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 (MFW)
Debtors.	(Jointly Administered)
	Ref. Docket Nos. 123, 124, 126 & 299

DEBTORS' REPLY IN SUPPORT OF DEBTORS' MOTION FOR ENTRY OF AN ORDER (I) APPROVING (A) THE ADEQUACY OF THE DISCLOSURE STATEMENT; (B) THE SOLICITATION AND NOTICE PROCEDURES WITH RESPECT TO THE CONFIRMATION OF THE DEBTORS' JOINT CHAPTER 11 PLAN; AND (C) THE FORMS OF BALLOTS AND NOTICES IN CONNECTION THEREWITH; (II) SCHEDULING CERTAIN DATES WITH RESPECT THERETO; AND (III) 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 file this reply (this "**Reply**") to the sole objection [D.I. 299] (the "**Objection**"), filed by Official Committee of Unsecured Creditors (the "**Committee**"), to the *Debtors' Motion for Entry of an Order (I) Approving (A) the Adequacy of the Disclosure Statement; (B) the Solicitation and Notice Procedures with Respect to the Confirmation of the Debtors' Joint Chapter 11 Plan; and (C) the Forms of Ballots and Notices in Connection Therewith; (II) Scheduling Certain Dates with Respect Thereto; and (III) Granting Related Relief* [D.I. 126] (the "**Solicitation Procedures Motion**") and the *Disclosure Statement for Debtors' Joint Plan Pursuant to Chapter 11 of the Bankruptcy Code* [D.I. 124] (the "**Disclosure Statement**"). Although the Committee has advised the Debtor's undersigned counsel that the Committee's issues pertaining to disclosure have been

[1] 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.

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resolved, and while the Objection otherwise raises confirmation concerns, it is the Debtors' understanding that the Committee does not intend to withdraw the Objection prior to the hearing scheduled for May 12, 2025. Accordingly, for the reasons set forth herein, the Debtors respectfully request that the Court overrule the Objection, approve the revised form of Disclosure Statement,[2] and enter the revised form of order approving the Solicitation Procedures Motion.[3]

PRELIMINARY STATEMENT

1. The Debtors initiated these Chapter 11 Cases to (a) facilitate a value-maximizing wind down of the Debtors' operations, (b) simultaneously explore and ultimately exhaust any potential value-maximizing sale transactions, and (c) implement a heavily-negotiated plan of liquidation that contemplates (i) satisfaction of all allowed priority and administrative expense claims against these estates and (ii) a distribution to holders of general unsecured claims which otherwise would fall far behind approximately $1.5 billion of secured claims arising under valid and binding secured debt instruments. As evidenced by the First Day Declaration [D.I. 2], notwithstanding the challenging circumstances under which the Debtors entered chapter 11 and at the direction of the independent Board, the Debtors, their management team and their professional advisors forged consensus with the Debtors' secured lenders prior to the Petition Date, thereby allowing these Chapter 11 Cases to go forward on an administratively solvent basis, *while also* establishing an avenue to unsecured creditor recoveries. Absent confirmation of the Plan, creditors holding valid administrative claims, priority claims, and general unsecured claims would receive

[2] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Disclosure Statement, the *Debtors' Joint Plan Pursuant to Chapter 11 of the Bankruptcy Code* [D.I. 123] (as may be subsequently amended, modified, or supplemented, the "**Plan**"), or the Objection, as applicable.

[3] A revised form of order approving the Solicitation Procedures Motion (the "**Revised Solicitation Procedures Order**"), as well as a revised form of Disclosure Statement (the "**Revised Disclosure Statement**") addressing issues raised in the Objection, have been filed contemporaneously herewith. A revised Plan (the "**Revised Plan**") has also been filed to clarify certain changes agreed to with the ABL Lenders and the U.S. Trustee.

nothing under any realistic alternative scenario. Consequently, the Plan is the value-maximizing path for junior stakeholders in these Chapter 11 Cases.

2. The Debtors have always endeavored to work cooperatively with the Committee and its professional advisors to cost effectively manage the wind down of their estates and provide for a recovery to unsecured creditors. The Debtors solicited feedback from the Committee with respect to the Disclosure Statement and Plan on multiple occasions well before the objection deadline passed, but rather than engage to resolve any disclosure concerns, the Committee elected to file the Objection.[4] Despite any implication from the Committee otherwise, the Debtors want to provide creditors with more than adequate information to allow such parties to vote on, or otherwise consider, the Plan in an informed manner. Accordingly, the Debtors revised the Disclosure Statement to address additional disclosures requested by the Committee, primarily with respect to the independent Board's Investigation, and shared those changes with the Committee prior to filing the Revised Disclosure Statement. In turn, the Committee's proposed counsel has advised the Debtors' undersigned counsel that the Committee's Objection is resolved with respect to adequate disclosure. Given that the Committee's other arguments raised in the Objection are, by the Committee's own concession, confirmation issues, the Debtors request that the Court overrule the Objection, to the extent that it remains unresolved, and enter the Revised Solicitation Procedures Order.[5]

[4] The Committee previewed its disclosure requests to the Debtors' undersigned counsel three hours prior to the Objection being filed.

[5] The Debtors received informal comments from the U.S. Trustee and certain landlords, all of which have been resolved through revised language in the Revised Solicitation Procedures Order or the Revised Plan, as applicable.

REPLY

I. The Disclosure Statement Contains Adequate Information Under Section 1125 of the Bankruptcy Code.

3. As more fully set forth in the Solicitation Procedures Motion, the primary purpose of a disclosure statement is to provide adequate information such that creditors and interest holders affected by a proposed plan can make an informed decision regarding whether or not to vote for the plan. *See, e.g.*, *Krystal Cadillac-Oldsmobile GMC Truck, Inc. v. Gen. Motors Corp.*, 337 F.3d 314, 321 (3d Cir. 2003) (providing that a disclosure statement must contain "adequate information to enable a creditor to make an informed judgment about the Plan.") (internal quotations omitted); *Century Glove, Inc. v. First Am. Bank of N.Y.*, 860 F.2d 94, 100 (3d Cir. 1988) ("[Section] 1125 seeks to guarantee a minimum amount of information to the creditor asked for its vote.").

4. Here, the Disclosure Statement contains fulsome, detailed, and clear disclosures enabling creditors to make an informed decision in connection with voting to accept or reject the Plan. The information and disclosures in the Disclosure Statement are consistent with the categories of information generally approved in this circuit, and contain "adequate information" within the meaning of section 1125 of the Bankruptcy Code. *See In re Phx Petroleum Co.*, 278 B.R. 385, 393 (Bankr. E.D. Pa. 2001) (listing 19 general categories, yet noting that the categories of information required in any specific case is a fact-specific determination).

5. Moreover, as noted above, the Revised Disclosure Statement includes incremental disclosures requested—and now agreed to—by the Committee. These supplemental disclosures are reflected in the Revised Disclosure Statement and relate, primarily, to the scope of the Investigation, the materials and interviews considered by the independent Board and its counsel, and conclusions reached in connection therewith.

6. Having addressed and resolved the Committee's concerns, the Debtors submit that with the inclusion of these incremental disclosures, the Revised Disclosure Statement satisfies section 1125(a) of the Bankruptcy Code and should be approved for purposes of Plan solicitation.

II. The Committee's Argument Regarding the Impairment of the Loan Claims is Both Premature and Mischaracterizes Applicable Law.

7. The Committee asserts that the Plan's designation of the Loan Claims as impaired is "clearly in an effort to obtain the vote of an 'impaired' consenting class," and that doing so "ignores the practical reality" that the secured lenders will be made whole by non-Debtor affiliates which, like the Debtors, are jointly and severally liable under each of the ABL Credit Agreement, Term Loan Credit Agreement and Subordinated Loan Credit Agreement (collectively, the "**Credit Agreements**"). Objection, ¶15. The Committee, however, has not provided (and cannot provide) any evidentiary support for its assertions, mischaracterizes applicable law with respect to whether a claim is "unimpaired," and concedes that these issues are properly addressed in connection with Plan confirmation. *See id.*

8. The Solicitation Procedures Motion seeks only a determination that the Disclosure Statement provides adequate information under section 1125 of the Bankruptcy Code regarding the Plan's treatment of the Loan Claims. The Debtors submit that it does. Among other things, the Revised Disclosure Statement: (a) identifies the classification and allowed amount for each respective Loan Claim, consistent with the stipulations and findings set forth in the Final Cash Collateral Order; (b) specifies that the Loan Claims are designated as "impaired" and holders of such claims are entitled to vote on the Plan; and (c) sets forth the range of recoveries such parties are anticipated to realize in connection with the Plan. The determination of whether a class of claims is impaired within the meaning of the Bankruptcy Code is an issue of law to be decided at the Confirmation Hearing when the Court addresses whether the Plan satisfies the requirements of

section 1129 of the Bankruptcy Code, not in connection with a determination of whether the Disclosure Statement satisfies the requirements of section 1125 of the Bankruptcy Code. As noted above, the Committee acknowledges that procedural point.

9. While the Debtors will address any such objection more fully in connection with seeking Confirmation of the Plan, applicable law unequivocally dictates that the Loan Claims against the Debtors are impaired within the meaning of section 1124 of the Bankruptcy Code. The Bankruptcy Code provides that a claim is impaired under a plan unless the plan leaves unaltered the legal, equitable, and contractual rights to which such claim entitles the holder. 11 U.S.C. § 1124. Indeed, the Bankruptcy Code creates a presumption of impairment, which is rebutted only if it is demonstrated that the plan leaves the creditor's rights entirely unaltered, and the party objecting to an impairment-related designation bears the burden of rebutting that presumption. *1199SEIU Nat'l Benefit Fund v. Akorn, Inc. (In re Akorn, Inc.)*, No. 20-11177 (KBO), 2021 U.S. Dist. LEXIS 180788, at *29 (D. Del. Sept. 22, 2021).

10. It is well established that any alteration of a creditor's rights constitutes impairment. *See id.* (finding that secured lenders were properly designated as "impaired" because, absent the filing of the chapter 11 cases, the lenders were authorized to take possession of their collateral upon default, and the lenders did not receive all material benefits of their loan agreement under the plan); *In re Glob. Ocean Carriers Ltd.*, 251 B.R. 31, 40 (Bankr. D. Del. 2000) ("Unfettered use of a secured creditor's restricted cash is clearly impairment of that creditor's rights"); 7 Collier on Bankruptcy ¶1124.03 (16th ed. 2025) ("Any alteration of these rights constitutes impairment, even if the value of the rights is enhanced. There is no 'suggestion . . . that only alterations of a particular kind or degree can constitute impairment.'" (footnotes omitted)). Simply stated, "impairment" is broadly interpreted in this Circuit and elsewhere. *See Wells Fargo Bank, N.A. v.*

Hertz Corp (In re Hertz Corp), 117 F. 4th 109, 129 (3d Cir. 2023) ("Congress defines impairment in the broadest possible terms, to ensure that creditors affected by a bankruptcy plan can vote on it."); *see also In re Barakat*, 99 F.3d 1520, 1527 (9th Cir. 1996).

11. Neither the Committee nor any other interested party has disputed that, as of the Petition Date, the Debtors were jointly and severally liable to their respective secured lenders on account of the collective Loan Claims in the approximate amount of $1.582 billion. *See* First Day Declaration, ¶ 33. Under the Plan, holders of the ABL Claims are recovering only a fraction of what is owed to them under the ABL Credit Agreement, and holders of the Term Loan Claims and the Subordinated Loan Claims, respectively, are recovering nothing; in fact, holders of the Term Loan Claims and the Subordinated Loan Claims, respectively, agreed under the PSA to forego any recovery from the Debtors providing a direct benefit for the Debtors' unsecured creditors.[6]

12. The Committee's assertion that the Loan Claims are unimpaired ignores the clear and unambiguous rights of the secured lenders set forth in the Credit Agreements to recover the full amount of their claims against the Debtors. While the Committee argues that nothing in the Plan alters the secured lenders' rights to seek recourse against non-Debtor affiliates consistent with the terms of the Credit Agreements, that is not the standard by which "impairment" is tested under the Bankruptcy Code and applicable caselaw.[7] To the contrary, even were the ABL Lenders able

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[6] Because the Debtors' secured lenders are clearly impaired, there likewise can be no credible argument that the Debtors artificially impaired the Loan Claims for purposes of Plan voting. *See In re Combustion Eng'g, Inc.*, 391 F.3d 190, 243 (3d Cir. 2004) ("'Artificial' impairment occurs when a plan imposes an insignificant or de minimis impairment on a class of claims to qualify those claims as impaired."). There is nothing insignificant or de minimis about the Plan's impairment of approximately $1.5 billion in outstanding Loan Claims in the manner proposed.

[7] The Objection notably does not expressly advocate that the Court require the secured lenders to marshal their collateral and seek recovery against non-Debtor affiliates; however, this is the end result of the Committee's argument. The Committee likely does not expressly seek such relief from the Court because the Committee is well aware that the equitable remedy of marshaling is not available to unsecured creditors. *Simon & Schuster, Inc. v. Advanced Mktg. Servs. (In re Advanced Mktg. Servs.)*, 360 B.R. 421, 427 (Bankr. D. Del. 2007) ("[U]nsecured creditors cannot invoke the equitable doctrine of marshaling.").

to hypothetically recover in full against non-Debtor affiliates, under the terms of the ABL Credit Agreement and the joint and several obligations arising thereunder, even *needing* to look to the non-Debtor affiliates renders the ABL Lenders impaired under the Plan. At bottom, there is no credible argument challenging the impairment of the Loan Claims under the Plan.

13. Moreover, it should not be overlooked here that the secured lenders have allowed the Debtors to use significant cash collateral to fund these Chapter 11 Cases, prosecute the Plan, and fund full recoveries to holders of priority claims and administrative claims directly from the secured lenders' collateral—forecast to be approximately over $100 million of the secured lenders' cash collateral.[8] Contrary to the Committee's misguided and erroneous assertion (made without any evidentiary support) that the Plan was drafted entirely for the benefit of the secured lenders, absent the good-faith and hard fought negotiations between the Debtors and their secured lenders that culminated in the execution of the PSA, the Debtors faced a chapter 7 liquidation in which holders of administrative claims, priority claims, and general unsecured claims would have received no recovery.

14. Finally, the Committee argues that the PSA (and not the Plan) is the source of limitation of the Loan Claims. The Loan Claims, however, do not arise under the PSA; rather, they arise under the Credit Agreements. The Committee has failed to identify anything in the PSA or any other document that negates the Loan Claims arising from the Credit Agreements. *See In re Akorn, Inc.*, 2021 U.S. Dist. LEXIS 180788, at *31 ("Appellants have not identified anything in the standstill agreement that negates the lenders' rights under the loan agreement, so the assertion that the secured lenders have received all material benefits of the standstill agreement misses the mark. The lenders did not receive all material benefits of the loan agreement under the plan, so

[8] This calculation does not include professional fees.

their class of secured claims was properly designated as impaired.") (internal citations omitted). As was the case in *Akorn*, the Committee's argument that the secured lenders are not impaired under the Plan because they are receiving what they bargained for and agreed to in the PSA misses the mark. Even had the PSA never been negotiated, given the cumulative collateral value of the Debtors' assets and the magnitude of the joint and several claims arising under the Credit Agreements, the secured lenders would receive only a sliver of the recovery to which they are otherwise contractually entitled. Each of the secured lenders' "impairment" is not derived from their good faith agreement under the PSA to share Net Proceeds with holders of Allowed General Unsecured Claims. If anything, that agreement just *further* impairs the secured lenders given that they are collectively already facing well north of $1 billion in unsatisfied secured obligations.

III. The Debtors are Cooperating with the Committee, the Plan is being Pursued in Good Faith, and the Timeline is Appropriate

15. The Debtors and their advisors have been promptly responding to each and every Committee request in these Chapter 11 Cases, whether it be with respect to discovery demands, explaining the scope and results of the independent Board's Investigation, or digesting and analyzing the Debtors' cash collateral budget on a routine basis. Given the level of professional and business-level cooperation, the Committee's allegation of bad faith is especially unsupported and surprising. The Committee justifies its unfounded assertion on assigned notions of nefarious intent, without any suitable explanation or basis in fact. The Committee has offered nothing to the Court or the Debtors which supports any allegation that the Debtors or the secured lenders—the latter of which have paid the freight of these cases and supported satisfying, among other things, valid administrative expense claims, including those arising under section 503(b)(9) of the Bankruptcy Code—are implementing a strategy that is anything other than the best possible

outcome for general unsecured creditors under the circumstances of these Chapter 11 Cases. For these reasons, accusations of bad faith are entirely unfounded and should be disregarded.

16. Furthermore, the Debtors' confirmation timeline is consistent with the Bankruptcy Rules and the Local Rules. When the hearing on the Solicitation Procedures Motion was rescheduled by seven days, from May 5, 2025, to May 12, 2025, the proposed confirmation hearing was rescheduled by twelve days, from June 12, 2025, to June 24, 2025. If the Court enters the Revised Disclosure Statement Order on or about May 12, 2025, there will be approximately forty-three days between entry of such order and the confirmation hearing. Even assuming the Debtors require multiple days to complete solicitation, this timeline provides ample cushion above and beyond the 35 days otherwise required under applicable procedural rules. There is no need for the Debtors to unnecessarily extend the timeline and incur additional administrative expense, as the Committee proposes.

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CONCLUSION

17. For the reasons outlined herein and those set forth in the Solicitation Procedures Motion, the Debtors submit that good and sufficient cause exists to overrule the Objection, approve the Revised Disclosure Statement and enter the Revised Solicitation Procedures Order.

Dated: May 9, 2025

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