this Final Order shall be effective and enforceable immediately upon entry hereof.
- 10. The Debtors are authorized and empowered to take all actions necessary or appropriate to implement the relief granted in this Final Order.
- 11. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation, interpretation or enforcement of this Final Order.