

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

<p>In re:</p> <p>FTD Companies, Inc., <u>et al.</u>,¹</p> <p style="padding-left: 40px;">Debtors.</p>	<p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p>	<p>Chapter 11</p> <p>Case No. 19-_____ (___)</p> <p>(Joint Administration Requested)</p>
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MOTION OF THE DEBTORS FOR AN ORDER (I) CONFIRMING THE ADMINISTRATIVE EXPENSE PRIORITY STATUS OF THE DEBTORS' UNDISPUTED OBLIGATIONS FOR THE POSTPETITION DELIVERY OF GOODS AND PROVISION OF SERVICES AND (II) GRANTING RELATED RELIEF

FTD Companies, Inc. and certain of its direct and indirect domestic subsidiaries, as debtors and debtors in possession (collectively, the "Debtors"), respectfully represent as follows:

Background

1. On the date hereof (the "Petition Date"), each of the Debtors commenced a case under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"). By a motion filed on the Petition Date, the Debtors have requested that their chapter 11 cases (collectively, the "Chapter 11 Cases") be consolidated for procedural purposes only and administered jointly. The Debtors are authorized to continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

¹ The Debtors are the following 15 entities (the last four digits of their respective taxpayer identification numbers, if any, follow in parentheses): FTD Companies, Inc. (5852); Bloom That, Inc. (9936); Florists' Transworld Delivery, Inc. (6960); FlowerFarm, Inc. (2852); FSC Denver LLC (7104); FSC Phoenix LLC (7970); FTD, Inc. (1271); FTD.CA, Inc. (7556); FTD.COM Inc. (4509); FTD Group, Inc. (9190); FTD Mobile, Inc. (7423); Giftco, LLC (5832); Provide Cards, Inc. (3462); Provide Commerce LLC (0019); and Provide Creations, Inc. (8964). The Debtors' noticing address in these chapter 11 cases is 3113 Woodcreek Drive, Downers Grove, IL 60515.

2. A comprehensive description of the Debtors' businesses and operations, capital structure, and the events leading to the commencement of these Chapter 11 Cases can be found in the Declaration of Scott D. Levin in Support of First-Day Pleadings (the "First Day Declaration"), which was filed contemporaneously herewith and which is incorporated by reference.

Jurisdiction and Venue

3. This Court has jurisdiction to consider 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. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue for this matter is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

Relief Requested

4. Pursuant to sections 105(a), 363(c), and 503(b)(1)(A) of the Bankruptcy Code, the Debtors hereby seek the entry of an order in substantially the form attached hereto as Exhibit A (the "Proposed Order"): (a) confirming the administrative expense priority status of the Debtors' undisputed obligations for the postpetition delivery of goods to the Debtors and provision of services to the Debtors; (b) authorizing the Debtors to pay such expenses in the ordinary course of their businesses; and (c) granting certain related relief.

Facts Relevant to This Motion

5. The Debtors provide floral, specialty food, gift, and related products and services to consumers, retail florists, and other retail locations and companies in need of floral and gifting solutions. In the ordinary course of the Debtors' businesses, numerous suppliers and service providers provide the Debtors with goods and services that are integral to the Debtors' ongoing business operations. As of the Petition Date, the Debtors had outstanding prepetition

purchase orders (collectively, the "Outstanding Orders") with many such suppliers of goods and services. Moreover, in the ordinary course of their businesses, the Debtors will order goods and request services postpetition for which there is no existing purchase order.

Argument

6. As a result of the commencement of these Chapter 11 Cases, the Debtors believe that their suppliers may perceive a risk of being treated as prepetition general unsecured creditors for the cost of any shipments made or services provided after the Petition Date pursuant to the Outstanding Orders. As a result, the suppliers may refuse to ship such goods or provide such services to the Debtors unless the Debtors issue substitute postpetition purchase orders or provide other assurances of payment.

7. Issuing substitute purchase orders on a postpetition basis would be administratively burdensome, time-consuming, and counterproductive. Such a requirement imposed by the Debtors' suppliers – or other requests for assurance of payment – inevitably will lead to delays in the Debtors' receipt of goods and services, potentially resulting in the disruption of the Debtors' operations and hindering the Debtors' ability to minimize the impact of these Chapter 11 Cases on their stakeholders.

8. In addition to suppliers with Outstanding Orders, other suppliers of the Debtors may not understand the impact of the Debtors' bankruptcy filings on them. Such suppliers may be hesitant to make shipments to the Debtors due to their uncertainty over the status of these Chapter 11 Cases. This uncertainty could impact the Debtors' ability to obtain the goods and services that they need on the best available terms and pricing.

9. Under these circumstances, the Debtors believe that relief is necessary to permit the Debtors to obtain the timely and uninterrupted delivery of goods and provision of services from their suppliers. Accordingly, the Debtors seek entry of an order confirming that

the Debtors' undisputed obligations to their suppliers under Outstanding Orders or under new postpetition purchase orders for (a) shipments of goods delivered to and accepted by the Debtors on or after the Petition Date and (b) the provision of services to the Debtors on or after the Petition Date at the Debtors' request will be entitled to administrative expense priority status. Notwithstanding the foregoing, the Debtors do not seek authority in this Motion to pay any obligations to their suppliers where title to the underlying goods was transferred to the Debtors prior to the Petition Date pursuant to the express terms of the legal documents governing a particular postpetition shipment.

10. The Debtors submit that the relief sought herein is non-controversial and entirely consistent with the Bankruptcy Code. Pursuant to section 363(c) of the Bankruptcy Code, the Debtors, as debtors in possession, are authorized to "enter into transactions ... in the ordinary course of business ... and may use property of the estate in the ordinary course of business without notice or a hearing." 11 U.S.C. § 363(c). Thus, following the Petition Date, the Debtors are authorized to conduct transactions in the ordinary course of business without further order of the Court.

11. Moreover, obligations arising out of the postpetition delivery of such goods and provision of such services to the Debtors generally are expenses incurred for the benefit of the Debtors' estates and assist in preserving the value of the Debtors' businesses. As such, these costs generally are accorded administrative expense priority status as "the actual, necessary costs and expenses of preserving the estate" pursuant to section 503(b)(1)(A) of the Bankruptcy Code. 11 U.S.C. § 503(b)(1)(A). The requested relief merely confirms the treatment of such postpetition obligations under the Bankruptcy Code, providing necessary

assurances of payment to the Debtors' suppliers and ensuring the Debtors' ongoing and uninterrupted receipt of essential goods and services.

12. Under section 105 of the Bankruptcy Code, the Court has broad discretion to issue orders necessary to "carry out the provisions of this title." 11 U.S.C. § 105(a). For all of the reasons described above, the Debtors submit that the relief sought herein is appropriate under section 105 of the Bankruptcy Code.

13. Courts in this District have approved similar relief in other chapter 11 cases. See, e.g., In re Imerys Talc Am., Inc., Case No. 19-10289 (LSS) (Bankr. D. Del. Mar. 19, 2019) (confirming administrative priority for postpetition delivery of goods and services to the debtor); In re The Bon-Ton Stores, Inc., Case No. 18-10248 (MFW) (Bankr. D. Del. Feb. 6, 2018) (same); In re Dexter Surgical Inc., Case No. 17-12913 (KJC) (Bankr. D. Del. Jan. 2, 2018) (same); In re Panda Temple Power, LLC, Case No. 17-10839 (LSS) (Bankr. D. Del. May 12, 2017) (same); In re Eastern Outfitters, LLC, Case No. 17-10243 (LSS) (Bankr. D. Del. Feb. 8, 2017) (same).²

14. Nothing in this Motion shall be deemed to modify or waive any of the Debtors' rights with respect to goods and services requested or received from their suppliers, including the Debtors' rights to: (a) cancel a purchase order (including any Outstanding Order) to the extent permitted by the purchase order or applicable non-bankruptcy law; (b) decline the acceptance of goods and services; (c) return any defective, nonconforming, or unacceptable goods; or (d) contest the amount of any invoice or claim on any legal or factual grounds. Likewise, nothing herein is intended to (a) be a promise or guarantee of payment of any claim or

² The unreported orders cited herein are not attached to this Motion. Copies of these orders are available upon request to proposed counsel to the Debtors.

group of claims or (b) modify, create, or expand any rights of the Debtors' suppliers under the Bankruptcy Code or otherwise.

Consent to Jurisdiction

15. Pursuant to Rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules"), the Debtors consent 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 order or judgment absent consent of the parties.

Notice

16. Notice of this Motion shall be provided to: (a) the Office of the United States Trustee for the District of Delaware; (b) the Debtors' 30 largest unsecured creditors on a consolidated basis, as identified in their chapter 11 petitions; and (c) Moore & Van Allen PLLC, as counsel to Bank of America, N.A., as administrative agent under both the Debtors' prepetition secured credit facility and proposed postpetition secured credit facility. As this Motion is seeking first-day relief, notice of this Motion and any order entered hereon will be served on all parties entitled to notice pursuant to Local Rule 9013-1(m). Due to the urgency of the circumstances surrounding this Motion and the nature of the relief requested herein, the Debtors respectfully submit that no further notice of this Motion is required.

No Prior Request

17. No prior request for the relief sought herein has been made to this Court or any other court.

WHEREFORE, the Debtors respectfully request that the Court (i) enter the Proposed Order, granting the relief requested herein; and (ii) grant such other and further relief to the Debtors as the Court may deem proper.

Dated: June 3, 2019
Wilmington, Delaware

Respectfully submitted,

/s/ Daniel J. DeFranceschi

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PROPOSED ATTORNEYS FOR DEBTORS
AND DEBTORS IN POSSESSION

EXHIBIT A

Proposed Order

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

<p>In re:</p> <p>FTD Companies, Inc., <u>et al.</u>,¹</p> <p style="padding-left: 40px;">Debtors.</p>	<p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p>	<p>Chapter 11</p> <p>Case No. 19-_____ (___)</p> <p>(Joint Administration Requested)</p>
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**ORDER GRANTING MOTION OF THE DEBTORS
FOR AN ORDER (I) CONFIRMING THE ADMINISTRATIVE
EXPENSE PRIORITY STATUS OF THE DEBTORS' UNDISPUTED
OBLIGATIONS FOR THE POSTPETITION DELIVERY OF GOODS
AND PROVISION OF SERVICES AND (II) GRANTING RELATED RELIEF**

This matter coming before the Court on the *Motion of the Debtors for an Order (I) Confirming the Administrative Expense Priority Status of the Debtors' Undisputed Obligations for the Postpetition Delivery of Goods and Provision of Services and (II) Granting Related Relief* (the "Motion"),² filed by the above-captioned debtors and debtors in possession (collectively, the "Debtors"); the Court having reviewed the Motion and the First Day Declaration and having considered the statements of counsel with respect to the Motion at a hearing before the Court (the "Hearing"); the Court having found that (i) 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, (ii) this is a core proceeding pursuant to 28 U.S.C. § 157(b), (iii) venue is

¹ The Debtors are the following 15 entities (the last four digits of their respective taxpayer identification numbers, if any, follow in parentheses): FTD Companies, Inc. (5852); Bloom That, Inc. (9936); Florists' Transworld Delivery, Inc. (6960); FlowerFarm, Inc. (2852); FSC Denver LLC (7104); FSC Phoenix LLC (7970); FTD, Inc. (1271); FTD.CA, Inc. (7556); FTD.COM Inc. (4509); FTD Group, Inc. (9190); FTD Mobile, Inc. (7423); Giftco, LLC (5832); Provide Cards, Inc. (3462); Provide Commerce LLC (0019); and Provide Creations, Inc. (8964). The Debtors' noticing address in these chapter 11 cases is 3113 Woodcreek Drive, Downers Grove, IL 60515.

² Capitalized terms not otherwise defined herein have the meanings given to them in the Motion.

proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409, and (iv) notice of the Motion and the Hearing was sufficient under the circumstances; and the Court having determined that the legal and factual bases set forth in the Motion and the First Day Declaration and at the Hearing establish just cause for the relief granted herein;

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED as set forth herein.
2. The Debtors' undisputed obligations to suppliers of goods and services arising from (a) shipments of goods delivered to and accepted by the Debtors on or after the Petition Date and (b) the provision of services to the Debtors on or after the Petition Date at the Debtors' request are hereby granted administrative expense priority status pursuant to section 503(b)(1)(A) of the Bankruptcy Code, and the Debtors are hereby authorized to pay such administrative expenses in the ordinary course of their businesses.
3. Nothing in this Order shall authorize the Debtors to pay any amount to any party for goods received where title to the underlying goods was transferred to the Debtors prior to the Petition Date.
4. Nothing in the Motion or this Order, nor the Debtors' implementation of the relief granted in this Order: (a) shall be deemed to modify or waive any of the Debtors' rights with respect to goods and services requested or received from their suppliers, including the Debtors' rights to (i) cancel a purchase order (including any Outstanding Order) to the extent permitted by the purchase order or applicable non-bankruptcy law, (ii) decline the acceptance of goods and services, (iii) return any defective, nonconforming, or unacceptable goods, or (iv) contest the amount of any invoice or claim on any legal or factual grounds; or (b) may be construed to (i) be a promise or guarantee of payment of any claim or group of claims or

(ii) modify, create, or expand any rights of the Debtors' suppliers under the Bankruptcy Code or otherwise.

5. The Debtors are authorized and empowered to take all actions necessary to implement the relief granted in this Order.

6. This Court shall retain exclusive jurisdiction over any and all matters arising from or related to the implementation or interpretation of this Order.

Dated: _____, 2019
Wilmington, Delaware

UNITED STATES BANKRUPTCY JUDGE