

**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, PURSUANT TO
SECTION 105 OF THE BANKRUPTCY CODE, FOR AN ORDER
(I) CONFIRMING THE PROTECTIONS OF SECTIONS 362, 365, AND 525
OF THE BANKRUPTCY CODE AND (II) GRANTING CERTAIN 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 the 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 section 105(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 application of three key protections afforded to the Debtors under the Bankruptcy Code: (i) the automatic stay provisions of section 362 of the Bankruptcy Code; (ii) the anti-termination and anti-modification provisions of section 365 of the Bankruptcy Code; and (iii) the anti-discrimination provisions of section 525 of the Bankruptcy Code (collectively, the "Code Protections"); and (b) granting certain related relief.

Argument

Confirming the Protections of Sections 362, 365, and 525 of the Bankruptcy Code Is Appropriate.

5. Each of (a) the extensive nature of the Debtors' businesses, (b) the Debtors' need for, and reliance upon, contract parties and governmental entities

continuing to perform their obligations, and (c) the Debtors' interactions with parties who may be unfamiliar with, are mistaken regarding, or who simply ignore the Code Protections require that an order confirming these protections be entered by this Court to maximize value for stakeholders.

6. As a result of the commencement of the Debtors' chapter 11 cases, the automatic stay imposed pursuant to section 362 of the Bankruptcy Code enjoins (subject to certain exceptions) all persons and all governmental units from, among other things: (a) commencing or continuing any judicial, administrative, or other proceeding against the Debtors that was or could have been commenced before the Debtors' chapter 11 cases were commenced; (b) recovering upon a claim against any of the Debtors that arose prior to the commencement of the Debtors' chapter 11 cases; (c) taking any action to collect, assess, or recover a claim against any of the Debtors that arose before the commencement of the Chapter 11 Cases; and (d) acting to obtain possession of, or exercise control over, property of the Debtors' estates. See 11 U.S.C. § 362(a)(1), (3), (6).

7. Section 365 of the Bankruptcy Code prohibits all parties to executory contracts or unexpired leases with any Debtors from, among other things, modifying or terminating such contracts or leases (or any right or obligation under such contracts or leases) at any time after the commencement of the Chapter 11 Cases solely because of a provision in any such contract or lease that is conditioned on, among other things: (a) the insolvency or financial condition of a Debtor at any time before the closing of the Debtors' chapter 11 cases; or (b) the commencement of the Debtors' chapter 11 cases. See 11 U.S.C. § 365(e)(1); see also In re W.R. Grace & Co., 475 B.R. 34, 152-53 (D. Del. 2012), aff'd, 729 F.3d 311 (3d Cir. 2013) (stating that it is well-established that ipso facto clauses are unenforceable as a

matter of law under the Bankruptcy Code and "the ban on ipso facto clauses has been interpreted to be much broader than the confines of §§ 541(c) and 365(e)(1)").

8. In addition, section 525 of the Bankruptcy Code prohibits and enjoins any and all governmental units from, among other things: (a) denying, revoking, suspending, or refusing to renew any permit, license, charter, franchise, or other similar grant to the Debtors; (b) placing conditions upon such a grant to the Debtors; or (c) discriminating against the Debtors with respect to such a grant, solely because the Debtors are debtors under the Bankruptcy Code, may have been insolvent before the commencement of the Chapter 11 Cases, or are insolvent during the pendency of the Chapter 11 Cases or have not paid a dischargeable debt.

See 11 U.S.C. § 525.

9. Each of the Code Protections is self-executing and, collectively, they constitute fundamental debtor protections that, in combination with other provisions of the Bankruptcy Code, provide the Debtors with the "breathing spell" that is essential to the Debtors' ability to position themselves to maximize value to stakeholders. See FCC v. NextWave Pers. Commc'ns Inc., 537 U.S. 293, 307 (2003) ("The government is not to revoke a bankruptcy debtor's license [under section 525(a) of the Bankruptcy Code] solely because of a failure to pay his debts."); In re Univ. Med., 973 F.2d 1065, 1074 (3d Cir. 1992) ("The stay gives the debtor a breathing spell from his creditors. It stops all collection efforts, all harassment, and all foreclosure actions. It permits a debtor to attempt a repayment or reorganization plan, or simply to be relieved of the financial pressures that drove him into bankruptcy.") (quoting H.R. Rep. No. 595, 95th Cong., 1st Sess. 340 (1978), reprinted in 1978 U.S.C.C.A.N., 5787, 5963, 6296-97) (internal citation and quotation marks omitted) (emphasis in original); Cuffee v. Atl. Bus. & Cmty. Dev. Corp. (In re Atl. Bus. & Cmty. Corp.), 901 F.2d 325, 327 (3d Cir. 1990)

("The automatic stay is one of the fundamental debtor protections provided by the bankruptcy laws. It gives the debtor a breathing spell from his creditors.") (internal citation omitted).

10. The protections in these provisions extend to protect a debtor's property, contracts, and regulatory rights and privileges wherever they are located and by whomever held. See, e.g., NextWave Pers. Commc'ns, 537 U.S. at 308 (pursuant to section 525(a) of the Bankruptcy Code, the Federal Communications Commission could not cancel a debtor's broadcasting license due to non-payment of licensing fees during the bankruptcy process); In re Nortel Networks, Inc., 669 F.3d 128, 138 (3d Cir. 2011) ("Since 1987, United States courts have uniformly upheld the extraterritorial application of the automatic stay.") (internal citations omitted); Sec. Investor Prot. Corp. v. Bernard L. Madoff Inv. Sec., LLC, 474 B.R. 76, 82 (S.D.N.Y. 2012) ("as numerous judicial opinions explain, 'the automatic stay applies extraterritorially'" (citing In re McLean Indus., Inc., 74 B.R. 589, 601 (Bankr. S.D.N.Y. 1987); see also 11 U.S.C. § 541(a) ("The commencement of a case under section 301 ... of this title creates an estate. Such estate is comprised of all the following property, wherever located and by whomever held") (emphasis added).

11. Moreover, "[c]ourts have consistently held that contract rights are property of the estate." In re Patriot Nat'l Inc., 592 B.R. 560, 572 (Bankr. D. Del. 2018); EBC I, Inc. v. Am. Online, Inc. (In re EBC I, Inc.), 356 B.R. 631, 639 (Bankr. D. Del. 2006) (same); see also U.S. Bank Trust Nat'l Ass'n v. AMR Corp. (In re AMR Corp.), 730 F.3d 88, 102–03 (2d Cir. 2013) (court acknowledging that contract rights are property of the estate); Fed. Realty Inv. Trust v. Park (In re Park), 275 B.R. 253, 255 (Bankr. E.D. Va. 2002) ("When a debtor files for bankruptcy, an 'estate' is created that includes all property interests of the debtor, legal or equitable. This includes the debtor's contract rights.") (internal citation omitted).

12. Accordingly, any actions by third parties to modify or terminate contracts are prohibited absent court approval or express statutory exceptions. See NLRB v. Bildisco & Bildisco, 465 U.S. 513, 531 (1984) (holding that while the debtor may enforce the terms of the contract against the creditor, the creditor is "precluded from ... enforcing the contract terms" of an executory contract prior to assumption by the debtor); see also In re Broadstripe, LLC, 402 B.R. 646, 656 (Bankr. D. Del. 2009) (quoting U.S. Postal Serv. v. Dewey Freight Sys., Inc., 31 F.3d 620, 624-25 (8th Cir. 1994)) ("Pending a debtor's decision to assume or reject an executory contract, courts have generally concluded that the contract is enforceable by the debtor but not against the debtor.").

13. Notwithstanding the self-executing and global nature of the Code Protections, not all parties affected or potentially affected by the commencement of a chapter 11 case are aware of, comprehensively understand, or will abide by these provisions. Experience has shown that it is often necessary to advise third parties of the existence, scope, and effect of sections 362, 365, and 525 of the Bankruptcy Code through a separate order. For these reasons, it is both appropriate and common for a bankruptcy court to issue an order confirming the Code Protections.

14. Such an order is appropriate in the Chapter 11 Cases because the Debtors' operations are dependent upon the uninterrupted performance by the Debtors' contract counterparties (including contractual relationships with foreign entities operating in foreign jurisdictions), as well as certain licenses protected by section 525 of the Bankruptcy Code. The Debtors believe that many of the entities subject to the Code Protections may be unaware of or misapprehend the scope of the protection these sections provide to the Debtors. Accordingly, the Debtors respectfully request that this Court issue an order that confirms the applicability of

the Code Protections. The Debtors believe that the existence of such an order, which the Debtors will be able to transmit to affected parties, will maximize the protections afforded by sections 362, 365, and 525 of the Bankruptcy Code.

15. The Court's general equitable powers are codified in section 105(a) of the Bankruptcy Code. Section 105(a) of the Bankruptcy Code empowers the court to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a). Granting the relief requested herein is fully consistent with the terms of the relevant Bankruptcy Code provisions and will facilitate a smooth and orderly transition into chapter 11. The Debtors, therefore, request that this Court grant the requested relief.

16. Similar relief has been approved in other bankruptcy cases in this District. See, e.g., In re Orchids Paper Prod. Co., No. 19-10729 (MFW) (Bankr. D. Del. May 2, 2019) (confirming the protections of sections 362, 365, and 525 of the Bankruptcy Code); In re Imerys Talc Am., Inc., No. 19-10289 (LSS) (Bankr. D. Del. Feb. 14, 2019) (same); In re TK Holdings, Inc., No. 17-11375 (BLS) (Bankr. D. Del. Jun. 27, 2017) (same).²

Consent to Jurisdiction

17. Pursuant to Local Rule 9013-1(f), 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

18. 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,

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.

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

19. 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.

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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**

In re:	:	Chapter 11
	:	
FTD Companies, Inc., <u>et al.</u> , ¹	:	Case No. 19-_____ (___)
	:	
Debtors.	:	(Joint Administration Requested)
	:	

**ORDER, PURSUANT TO SECTION 105 OF THE BANKRUPTCY CODE,
(I) CONFIRMING THE PROTECTIONS OF SECTIONS 362, 365, AND 525
OF THE BANKRUPTCY CODE AND (II) GRANTING CERTAIN RELATED RELIEF**

This matter coming before the Court on the *Motion of the Debtors Pursuant to Section 105 of the Bankruptcy Code, for an Order (I) Confirming the Protections of Sections 362, 365, and 525 of the Bankruptcy Code and (II) Granting Certain 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. § 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 proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409, (iv) notice of the Motion and the Hearing was sufficient under

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 shall have the meanings given to them in the Motion.

the circumstances, and (v) the requested relief confirms the protections of sections 362, 365, and 525 of the Bankruptcy Code; 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. Pursuant to and to the extent set forth in section 362 of the Bankruptcy Code, and subject to paragraph 5 below, all persons (including individuals, partnerships, corporations, and all those acting for or on their behalf) and all foreign or domestic governmental units (and all those acting for or on their behalf) are hereby stayed from:

- a) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the Debtors that was or could have been commenced before the commencement of any of their Chapter 11 Cases, or to recover a claim against the Debtors that arose before the commencement of any of their Chapter 11 cases;
- b) the enforcement, against the Debtors or against property of their estates, of a judgment before the commencement of any of their Chapter 11 Cases;
- c) any act to obtain possession of property of the Debtors' estates or of property from their estates or to exercise control over property of their estates;
- d) any act to create, perfect, or enforce any lien against property of the Debtors' estates;
- e) any act to create, perfect, or enforce against property of the Debtors any lien to the extent that such lien secures a claim that arose before the commencement of any of the Debtors' Chapter 11 Cases;
- f) any act to collect, assess, or recover a claim against any of the Debtors that arose before the commencement of any of their chapter 11 cases;
- g) the setoff of any debt owing to any of the Debtors that arose before the commencement of any of their chapter 11 cases against any claim against any of the Debtors; and

- h) the commencement or continuation of a proceeding before the United States Tax Court concerning a tax liability of the Debtors for a taxable period the Court may determine.

3. All persons and all foreign and domestic governmental units, and all those acting on their behalf, including sheriffs, marshals, constables, and other or similar law enforcement officers and officials, are stayed, restrained, and enjoined from in any way seizing, attaching, foreclosing upon, levying against, or in any other way interfering with any and all property of any of the Debtors, wherever located.

4. Pursuant to and to the extent set forth in section 365(e) of the Bankruptcy Code, all persons (including individuals, partnerships, corporations, and all those acting for or on their behalf) and all foreign or domestic governmental units (and all those acting for or on their behalf) are hereby prohibited from modifying or terminating any executory contract or unexpired lease, or any right or obligation under such contract or lease, at any time after the commencement of the Debtors' Chapter 11 Cases solely because of a provision in such contract or lease that is conditioned on:

- a) the insolvency or financial condition of any Debtor at any time before the closing of the Debtors' Chapter 11 Cases; or
- b) the commencement of the Debtors' Chapter 11 Cases.

5. This Order shall not affect the substantive rights of any party, nor create any rights, defenses, or arguments not otherwise available under applicable law. Specifically, this Order shall not affect the exceptions contained in sections 362(b), 365(b)(4), and 365(e)(2) of the Bankruptcy Code or the right of any party in interest to seek relief from the automatic stay in accordance with section 362(d) of the Bankruptcy Code or with respect to an unexpired lease or executory contract under section 365 of the Bankruptcy Code.

6. Pursuant to and to the extent set forth in section 525 of the Bankruptcy Code (and subject to the exceptions set forth in section 525(a) of the Bankruptcy Code), all foreign and domestic governmental units may not: (a) deny, revoke, suspend, or refuse to renew a license, permit, charter, franchise, or other similar grant to, condition such a grant to, discriminate with respect to such a grant against, the Debtors solely because the Debtors are debtors under the Bankruptcy Code, may have been insolvent before the commencement of the Chapter 11 Cases, are insolvent during the Debtors' Chapter 11 Cases but before the Debtors are granted or denied a discharge, or have not paid a debt that is dischargeable in the Chapter 11 Cases.

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

8. 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