

manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

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 345, 363(c)(1), and 503(b)(1) of the Bankruptcy Code, Rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Rule 2015-2 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 hereby seek the entry of interim and final orders in substantially the forms attached hereto as Exhibit A (the "Proposed Interim Order") and Exhibit B (the "Proposed Final Order"), respectively:

- (a) approving the Debtors' continued use of their (i) current cash management system (as it may be modified by any interim or final order approving the Debtors' continued use of cash collateral or proposed postpetition secured debtor in possession financing (the "DIP Facility") and (ii) business forms, each as modified to the extent described herein;

- (b) granting the Debtors a 30-day extension to comply with the requirements of section 345(b) of the Bankruptcy Code with respect to the Debtors' deposit practices and certain requirements in the *Operating Guidelines for Chapter 11 Cases* for the District of Delaware (the "UST Operating Guidelines") maintained by the Office of the United States Trustee for Region 3 (the "U.S. Trustee") with respect to certain of the Debtors' existing bank accounts (the "Bank Accounts");
- (c) authorizing all banks participating in the Debtors' cash management system to honor certain transfers and charge bank fees and certain other amounts;
- (d) approving the continuation of ordinary course intercompany transactions and granting administrative expense priority status to postpetition intercompany claims held by a Debtor against one or more of the other Debtors; and
- (e) granting certain related relief.

Facts Relevant to This Motion

A. The Debtors' Cash Management System

5. The Debtors, as affiliated entities, historically have employed a consolidated cash management system (the "Cash Management System") encompassing 22 domestic Bank Accounts and three foreign Bank Accounts which are used in the collection, management, and disbursement of funds in the day-to-day operation of the Debtors' businesses. The Debtors make and receive thousands of payments per week, and over approximately \$3.5 billion in cash flows through the Cash Management System annually.

6. The Debtors maintain each of the domestic Bank Accounts at financial institutions insured by the Federal Deposit Insurance Corporation (the "FDIC"). Each of the foreign Bank Accounts are maintained at large, highly-regulated financial institutions with international operations, and the Debtors believe that their deposits with these institutions are secure. The Debtors use most of these Bank Accounts to collect, transfer, and disburse funds

generated from operations on a daily basis and record such collections, transfers, and disbursements.²

7. The following is a detailed description of the various Bank Accounts within the Cash Management System:

- (a) **Accounts Receivable Accounts.** The Debtors have five discrete accounts (associated with Debtors FTD, Inc., Provide Commerce LLC, Provide Creations, Inc., and Giftco, LLC) (collectively, the "A/R Accounts") which collect all customer receipts from the Debtors' (i) FTD.com, Personal Creations, ProFlowers, and Gourmet Foods businesses and (ii) thousands of florist network members (collectively, the "Florist Network Members"). Four of the A/R Accounts (collectively, the "DACA Accounts") are (i) subject to deposit account control agreements with the Debtors' prepetition secured lenders and (ii) automatically swept each day such that the proceeds from any customer receipts are applied directly to pay down the Debtors' prepetition secured revolving credit facility (the "Revolving Credit Facility"). The Debtors maintain these four DACA Accounts at Wells Fargo, N.A. ("Wells Fargo"), MUFG Union Bank ("Union Bank"), and JPMorgan Chase Bank ("JPM"). The fifth A/R Account is a lockbox account maintained at Wells Fargo, which collects checks representing customer receipts from Florist Network Members. This lockbox account is automatically swept such that the proceeds from any Florist Network Member receipts are (i) transferred to the DACA Account maintained at Wells Fargo and (ii) thus, ultimately applied to pay down the Revolving Credit Facility.
- (b) **Main Concentration Account.** The Debtors maintain one account with Wells Fargo that receives funds borrowed under the Revolving Credit Facility (the "Main Concentration Account"). The Main Concentration Account is the focal point of the Cash Management System, and is used to fund the Debtors' disbursement accounts (as described below), make intercompany transfers, receive amounts from credit card processing services (which amounts are subsequently disbursed to participating Florist Network Members with the Debtors acting as an intermediary between such members and credit card companies in connection with credit card transactions involving the Debtors' retail customers), and pay down debt.
- (c) **Florist Network Member Disbursement Account.** The Debtors maintain one "zero balance" account (the "Florist Network Member Disbursement Account") for making disbursements to Florist Network Members in

² A chart summarizing the Cash Management System and a schedule of the Bank Accounts are attached hereto as Exhibit C and Exhibit D, respectively.

connection with the Debtors' order clearinghouse service. The Florist Network Member Disbursement Account is funded by the Main Concentration Account and is maintained at Wells Fargo.

- (d) **Operating Accounts.** The Debtors maintain four accounts to (i) hold and transfer operating funds and (ii) make certain vendor payments and other disbursements in connection with the Debtors' businesses (collectively, the "Operating Accounts"). The Debtors maintain one "zero balance" Operating Account for vendor payments and other disbursements by Debtor FTD, Inc. (the "FTD Operating Account"), which account is funded by the Main Concentration Account and is maintained at Wells Fargo. The Debtors employ the remaining three Operating Accounts (collectively, the "Provide Operating Accounts") to (i) make vendor payments and other disbursements related to Provide Commerce LLC, Giftco, LLC, and Personal Creations, Inc. and (ii) make further transfers to certain Payroll Disbursement Accounts (as defined herein) for such Debtors. The Provide Operating Accounts receive and transmit funds via intercompany transfers and are maintained at Union Bank and JPM.
- (e) **Payroll Disbursement Accounts.** The Debtors maintain four "zero balance" accounts for disbursements related to payroll and employee benefits (collectively, the "Payroll Disbursement Accounts"). The Payroll Disbursement Account for Debtor FTD, Inc. is maintained at Wells Fargo and funded directly by the Main Concentration Account. The Payroll Disbursement Accounts for Debtors Provide Commerce LLC, Giftco, LLC, and Provide Creations, Inc. are maintained at Union Bank and funded directly by the Operating Accounts.
- (f) **Canadian Operating Accounts.** The Debtors maintain three Canadian dollar denominated accounts: one operating account at Toronto Dominion Bank and one operating account and one lockbox account at Bank of Montreal (the "Canadian Operating Accounts"). Together, the Canadian Operating Accounts (i) receive intercompany transfers, Florist Network Member receipts, and amounts received from credit card processing services; (ii) make disbursements to (A) vendors and (B) Florist Network Members in connection with credit card processing services; and (iii) make payments on account of employee payroll and benefits and intercompany obligations.
- (g) **Dormant and Discontinued Accounts.** The Debtors currently maintain seven accounts that are either dormant (i.e., inactive, but associated with currently operating businesses) or discontinued (i.e., inactive and associated with defunct, discontinued businesses) (collectively, the "Dormant and Discontinued Accounts"): (i) three at Silicon Valley Bank related to discontinued operations at Debtor Bloom That, Inc., (ii) two at Union Bank related to the winddown of FTD Mobile, Inc., f/k/a Sincerely, Inc., and (iii) two investment accounts – one at Bank of America, N.A. and one at

BBVA Compass Bank – related to legacy corporate investment programs that are no longer in effect. As the Debtors continue to evaluate their Cash Management System in connection with their efforts to maximize value for stakeholders in these Chapter 11 Cases, the Debtors may dissolve or repurpose certain of the Dormant and Discontinued Accounts. Each Dormant and Discontinued Account carries a zero or de minimis balance.

B. Transactions Among the Debtors

8. In the ordinary course of business, the Debtors engage in intercompany financial transactions with one another (collectively, the "Inter-Debtor Transactions") for administrative convenience, to ensure their operational and financial needs are met, and to facilitate the Debtors' sale of goods and services. For example, Provide Commerce LLC and its Debtor affiliates (collectively, the "Provide Debtors") are party to an Intercompany Agreement, effective as of July 20, 2010, which provides for the allocation of certain costs, sharing of certain services, and the transfer of certain products among the Provide Debtors. All Inter-Debtor Transactions result in the creation of corresponding intercompany payables and receivables. The Debtors expect that similar Inter-Debtor Transactions will occur on a postpetition basis. These intercompany payables and receivables will be maintained and tracked in the Debtors' books and records.

C. Transactions Between the Debtors and Non-Debtor Affiliates

9. In addition to the Inter-Debtor Transactions, in the ordinary course of business, the Debtors engage in certain intercompany transactions with non-Debtor affiliates (collectively, the "Inter-Affiliate Transactions" and, together with the Inter-Debtor Transactions, the "Intercompany Transactions"), which provide for the allocation of corporate overhead costs, the sharing of certain services, the Debtors' receipt of key IT Services (as defined herein), and the facilitation of the Debtors' sale of goods and services.

10. For example, prior to the Petition Date, Debtor Florists' Transworld Delivery, Inc. was responsible for compensating and making payments toward the supplemental medical, dental, life, and disability insurance plans for three Canadian employees (the "Canadian Employees") employed by non-Debtor affiliate FTD Canada Inc. ("FTD Canada"). Historically, FTD Canada reimbursed Florists' Transworld Delivery, Inc. through intercompany transfer for amounts paid on account of the Canadian Employees. While FTD Canada is not a debtor in these Chapter 11 Cases, the Canadian Employees conduct sales and recruit Florist Network Members in Canada for the Debtors' Florist segment and thus are critical to the Debtors' Canadian business transactions. Accordingly, postpetition, the Debtors seek to continue their prepetition practice of making payments for the benefit of the Canadian Employees subject to reimbursement by FTD Canada through intercompany transfers. The average amount that the Debtors pay per payroll period for the compensation and benefits of the Canadian Employees is less than \$10,000.

11. Debtor FTD, Inc. and non-Debtor FTD India Private Limited ("FTD India") are party to a Foreign Collaboration Agreement, dated as of November 1, 2013, pursuant to which FTD India manufactures, develops, and exports computer software and services related thereto (the "IT Services") to FTD, Inc. In accordance with the Foreign Collaboration Agreement, FTD, Inc. reimburses FTD India for all reasonable operating expenses incurred by FTD India toward provision of the IT Services, including the cost of FTD India's employee salaries and certain costs associated with the development of the IT Services, such as rent,

equipment, telephones or faxes, email, and travel, subject to approval by FTD, Inc. Payments made to FTD India total approximately \$250,000 per month.³

12. In addition, the Debtors (a) fulfill and facilitate international orders (e.g., orders originating outside North America to be fulfilled therein; or vice versa) and (b) process payments to overseas florists fulfilling such transactions through non-Debtor Interflora, Inc. Fulfillment revenues due to the Debtors on account of orders placed outside North America and fulfilled in North America average approximately \$400,000 per month and are offset by transfers of cash in satisfaction of fees and costs of processing and fulfillment obligations owed to overseas florists. These outgoing cash transfers aggregate approximately \$200,000 per month.

13. The Inter-Affiliate Transactions result in the creation of corresponding intercompany payables and receivables. The Debtors expect that similar Inter-Affiliate Transactions will occur on a postpetition basis. These intercompany payables and receivables will be maintained and tracked in the Debtors' books and records.

14. Each of the foregoing Intercompany Transactions was, and is, being conducted to facilitate the Debtors' continued operations and to maximize and appropriately allocate value for the materials and services provided. In general, the Intercompany Transactions provide substantial benefits to the Debtors. As set forth above, the Inter-Debtor Transactions reduce significantly the cost of shared overhead and the Debtors' call center operations. The Inter-Affiliate Transactions between the Debtors and FTD Canada and Interflora, Inc. generate revenue from business operations extending beyond the United States. The Foreign

³ This amount includes a "transfer pricing margin" based on the published margins of comparable companies registered in India. The transfer pricing margin is subject to annual change, and the Debtors currently pay approximately \$40,000 per month on account of the transfer pricing margin.

Collaboration Agreement provides the Debtors with highly sophisticated software that is exclusively developed and produced for the Debtors for use in their businesses. Accordingly, the Debtors intend to continue these transactions in the ordinary course of business on a postpetition basis.

Argument

A. The Continued Use of the Cash Management System and Business Forms Is Essential to the Debtors' Ongoing Businesses and Is in the Best Interests of the Debtors' Respective Estates and Creditors.

15. Cash Management System. Absent the ability to maintain their Cash Management System, the Debtors would have to significantly alter their business operations to comply with the UST Operating Guidelines.⁴ The Debtors' ability to continue their Cash Management System in the ordinary course of business, however, is essential to their operations. The Cash Management System enables the Debtors to (a) control and monitor corporate funds, (b) ensure cash availability, and (c) reduce costs and administrative expenses by facilitating the movement of funds, thereby increasing the efficiency of their business operations. These benefits are especially important here given the significant volume of cash transactions managed through the Cash Management System. It would be difficult, expensive, disruptive, and administratively burdensome to require the Debtors to close all of their existing Bank Accounts and open new, segmented, debtor-in-possession bank accounts for each Debtor entity at the very outset of these bankruptcy cases as required by the UST Operating Guidelines.

16. In light of the substantial size and complexity of the Debtors' operations, any disruption in the Debtors' Cash Management System will hamper the Debtors' efforts to

⁴ Among other requirements, the UST Operating Guidelines require a debtor to: (a) close existing bank accounts; (b) open new debtor in possession accounts; and (c) maintain separate debtor in possession accounts for various items. UST Operating Guidelines, pp. 1-2, available at https://www.justice.gov/ust-regions-r03/file/ch11opguide_de.pdf.

preserve and enhance the value of their estates. Altering the Cash Management System may delay the receipt of payables from customers and disrupt payments to Florist Network Members, key vendors, and employees (among others) at a time when the support of these key constituencies is most critical. Therefore, it is essential that the Debtors be permitted to continue to use their Cash Management System in accordance with their existing cash management procedures.

17. The Debtors further seek authority to implement ordinary course changes to their Cash Management System as necessary to maintain their continued operations. As part of these potential ordinary course changes, the Debtors request authority to open and close bank accounts; provided, however, that (a) any new domestic account must be established at a bank insured with the FDIC and organized under the laws of the United States or any State therein, or, in the case of accounts that may carry a balance exceeding the insurance limitations set thereby, at a bank that has executed a Uniform Depository Agreement with the U.S. Trustee or such bank that is willing to immediately execute such agreement, and (b) before opening or closing a bank account, the Debtors will give notice to the U.S. Trustee, any official committees appointed in these Chapter 11 Cases, and Bank of America, N.A., as administrative agent under the Debtors' proposed DIP Facility. The Debtors request that their banks and financial institutions (collectively, the "Banks") be authorized to honor the Debtors' requests to open or close any bank accounts.

18. Bankruptcy courts routinely permit chapter 11 debtors to maintain their existing cash management systems and generally treat requests for such relief as a relatively "simple matter." In re Baldwin-United Corp., 79 B.R. 321, 327 (Bankr. S.D. Ohio 1987). In granting such relief, courts recognize that an integrated cash management system "allows

efficient utilization of cash resources and recognizes the impracticalities of maintaining separate cash accounts for the many different purposes that require cash." In re Columbia Gas Sys., Inc., 136 B.R. 930, 934 (Bankr. D. Del. 1992), aff'd in relevant part, 997 F.2d 1039, 1061 (3d Cir. 1993). The requirement to maintain all accounts separately "would be a huge administrative burden and economically inefficient." Id. at 1061; see also In re Southmark Corp., 49 F.3d 1111, 1114 (5th Cir. 1995) (stating that a cash management system allows a debtor "to administer more efficiently and effectively its financial operations and assets"); Charter Co. v. Prudential Ins. Co. of Am. (In re Charter Co.), 778 F.2d 617, 621 (11th Cir. 1985) (holding that the debtors' postpetition use of their prepetition "routine cash management system" was "entirely consistent" with applicable provisions of the Bankruptcy Code).

19. The Debtors' request for authorization to continue to use their Cash Management System is consistent with section 363(c)(1) of the Bankruptcy Code, which authorizes a debtor in possession to "use property of the estate in the ordinary course of business, without notice or a hearing." 11 U.S.C. § 363(c)(1). Section 363(c)(1) is intended to provide a debtor in possession with the flexibility to engage in the ordinary transactions required to operate its business. See, e.g., In re Roth Am., Inc., 975 F.2d 949, 952 (3d Cir. 1992); see also In re Nellson Nutraceutical, Inc., 369 B.R. 787, 796 (Bankr. D. Del. 2007). Included within the purview of section 363(c) is a debtor's ability to continue the routine transactions necessitated by its cash management system. See Amdura Nat'l Distrib. Co. v. Amdura Corp. (In re Amdura Corp.), 75 F.3d 1447, 1453 (10th Cir. 1996) (noting that certain postpetition transfers were "no more than a continuation of the routine transactions necessitated by the cash management systems the companies had adopted" and that a "debtor in possession under chapter 11 is generally authorized to continue operating its business") (citing 11 U.S.C. § 363(c)).

Nevertheless, the Debtors have filed this Motion out of an abundance of caution, to the extent any aspect of the Cash Management System could be considered as outside the ordinary course of business for purposes of section 363(c) of the Bankruptcy Code.

20. The Debtors respectfully submit that, under the circumstances, the maintenance of the Cash Management System in substantially the same form as it existed prior to the Petition Date or as modified in the ordinary course of business is in the best interests of the Debtors' estates and creditors. Preserving a "business as usual" atmosphere and avoiding the unnecessary distractions that inevitably would be associated with any substantial changes to the Cash Management System will (a) facilitate the Debtors' stabilization of their postpetition business operations and (b) assist the Debtors in their efforts to maximize value for the benefit of their stakeholders.

21. The continued postpetition use of cash management systems similar to that requested here has been approved as a routine matter in other chapter 11 cases in this District. See, e.g., In re M & G USA Corp., Case No. 17-12307 (BLS) (Bankr. D. Del. June 22, 2018) (allowing debtors to continue their existing cash management system) (the "M & G Order"); In re Tidewater Inc., Case No. 17-11132 (BLS) (Bankr. D. Del. June 13, 2017) (same) (the "Tidewater Order"); In re CST Industries Holdings Inc., Case No. 17-11292 (BLS) (Bankr. D. Del. July 13, 2017) (same) (the "CST Order"); In re Phoenix Brands LLC, Case No. 16-11242 (BLS) (Bankr. D. Del. June 15, 2016) (same) (the "Phoenix Brands Order").⁵

22. Business Forms. In the ordinary course of business, the Debtors use a multitude of checks and other business forms. By virtue of the nature and scope of the Debtors'

⁵ 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.

business operations and the large number of suppliers, as well as key parties (including Florist Network Members, strategic partner customers, and other stakeholders) with whom the Debtors deal on a regular basis, it is important that the Debtors be permitted to continue to use their existing checks and other business forms without alteration or change. Pursuant to Local Rule 2015-2(a), and to avoid disruption of the Cash Management System and unnecessary expense, the Debtors request that they not be required to include the legend "Debtor-in-Possession" and the corresponding bankruptcy case number on any existing business forms or checks; provided, however, that any new checks ordered by the Debtors will contain the designation "Debtor-in-Possession" and the corresponding bankruptcy case number.

23. Absent this relief, the Debtors' estates will be required to bear potentially significant and unnecessary expenses, which the Debtors respectfully submit is unwarranted. Because parties that presently conduct business with the Debtors likely will be aware of the Debtors' status as debtors in possession, the alteration of the Debtors' checks and business forms would be unnecessary and unduly burdensome.

24. Courts in this District have approved similar relief in other chapter 11 cases. See, e.g., M & G Order (authorizing debtors to continue to use their existing business forms and checks without alteration or change); Tidewater Order (same); CST Order (same); Phoenix Brands Order (same).

B. The Court Should Allow the Debtors 30 Days to Comply With the Requirements of Section 345(b) of the Bankruptcy Code.

25. The Debtors seek an initial 30-day extension from the Petition Date to:

(a) comply with the requirements of section 345(b) of the Bankruptcy Code and complementary

requirements contained in the UST Operating Guidelines⁶ (or make such other arrangements as agreed to with the U.S. Trustee); (b) file a motion seeking authority to deviate from such requirements; or (c) seek a further extension or final waiver.

26. Pursuant to section 345(b) of the Bankruptcy Code, for any deposit or other investment made by a debtor (except those insured or guaranteed by the United States or by a department, agency, or instrumentality of the United States or backed by the full faith and credit of the United States), the U.S. Trustee shall require from the debtor either (a) a bond in favor of the United States that is secured by the undertaking of a corporate surety approved by the U.S. Trustee or (b) the deposit of securities of the kind specified in section 9303 of Title 31 of the United States Code.

27. Section 345(b) of the Bankruptcy Code provides further, however, that a bankruptcy court may allow the use of alternatives to these approved investment guidelines "for cause." 11 U.S.C. § 345(b)(2); see also In re Serv. Merch. Co., 240 B.R. 894, 896 (Bankr. M.D. Tenn. 1999). In Service Merchandise, the court identified the following factors as a guide for determining whether "cause" exists to waive the requirements of section 345(b) of the Bankruptcy Code:

- (a) the sophistication of the debtor's business;
- (b) the size of the debtor's business operations;
- (c) the amount of investments involved;
- (d) the bank ratings of the financial institutions where the debtor's funds are held;

⁶ See UST Guidelines, p. 2 ("If the [debtor's] aggregate [account] balances with any one financial institution are expected to exceed the current FDIC insurance limits of \$250,000.00 per depositor, the debtor must immediately contact the United States Trustee to discuss how the debtor plans to comply with the Bankruptcy Code Section 345 requirement concerning the collateralization of uninsured deposits.").

- (e) the safeguards in place within the debtor's own business for ensuring the safety of the funds;
- (f) the debtor's ability to reorganize in the face of a failure of one or more of the financial institutions;
- (g) the benefit to the debtor of current practices;
- (h) the harm, if any, to the estate; and
- (i) the reasonableness of the debtor's request for relief from the section 345(b) requirements in light of the overall circumstances of the case.

Serv. Merch., 240 B.R. at 896. Examining these factors, the Service Merchandise court concluded that "cause" existed because the debtors were "large, sophisticated [companies] with a complex cash management [system]" that had the ability to shift money as needed to ensure the safety of their funds. Id. Moreover, the benefits to the debtor of waiving the section 345(b) requirements far outweighed any potential harm to the estate, and the failure to waive the requirements "would [have] needlessly handcuff[ed] the[] debtors' reorganization efforts." Id. at 896-97.

28. As in Service Merchandise and chapter 11 cases in which courts in this District have granted requests for approval of the continued use of prepetition deposit guidelines, the Debtors are large, sophisticated companies with a complex Cash Management System. The Debtors' domestic Bank Accounts are with stable banks, each insured by the FDIC, and the Debtors' foreign Bank Accounts are with large, highly-regulated banks.

29. Local Rule 2015-2(b) provides that if a motion for a waiver under section 345(b) of the Bankruptcy Code is filed on the first day of the case and there are more than 200 creditors – as is the case here – the court may grant an interim waiver. In light of the safety of the Debtors' Bank Accounts, the Debtors respectfully request that, to the extent their practices do not comply with the requirements of section 345(b) of the Bankruptcy Code, the

Court extend the Debtors' time to comply with section 345(b) to 30 days from the Petition Date, without prejudice to the Debtors' ability to seek a further or final waiver of those requirements. During the extension period, the Debtors will engage in discussions with the U.S. Trustee and any statutory committee appointed in these Chapter 11 Cases to determine whether modifications to their banking practices are appropriate under the circumstances.

30. Courts in this District have approved similar relief in other chapter 11 cases. See, e.g., In re Diesel USA, Inc., Case No. 19-10432 (MFW) (Bankr. D. Del. Apr. 3, 2019) (final order granting extension of 45 days from entry of order, i.e., 74 days from the petition date); In re Egalet Corp., Case No. 18-12439 (BLS) (Bankr. D. Del. Nov. 29, 2018) (final order granting extension of 60 days from the petition date); In re Gulfmark Offshore, Inc., Case No. 17-11125 (KG) (Bankr. D. Del. May 18, 2017) (interim order granting extension of 45 days from entry of the order, i.e., 46 days from the petition date, before final order granted a full waiver).

C. The Court Should Authorize Banks Participating in the Cash Management System to Honor Certain Transfers and Charge Bank Fees and Certain Other Amounts.

31. Contemporaneously with the filing of this Motion, the Debtors have filed various motions for authorization to pay certain prepetition obligations in the ordinary course of business. With respect to certain of these obligations, the Debtors issued checks prior to the Petition Date that have yet to clear the banking system. With respect to other obligations, the Debtors intend to issue checks postpetition on account of such prepetition obligations once the Court enters an order permitting the Debtors to take such action. The Debtors intend to inform their Banks which prepetition checks the Banks should honor pursuant to orders of the Court authorizing such payment.

32. As a result of the foregoing, the Debtors request that the Banks be authorized to accept and honor all representations from the Debtors as to which checks, drafts, wires, or ACH transfers (each, a "Disbursement") should be honored or dishonored consistent with any order of this Court and governing law, whether such Disbursements are dated prior to, on, or after the Petition Date; provided, however, that, to the extent the Debtors direct the Banks to dishonor any Disbursements or the Banks inadvertently dishonor any Disbursements, the Debtors may issue a replacement Disbursement consistent with the orders of this Court. Pursuant to the relief requested in this Motion, the Banks will not be liable to any party on account of (a) following the Debtors' instructions or representations as to any order of this Court, (b) honoring any prepetition check or item in a good-faith belief that the Court has authorized such prepetition check or item to be honored, or (c) making an innocent mistake despite implementation of reasonable item-handling procedures. Such relief is reasonable and appropriate because the Banks are not in a position to independently verify or audit whether a particular item may be paid in accordance with a Court order or otherwise.

33. Additionally, the Debtors request authority for the Banks to charge and the Debtors to pay or honor both prepetition and postpetition service and other fees, costs, charges, and expenses to which the Banks may be entitled under the terms of and in accordance with their contractual arrangements with the Debtors (collectively, the "Bank Fees"). The Debtors pay approximately \$15,000 in Bank Fees per month and expect to pay approximately that amount on a monthly basis going forward. The Debtors also request the Banks be authorized to charge back returned items to the Bank Accounts in the normal course of business. The Debtors require this relief to minimize disruption of the Cash Management System and their Bank Accounts and to assist them in accomplishing a smooth transition to operating in chapter 11.

34. Courts in this District have approved similar relief in other chapter 11 cases. See, e.g., In re Diesel USA, Case No. 19-10432 (MFW) (Apr. 3, 2019) (authorizing the debtor's banks to honor certain transfers, charge certain fees, and charge back returned items); In re The Bon-Ton Stores, Inc., Case No. 18-10248 (MFW) (Mar. 6, 2018) (same); In re Charming Charlie Holdings Inc., Case No. 17-12906 (CSS) (Jan. 10, 2018) (same).

D. Permitting Continued Intercompany Transactions and Granting Administrative Expense Status to Postpetition Intercompany Obligations is Appropriate.

35. As described above, as the Debtors participating in the Cash Management System require funds to meet current obligations, cash is transferred among the Bank Accounts. In addition, and as described above, a variety of ordinary course Intercompany Transactions are central to the Debtors' operations. It is, therefore, imperative that the Debtors be permitted to continue to engage in the Intercompany Transactions during these Chapter 11 Cases.

36. Pursuant to section 363(c)(1) of the Bankruptcy Code, a debtor in possession "may enter into transactions, including the sale or lease of property of the estate, 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)(1). The Debtors enter into and perform under the Intercompany Transactions "in the ordinary course of business" within the meaning of section 363(c)(1) of the Bankruptcy Code. The Debtors thus believe that they do not require the Court's approval to continue entering into and performing under the Intercompany Transactions. Nonetheless, out of an abundance of caution, the Debtors request express authority to engage in such transactions postpetition; provided, that, until entry of a Final Order, (a) the aggregate amount of Inter-Affiliate Transactions out of the Debtors to Interflora, Inc. shall

not exceed \$200,000⁷ and (b) the aggregate amount of Inter-Affiliate Transactions out of the Debtors to FTD Canada, Inc. shall not exceed \$20,000.

37. As described above, the Debtors and their non-Debtor affiliates record all Intercompany Transactions and allocate expenses to the appropriate entities. Further, the Intercompany Transactions are integral to the Debtors' ability to operate their businesses and provide significant benefits to the Debtors, such as critical IT Services and the reduction of certain administrative costs. By contrast, a discontinuation of the Intercompany Transactions would disrupt the Cash Management System and related administrative controls and would deprive the Debtors of critical benefits – all to the detriment of the Debtors and their estates. The Debtors thus submit that the continuation of the Intercompany Transactions is in the best interests of the Debtors' respective estates and creditors.

38. If the Court authorizes the continuation of the Intercompany Transactions, at any given time there may be balances due and owing among Debtors and between Debtors and non-Debtor affiliates. These balances represent extensions of intercompany credit. The Debtors will continue to maintain records of all Intercompany Transactions and current intercompany accounts receivable and payable. In addition, as set forth above, the Debtors possess the capacity to draw the necessary distinctions between prepetition and postpetition obligations and payments, including those related to the Intercompany Transactions. The Debtors will continue to maintain such records during these Chapter 11 Cases.

39. The Debtors respectfully request that, pursuant to section 503(b)(1) of the Bankruptcy Code, all intercompany claims arising after the Petition Date as a result of

⁷ As discussed herein, the Debtors receive approximately \$400,000 per month from Interflora, Inc. The \$200,000 interim cap provided herein limits only the aggregate amount of Inter-Affiliate Transactions *from* the Debtors *to* Interflora, Inc. The cap does not limit the amount of Inter-Affiliate Transactions from Interflora, Inc. to the Debtors.

Intercompany Transactions (collectively, the "Intercompany Claims") be accorded administrative expense priority status, as transfers among the Debtors represent extensions of intercompany credit. According administrative expense priority status to the Intercompany Claims will ensure that each individual Debtor using funds from the Cash Management System will continue to bear ultimate repayment responsibility for such borrowings, thereby protecting the interests of the Debtors' creditors.

40. Courts in this District have approved similar relief in other chapter 11 cases. See, e.g., M & G Order (allowing the debtors to continue intercompany transactions and granting administrative expense priority status to such intercompany transactions); Phoenix Brands Order (same); Allen Systems Order (same).

Requests for Immediate Relief & Waiver of Stay

41. Pursuant to Bankruptcy Rules 6003(b) and 6004(h), the Debtors seek (a) immediate entry of an order granting the relief sought herein and (b) a waiver of any stay of the effectiveness of such an order. Bankruptcy Rule 6003(b) provides, in relevant part, that "[e]xcept to the extent that relief is necessary to avoid immediate and irreparable harm, the court shall not, within 21 days after the filing of the petition, issue an order granting ... a motion to pay all or part of a claim that arose before the filing of the petition." Bankruptcy Rule 6004(h) 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." From this, courts have ruled that, where a failure to grant any such requested relief would result in immediate and irreparable harm to a debtor's estate, a court may allow a debtor to pay all or part of a claim that arose prepetition immediately.

42. As set forth above and in the First Day Declaration, the continued use of the Cash Management System and business forms; the payment of Bank Fees; and the

continuation of ordinary course intercompany transactions are necessary to prevent the immediate and irreparable damage to the Debtors' operations and, thus, their chapter 11 estates. Accordingly, the Debtors submit that ample cause exists to justify (a) the immediate entry of an order granting the relief sought herein and (b) a waiver of the 14-day stay imposed by Bankruptcy Rule 6004(h), to the extent that it applies.

Consent to Jurisdiction

43. 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

44. Notice of this Motion shall be provided to: (a) the U.S. Trustee; (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 DIP 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

45. 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 Interim Order, granting the relief requested herein on an interim basis; (ii) enter the

Proposed Final Order, granting the relief requested herein; and (iii) 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

Daniel J. DeFranceschi (No. 2732)
Paul N. Heath (No. 3704)
Brett M. Haywood (No. 6166)
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PROPOSED ATTORNEYS FOR DEBTORS
AND DEBTORS IN POSSESSION

EXHIBIT A

Proposed Interim Order

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 the circumstances, (v) the relief requested in the Motion is necessary and appropriate to prevent immediate and irreparable harm to the Debtors' business operations and will serve to protect and preserve the Debtors' estates for the benefit of all stakeholders and, thus, cause exists to grant the requested relief immediately notwithstanding Bankruptcy Rule 6003, and (vi) there is good cause to waive the 14-day stay imposed by Bankruptcy Rule 6004(h) to the extent it is applicable; 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 on an interim basis as set forth herein.
2. The Debtors are authorized to: (a) maintain the Cash Management System in substantially the same form as described in the Motion; (b) implement ordinary course changes to their Cash Management System; and (c) open and close bank accounts, provided, however, that the Debtors give notice to the U.S. Trustee, any official committees appointed in these Chapter 11 Cases, and Bank of America, N.A., as administrative agent under the Debtors' proposed DIP Facility prior to opening or closing a bank account. Any new domestic bank account opened by the Debtors shall be established at an institution insured by the FDIC and organized under the laws of the United States or any State therein, or in the case of accounts that may carry a balance exceeding the insurance limitations set thereby, the Debtors shall open any

such new bank account at a bank that has executed a Uniform Depository Agreement with the U.S. Trustee, or at such bank that is willing to immediately execute such agreement.

3. For all Banks at which the Debtors maintain Bank Accounts that are party to a Uniform Depository Agreement with the U.S. Trustee, within 15 days of the date of entry of this Interim Order, the Debtors shall (a) contact each such Bank, (b) provide each such Bank with each of the Debtor's employee identification numbers, and (c) identify each of their Bank Accounts held at such Banks as being held by a debtor in possession in a chapter 11 case.

4. The Debtors will close all Dormant and Discontinued Accounts that are either (a) maintained at a Bank not party to a Uniform Depository Agreement with the U.S. Trustee or (b) not in compliance with Local Rule 4001-3.

5. The Debtors are authorized to continue to use their Bank Accounts under existing account numbers without interruption; provided, however, that no checks issued against the Bank Accounts prior to the commencement of these Chapter 11 Cases shall be honored, except as otherwise authorized by an order of this Court and directed by the Debtors.

6. The Debtors shall not be required to include the legend "Debtor-in-Possession" and the corresponding bankruptcy case number on any existing checks or business forms. Once a Debtor's existing checks have been used, that Debtor shall, when reordering checks, require the designation "Debtor-in-Possession" and the corresponding bankruptcy number on all checks.

7. The Debtors are granted an initial 30-day extension from the Petition Date to: (a) comply with the requirements of section 345(b) of the Bankruptcy Code and related requirements set forth in the UST Operating Guidelines (or make such other arrangements as

agreed to with the U.S. Trustee); (b) file a motion seeking authority to deviate from such requirements; or (c) seek a further extension or final waiver.

8. The Banks are authorized to charge and the Debtors are authorized to pay or honor the Bank Fees related to the Bank Accounts. The Banks also are authorized to charge back returned items to the Bank Accounts in the normal course of business.

9. The Debtors are authorized, from and after the Petition Date, to continue to engage in Intercompany Transactions in the ordinary course of the Debtors' businesses; provided, however, that (a) the aggregate amount of Inter-Affiliate Transactions out of the Debtors to Interflora, Inc. shall not exceed \$200,000; (b) the aggregate amount of Inter-Affiliate Transactions out of the Debtors to FTD Canada, Inc. shall not exceed \$20,000; and (c) for the avoidance of doubt, the Debtors shall not be authorized by this Interim Order to undertake any Intercompany Transactions that are not on the same terms as, or materially consistent with, the Debtors' operation of their businesses in the ordinary course during the prepetition period.

All Intercompany Claims held by one Debtor against another Debtor arising from postpetition Intercompany Transactions shall be entitled to administrative expense priority status pursuant to section 503(b)(1) of the Bankruptcy Code. In connection therewith, the Debtors shall continue to maintain current records with respect to all transfers of cash so that all transactions may be readily ascertained, traced, and recorded properly on applicable intercompany accounts.

10. The Debtors' banks and other financial institutions (collectively, the "Banks") are authorized, when requested by the Debtors in the Debtors' sole discretion, to receive, process, honor, and pay all checks presented for payment of, and to honor all fund transfer requests made by, the Debtors related to the relief granted by this Interim Order, whether such checks were presented, or fund transfer requests were submitted, prior to, on, or after the

Petition Date, provided that sufficient funds are available in the Debtors' Bank Accounts to cover such checks and fund transfers. The Banks are authorized to rely on the Debtors' designation of any particular check or funds transfer as approved by this Interim Order without any duty of further inquiry and without liability for following the Debtors' instructions.

11. Notwithstanding anything contained herein, the Debtors shall calculate their quarterly fees under 28 U.S.C. § 1930(a)(6) based on the disbursements of each Debtor, regardless of which Debtor makes those disbursements.

12. The requirements of Bankruptcy Rule 6003(b) have been satisfied with respect to the payments authorized by this Interim Order.

13. This Interim Order shall be immediately effective and enforceable upon its entry. To the extent that it may be applicable, the 14-day stay imposed by Bankruptcy Rule 6004(h) is hereby waived.

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

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

16. A final hearing to consider the relief requested in the Motion (the "Final Hearing") shall be held on _____, 2019 at _____ (prevailing Eastern Time) and any objections or responses to the Motion shall be filed and served on or prior to _____, 2019 at _____ (prevailing Eastern Time).

Dated: _____, 2019
Wilmington, Delaware

UNITED STATES BANKRUPTCY JUDGE

EXHIBIT B

Proposed Final Order

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 the circumstances, and (v) there is good cause to waive the 14-day stay imposed by Bankruptcy Rule 6004(h) to the extent it is applicable; 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 on a final basis as set forth herein.
2. The Debtors are authorized to: (a) maintain the Cash Management System in substantially the same form as described in the Motion; (b) implement ordinary course changes to their Cash Management System; and (c) open and close bank accounts, provided, however, that the Debtors give notice to the U.S. Trustee, any official committees appointed in these Chapter 11 Cases, and Bank of America, N.A., as administrative agent under the Debtors' proposed DIP Facility prior to opening or closing a bank account. Any new domestic bank account opened by the Debtors shall be established at an institution insured by the FDIC and organized under the laws of the United States or any State therein, or in the case of accounts that may carry a balance exceeding the insurance limitations set thereby, the Debtors shall open any such new bank account at a bank that has executed a Uniform Depository Agreement with the U.S. Trustee, or at such bank that is willing to immediately execute such agreement.
3. The Debtors will close all Dormant and Discontinued Accounts that are either (a) maintained at a Bank not party to a Uniform Depository Agreement with the U.S. Trustee or (b) not in compliance with Local Rule 4001-3.

4. The Debtors are authorized to continue to use the Bank Accounts under existing account numbers without interruption; provided, however, that no checks issued against the Bank Accounts prior to the commencement of these Chapter 11 Cases shall be honored, except as otherwise authorized by an order of this Court and directed by the Debtors.

5. The Debtors shall not be required to include the legend "Debtor-in-Possession" and the corresponding bankruptcy case number on any existing checks or business forms. Once a Debtor's existing checks have been used, that Debtor shall, when reordering checks, require the designation "Debtor-in-Possession" and the corresponding bankruptcy number on all checks.

6. The Debtors are granted an initial 30-day extension from the Petition Date to: (a) comply with the requirements of section 345(b) of the Bankruptcy Code and related requirements set forth in the UST Operating Guidelines (or make such other arrangements as agreed to by the U.S. Trustee); (b) file a motion seeking authority to deviate from such requirements; or (c) seek a further extension or final waiver.

7. The Banks are authorized to charge and the Debtors are authorized to pay or honor the Bank Fees related to the Bank Accounts. The Banks also are authorized to charge back returned items to the Bank Accounts in the normal course of business.

8. The Debtors are authorized, from and after the Petition Date, to continue to engage in Intercompany Transactions in the ordinary course of the Debtors' businesses; provided, however, that, for the avoidance of doubt, the Debtors shall not be authorized by this Final Order to undertake any Intercompany Transactions that are not on the same terms as, or materially consistent with, the Debtors' operation of their businesses in the ordinary course during the prepetition period. All Intercompany Claims held by one Debtor against another

Debtor arising from postpetition Intercompany Transactions shall be entitled to administrative expense priority status pursuant to section 503(b)(1) of the Bankruptcy Code. In connection therewith, the Debtors shall continue to maintain current records with respect to all transfers of cash so that all transactions may be readily ascertained, traced, and recorded properly on applicable intercompany accounts.

9. The Debtors' banks and other financial institutions (collectively, the "Banks") are authorized, when requested by the Debtors in the Debtors' sole discretion, to receive, process, honor, and pay all checks presented for payment of, and to honor all fund transfer requests made by, the Debtors related to the relief granted by this Final Order, whether such checks were presented, or fund transfer requests were submitted, prior to, on, or after the Petition Date, provided that sufficient funds are available in the Debtors' Bank Accounts to cover such checks and fund transfers. The Banks are authorized to rely on the Debtors' designation of any particular check or funds transfer as approved by this Final Order without any duty of further inquiry and without liability for following the Debtors' instructions.

10. Notwithstanding anything contained herein, the Debtors shall calculate their quarterly fees under 28 U.S.C. § 1930(a)(6) based on the disbursements of each Debtor, regardless of which Debtor makes those disbursements.

11. This Final Order shall be immediately effective and enforceable upon its entry. To the extent that it may be applicable, the 14-day stay imposed by Bankruptcy Rule 6004(h) is hereby waived.

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

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

Dated: _____, 2019
Wilmington, Delaware

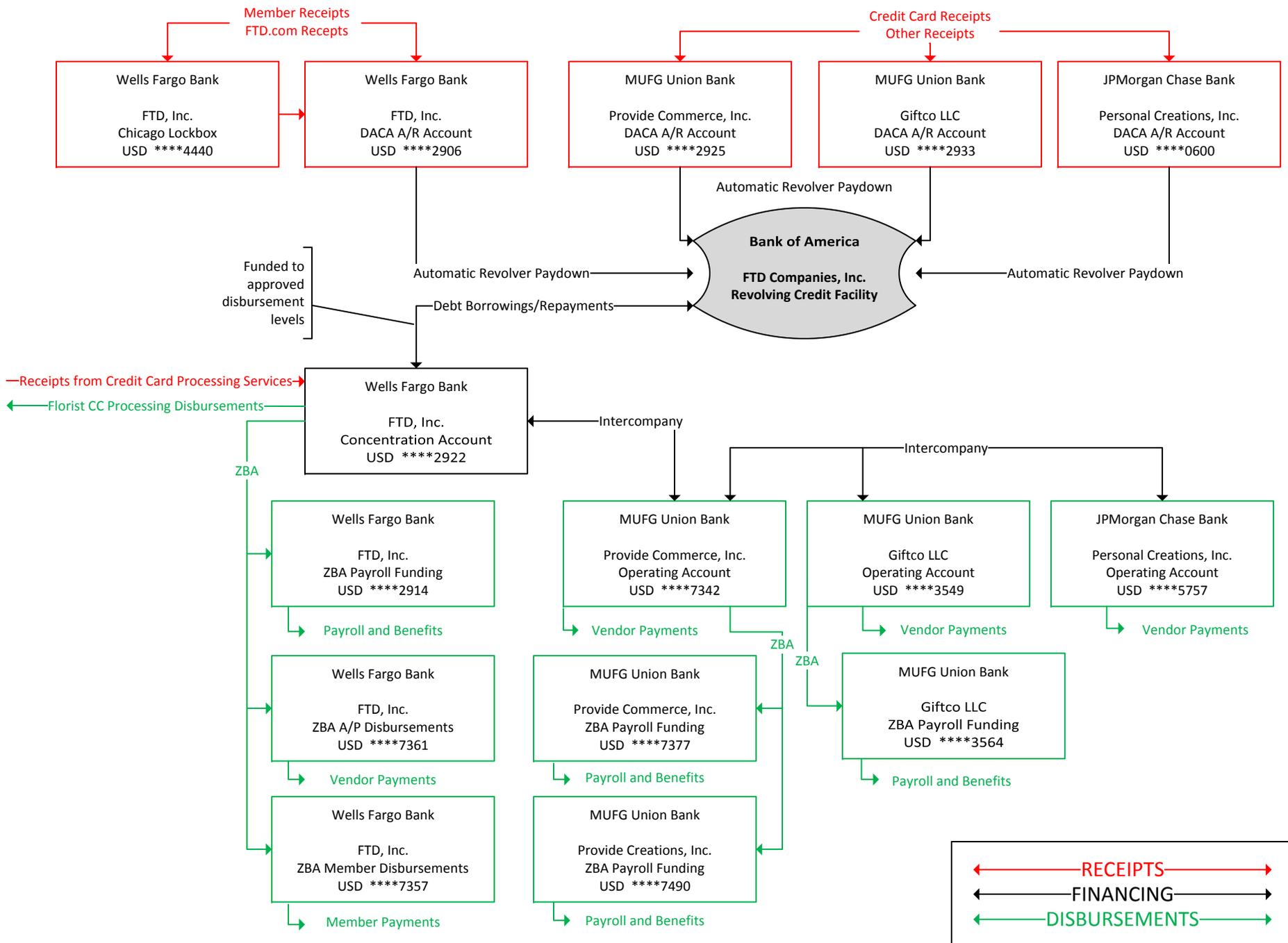
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT C

Flow Chart Summarizing Cash Management System

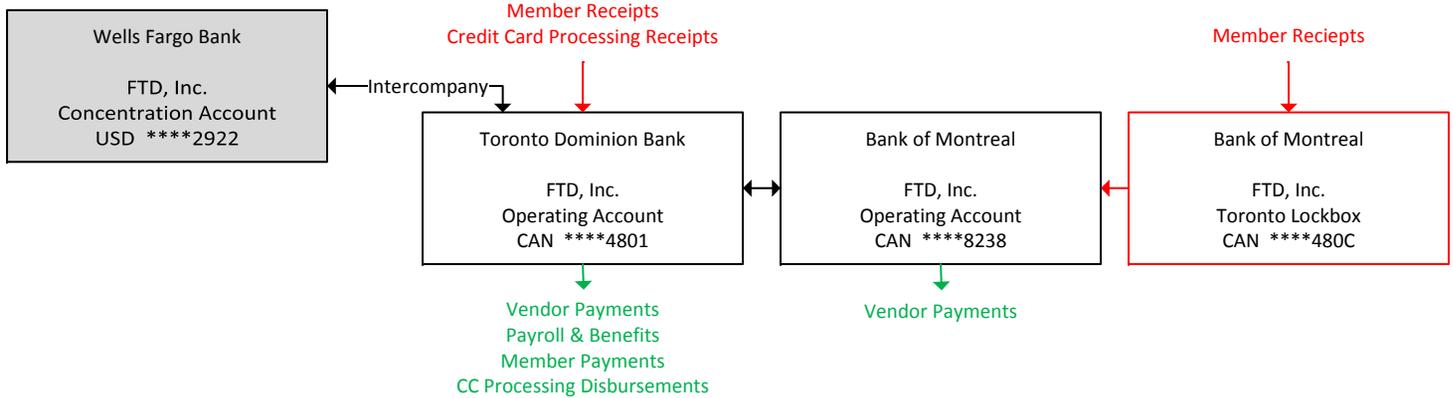
CASH MANAGEMENT SYSTEM

CORE RECEIPTS, FINANCING AND DISBURSEMENTS ACCOUNTS



CASH MANAGEMENT SYSTEM
CANADIAN OPERATING AND DORMANT AND DISCONTINUED ACCOUNTS

CANADIAN OPERATING ACCOUNTS



DORMANT AND DISCONTINUED ACCOUNTS

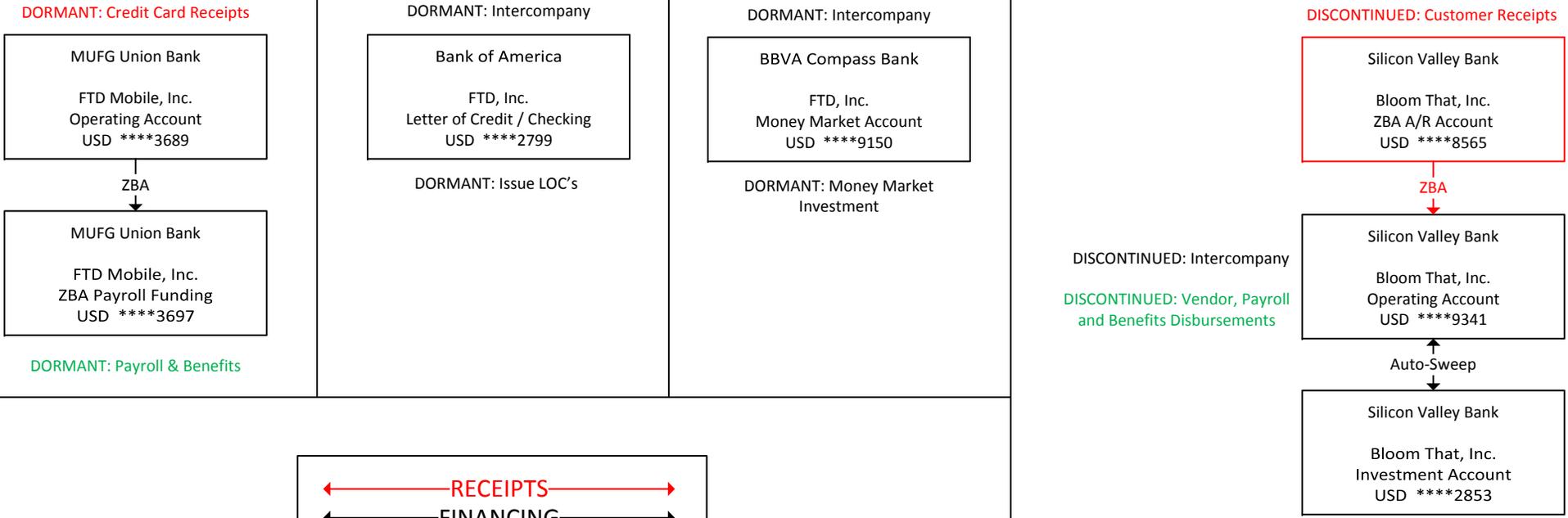


EXHIBIT D

Schedule of Bank Accounts

SUMMARY OF DEBTORS' BANK ACCOUNTS			
	BANK	TYPE OF ACCOUNT	ACCOUNT #
1	Wells Fargo Bank	Main Concentration Account	****2922
2	Wells Fargo Bank	A/R Account (DACA)	****2906
3	Wells Fargo Bank	Payroll Disbursement Account (ZBA)	****2914
4	Wells Fargo Bank	Operating Account (FTD)	****7361
5	Wells Fargo Bank	Florist Network Member Disbursement Account (ZBA)	****7357
6	Wells Fargo Bank	A/R Account (Lockbox)	****4440
7	MUFG Union Bank	Operating Account (Provide)	****3549
8	MUFG Union Bank	Payroll Disbursement Account (ZBA)	****3564
9	MUFG Union Bank	A/R Account (DACA)	****2933
10	JPMorgan Chase Bank	Operating Account (Provide)	****5757
11	JPMorgan Chase Bank	A/R Account (DACA)	****0600
12	MUFG Union Bank	Operating Account (Provide)	****7342
13	MUFG Union Bank	Payroll Disbursement Account (ZBA)	****7377
14	MUFG Union Bank	A/R Account (DACA)	****2925
15	MUFG Union Bank	Payroll Disbursement Account (ZBA)	****7490

16	Silicon Valley Bank	Dormant/Discontinued Account (Operating Account)	****9341
17	Silicon Valley Bank	Dormant/Discontinued Account (A/R Account)	****8565
18	Silicon Valley Bank	Dormant/Discontinued Account (Investment Account)	****2853
19	MUFG Union Bank	Dormant/Discontinued Account (Operating Account)	****3689
20	MUFG Union Bank	Dormant/Discontinued Account (Payroll Funding)	****3697
21	Bank of America	Dormant/Discontinued Account (Investment Account)	****2799
22	Bank of Montreal	Canadian Operating Account	****8238
23	Bank of Montreal	Canadian Operating Account	****480C
24	BBVA Compass Bank	Dormant/Discontinued Account (Investment Account)	****9150
25	Toronto Dominion Bank	Canadian Operating Account	****4801