

UNITED STATES DEPARTMENT OF JUSTICE
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UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

In re:	:	Chapter 11
	:	
Francesca's Acquisition, LLC, <i>et al.</i> , ¹	:	Case No. 26-11312 (MBK)
	:	Jointly Administered
	:	
Debtors.	:	Hearing Date: February 11, 2026 at 11 a.m.
	:	

UNITED STATES TRUSTEE'S OBJECTION TO THE DEBTORS' MOTION FOR ENTRY OF (I) AN ORDER (A) APPROVING BIDDING PROCEDURES; (B) AUTHORIZING THE DEBTORS TO ENTER INTO STALKING HORSE AGREEMENT AND TO PROVIDE BID PROTECTIONS THEREUNDER; (C) SCHEDULING CERTAIN DATES WITH RESPECT THERETO; (D) APPROVING THE FORM AND MANNER OF NOTICE THEREOF; AND (E) APPROVING ASSUMPTION AND ASSIGNMENT PROCEDURES; (II) AN ORDER APPROVING THE SALE OF DEBTORS' INTELLECTUAL PROPERTY ASSETS FREE AND CLEAR OF LIENS, CLAIMS AND ENCUMBRANCES; AND (III) GRANTING RELATED RELIEF

Andrew R. Vara, the United States Trustee for Regions Three and Nine (the "U.S. Trustee"), through his undersigned counsel, files this objection (the "Objection") to the *Debtors'* *Motion for Entry of an Order (A) Approving Bidding Procedures; (B) Authorizing the Debtors to*

¹ The Debtors in these Chapter 11 Cases, along with the last four digits of each Debtor's federal tax identification number, are: (i) Francesca's Acquisition, LLC (3616); Francesca's Operations, Inc. (6872); Francesca's Administrative Management, Inc. (5788); and Francesca's IP Company, Inc. (9588). The Debtors' service address is 8760 Clay Road, Suite 100, Houston, TX 77080.

Enter into a Stalking Horse Agreement; (C) Scheduling Certain Dates With Respect Thereto; (D) Approving the Form and Manner of Notice Thereof; and (E) Approving Assumption and Assignment Procedures; (II) an Order Approving the Sale of Debtors' Intellectual Property Assets Free and Clear of Liens, Claims and Encumbrances; and (III) Granting Related Relief (the "Bidding Procedures Motion") (Dkt. 45), and respectfully states:

I. JURISDICTION, VENUE, AND STANDING

1. This Court has jurisdiction to hear and determine this Objection.
2. Under (i) 28 U.S.C. § 1334, (ii) applicable order(s) of the United States District Court for the District of New Jersey issued pursuant to 28 U.S.C. § 157(a), and (iii) 28 U.S.C. § 157(b)(2), this Court has jurisdiction to hear and determine the Debtor's request for approval of the relief requested in the Motion and the matters raised in this Objection.
3. The U.S. Trustee is charged with overseeing the administration of chapter 11 cases filed in this judicial district, pursuant to 28 U.S.C. § 586. This duty is part of the U.S. Trustee's overarching responsibility to enforce the bankruptcy laws as written by Congress and interpreted by the courts to guard against abuse and over-reaching to assure fairness in the process and adherence to the provisions of the Bankruptcy Code. *See In re United Artists Theatre Co.*, 315 F.3d 217, 225 (3d Cir. 2003) ("U.S. Trustees are officers of the Department of Justice who protect the public interest by aiding bankruptcy judges in monitoring certain aspects of bankruptcy proceedings."); *United States Trustee v. Columbia Gas Sys., Inc. (In re Columbia Gas Sys., Inc.)*, 33 F.3d 294, 298 (3d Cir. 1994) ("It is precisely because the statute gives the U.S. Trustee duties to protect the public interest . . . that the Trustee has standing to attempt to prevent circumvention of that responsibility."); *Morgenstern v. Revco D.S., Inc. (In re Revco D.S., Inc.)*, 898 F.2d 498,

499 (6th Cir. 1990) (“As Congress has stated, the U.S. trustees are responsible for protecting the public interest and ensuring that the bankruptcy cases are conducted according to [the] law”).

4. Under Section 307 of title 11 of the United States Code (the “Bankruptcy Code” or “Code”), the U.S. Trustee has standing to be heard on the Debtors’ request for approval of the relief in the Motion.

II. FACTUAL BACKGROUND

General Case Background

5. On February 5, 2026 (the “Petition Date”), Francesca’s Acquisition, LLC, Francesca’s Operations, Inc., Francesca’s Administrative Management, Inc., and Francesca’s IP Company, Inc. (the “Debtors”) filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “Bankruptcy Code”). *See*, for example, Case No. 26-11312/MEH, at Dkt. 1.

6. The Debtors continue to operate their businesses as debtors in possession pursuant to 11 U.S.C. §§ 1107 and 1108.

7. On February 6, 2025, the Court granted the Debtors’ Motion for Joint Administration with the lead case being Francesca’s Acquisition, LLC. The Court has not entered an order yet.

8. According to the Declaration of Curt Kroll in Support of Debtors’ Chapter 11 Petitions and First Day Motions, “[t]he Company is a leading specialty retailer of women’s apparel and accessories focused on a Gen Z and multigenerational customer, operating approximately 400 boutiques across 45 states, together with an e-commerce website.” *See* Dkt. 4 at page 4 of 27.

9. It appears that “these Chapter 11 Cases were commenced as a result of a generally difficult retail operating environment and the Debtors’ acute liquidity crisis caused by an inability

to secure anticipated funding for ongoing business operations in early January 2026.” *See* Dkt. 45 a page 4 of 141.

10. As a result, “the Company, in its business judgment, determined no strategic alternative existed to preserve value for the Debtors’ stakeholders outside of a court-supervised orderly store closing and liquidation process.” *See* Dkt. 4 at page 11 of 27.

The Bidding Procedures Motion and Requested Bid Protections

11. On February 9, 2026, in furtherance of a court-supervised orderly store closing and liquidation process, the Debtors filed the Bidding Procedures Motion. *See* Dkt. 45.

12. Through the Bidding Procedures Motion, the Debtors seek to sell their intellectual property supporting assets to the Stalking Horse Bidder, Stand Out For Good, Inc. (“Stand Out”) for consideration that would include \$7,000,000.00 in cash consideration and the assumption of Assumed Liabilities. *See id.* at page 7 and 71 of 141.

13. Bids for the Debtors’ assets are to be received by either 4:00 p.m. on March 5, 2026, *see id.* at pages 8 and 53 of 141, or 4:00 p.m. on March 4, 2026, *see id.* at page 45 of 141, and an auction would be scheduled for March 9, 2026. *See id.* at page 8 of 141. The pleadings provide different dates for the Bid Deadline.

14. Other terms in the Bidding Procedures Motion require (i) a Notice of Successful Bidder to be filed by 5:00 p.m. on March 10, 2026; (ii) Notice of Proposed Sale Order by 5:00 p.m. on February 27, 2026; (iii) a Sale Objection Deadline of 5:00 p.m. on March 6, 2026 that includes cure objections and adequate assurance objections; and (iv) an Adequate Assurance Objection Deadline of 5:00 p.m. on March 11, 2026. *See id.* at pages 8 and 53 of 141. A Sale hearing is to be scheduled for 2:00 p.m. on March 12, 2026. *See id.* It is unclear when objections

to the sale are to be filed but any such objections would be due less than two (2) days after the Notice of Successful Bidder is filed under the proposed sale timeline.

15. In addition, the proposed order provides that the Bidding Procedures Order will be served upon the Bid Notice Parties within three (3) business days of the entry of the Bidding Procedures Order or within two (2) business days of the entry of the Bidding Procedures Order. *See id.* at page 20 and 42 of 141. As a result, if the Bidding Procedures Order is entered on February 11, 2026, the Bidding Procedures Order need not be served until either Friday, February 13 or Monday, February 16, 2026, which will only provide potential bidders with either nineteen (19) or seventeen (17) days' notice prior to the bid deadline, which is either March 4 or March 5. Again, the Debtors must clarify which deadlines they seek to impose. In either event, the Bid Deadline should be extended.

16. The Debtors also seek approval of the Bid Protections, without any further order of the Court, that would award a break-up fee of \$210,000.00 and an expense reimbursement not to exceed \$150,000.00. *See id.* at page 7 of 141. As support for the Bid Protections, the Debtors provide that “[t]he Stalking Horse Bid was negotiated at arms’-length between the Debtors and the proposed Stalking Horse Bidder. It provides a base from which interested parties may work when formulating the terms of their respective bids, and is a form with which the Debtors are comfortable and which the Debtors believe is fair to both the Debtors and prospective bidders.” *See* Dkt. 45 at page 28 of 141.

17. The Debtors set forth that on January 19, 2026, they engaged Hilco IP Services, LLC (“Hilco”) as their intellectual property consultant, who embarked on a targeted marketing process pre-petition. *See id.* at page 6 of 141. The Debtors’ further provide that “[r]esulting from these discussions, four (4) interested parties submitted offers to serve as a stalking horse bidder for

the intangible assets. Hilco has worked with the Debtors and its advisors to improve and qualify these offers, resulting in the Debtors' entry into the Stalking Horse APA as described with more specificity below." *See id.*

18. As there were at least three (3) other interested parties willing to act as a stalking horse in these cases, it does not appear that there is a need to saddle the estate with a break-up fee and expense reimbursement that requires the next bid to be at least more than approximately \$7,610,000.00.

III. LEGAL ANALYSIS AND ARGUMENT

A. The Stalking Horse Bid Protections Should Not Be Approved

19. The expense reimbursement requested in the Bidding Procedures Motion, including any due diligence, should be denied because it appears that most of the due diligence performed by Stand Out was performed pre-petition in connection with its negotiations with the Debtors concerning the purchase of the intellectual property supporting assets. In addition, the Break-Up Fee should be denied because interested parties are already aware of the sale of the intellectual property supporting assets through the prepetition marketing and sale process, and three (3) other potential bidders were interested in serving as a stalking horse.

20. Bid protections must be sought pursuant to, and analyzed under, Section 503(b) of the Bankruptcy Code. *See Reliant Energy Channelview LP*, 594 F.3d 200, 206 (3d Cir. 2010) ("[A] bidder must seek a break-up fee under 11 U.S.C. § 503(b)[.]" (citing *Calpine Corp. v. O'Brien Env't'l Energy (In re O'Brien Env't'l Energy, Inc.)*, 181 F.3d 527 (3d Cir. 1999)). Section 105(a) is not a basis to award an administrative expense. *See In re Woman First Healthcare, Inc.*, 332 B.R. 115, 120-21 (Bankr. D. Del. 2005).

21. The analysis of bid protections under Section 503(b) “must be made in reference to general administrative expense jurisprudence. In other words, the allowability of bid protections, like that of other administrative expenses, depends upon the requesting party’s ability to show that the fees were actually necessary to preserve the value of the estate.” *O’Brien*, 181 F.3d at 535; *see In re Energy Future Holdings Corp. (“EFHI”)*, 904 F.3d 298, 313 (3d Cir. 2018) (“[T]ermination fees are subject to the same general standard used for all administrative expenses under 11 U.S.C. § 503[.]”).

22. The benefit to the estate of an administrative expense “must be *actual*, not hypothetical.” *In re Energy Future Holdings Corp. (“EFH II”)*, No. 19-3492, 2021 WL 957301 at *10 (3d Cir. Mar. 15, 2021) (emphasis in original) (citing *In re Continental Airlines, Inc.*, 146 B.R. 520, 526 (Bankr. D. Del. 1992)).

23. A break-up fee may provide a benefit to the estate where (1) assurance of the break-up fee promotes more competitive bidding, such as by inducing a bid that otherwise wouldn’t have been made, (2) availability of the break-up fee induces a buyer to perform diligence and set a floor price. *See EFH I*, 904 F.3d at 313-14 (citing *O’Brien*, 181 F.3d at 537).

24. Even if a break-up fee would benefit the estate, the Court is not required to approve it. *See EFH I*, 904 F.3d at 313-14 (“We have never held that bankruptcy courts must allow fees whenever they find that [a break-up fee confers a benefit on the estate.]”). The Court must determine, based on the totality of the circumstances of the case, “whether the proposed fee’s potential benefits to the estate outweigh any potential harms, such that the fee is actually necessary to preserve the value of the estate.” *Id.* (citing *O’Brien*, 181 F.3d at 535) (quotation marks omitted).

25. The party requesting bid protections has the burden of showing that the fee is actually necessary to preserve the value of the estate. *See O'Brien*, 181 F.3d at 535.

26. In *EFH II*, the United States Court of Appeals for the Third Circuit considered, in the context of a motion to dismiss based upon the sufficiency of the pleading, an administrative expense application submitted by an unsuccessful bidder. Initially, the unsuccessful bidder argued that the lower courts erred in measuring whether its bid had conferred a benefit using hindsight (as opposed to measuring the benefit at the time the bid was submitted). *See EFH II* at *12. The Third Circuit rejected that argument and concluded that, consistent with the well-established Bankruptcy Code policy of limiting administrative expenses, it was “entirely appropriate to consider” the asserted benefit “through the rearview mirror.” *Id.*

27. The unsuccessful bidder in *EFH II* also asserted two potential benefits to the process: that it served as a stalking horse bidder, and that its unsuccessful efforts provided a “roadmap” for other viable bids that were later submitted, including the successful bid. *Id.* The Third Circuit rejected the argument that the unsuccessful bidder had stated a plausible argument for allowance of an administrative expense on a theory that its bid served as a catalyst for the submission of other bids, as it was the only bid at the time it was submitted. *Id.* While the bid did not technically establish a “floor” because the estates ultimately accepted a substantially lower offer after the unsuccessful bid fell through, the Third Circuit found that the argument that the bid had provided a “roadmap” for other bids post-termination was a plausible argument in favor of benefit to the estate. *Id.* at *12-13. The Third Circuit remanded the matter in *EFH II* so that a sufficient record could be developed to enable the bankruptcy court to determine, in hindsight, the extent to which the unsuccessful bidder’s participation had actually benefitted the estate more than it had harmed the estate. *Id.* at *15.

28. To receive bid protections as an administrative claim under Section 503(b) of the Bankruptcy Code, it must be shown that such bid protections conferred a benefit to the estate, which could only be discerned after the sale to another bidder at a price more beneficial to the estate.

29. Consistent with the Third Circuit's latest guidance, the Court should not consider bid protections until there is a sufficient evidentiary record on which to make the legal determinations outlined in *O'Brien* and subsequent Circuit cases.

30. In sum, the Debtors' request for authority to award the Bid Protections should be denied as it undermines this Court's control of administrative expenses. The break-up fee proposed to be paid to the stalking horse is unnecessary as there already exist three (3) additional interested bidders for the intellectual property supporting assets. At the very least, the requested \$150,000.00 expense reimbursement should only be granted after the auction occurs and upon proof of such services performed.

B. Certain of the Deadlines Should be Extended.

31. As set forth above, the Bidding Procedures Motion provides that the Bid Deadline is 4:00 p.m. on March 5, 2026, and, in contrast, the proposed order provides that the Bid Deadline is 4:00 p.m. on March 4, 2026. *See* Dkt. 45 at pages 8, 45, 53 of 151. The Debtors must reconcile the date before notice is provided.

32. It appears that the Debtors intend to schedule the Sale Hearing for 2:00 p.m. on March 12, 2026. *See id.* As the Auction is on March 9, 2026, at 10:00 a.m., and the deadline to file the Notice of Successful Bidder is 5:00 p.m. on March 10, 2026, any objections to the determination of the successful bidder or to any other sale related issues would have to be filed immediately prior to the Sale Hearing. This schedule does not provide much time for objections

to be filed. In addition, it is unclear why there are two objection deadlines, one being three (3) days prior to the Auction and the other being less than two (2) days prior to the Sale Hearing. *See* Dkt. 45 at page 8 of 151.

33. Further, the proposed order provides that the Bidding Procedures Order will be served upon the Bid Notice Parties within two (2) or three (3) business days of the entry of the Bidding Procedures Order. *See id.* at pages 20 and 42 of 141. As a result, if the Bidding Procedures Order is entered on February 11, 2026, and the Debtors must serve it within three (3) business days, the Bidding Procedures Order need not be served until Monday, February 16, 2026, which will only provide potential bidders with seventeen (17) days to conduct due diligence and obtain sufficient financing to submit a bid. However, if the Debtors must serve the Bidding Procedures Order within two (2) business days, then potential bidders will have approximately nineteen (19) days to submit a bid. The Debtors must clarify which deadlines they seek to impose on the Bid Notice Parties. As the marketing of the Debtors' intellectual property supporting assets only started a few weeks prior to the Petition Date, the Bid Deadline should be extended.

34. Paragraph 4 of the proposed order requires the Debtors to serve the Bid Notice Parties with the Bidding Procedures Order, the Bidding Procedures, the Stalking Horse APA, and the Sale Notice (the "Sale Documents"). However, it does not appear that the Bid Notice Parties include any of the other interested purchasers of the Debtors' intellectual property supporting assets and those parties that Hilco reached out to. As such, the Debtors should be required to serve the Sale Documents on known interested purchasers of the Debtors' intellectual property supporting assets and any other entities that Hilco reached out to previously.

C. The Overbids Should be Revised.

35. Pursuant to the Intellectual Property Asset Purchase Agreement attached to the Bidding Procedures Motion, “[s]eller shall not consummate a sale of the Acquired Assets to any Person other than Buyer (any such Person, a “Successful Bidder”) unless the aggregate consideration to be received by Seller from such Successful Bidder equals or exceeds the sum of: (i) the Purchase Price, plus (ii) the Break-Up Fee, plus (iii) the maximum amount of the Expense Reimbursement (i.e., \$150,000), plus (iv) Two Hundred Fifty Thousand Dollars (\$250,000) (collectively, Seven Million Six Hundred Ten Thousand Dollars (\$7,610,000)) (the "Minimum Overbid"). See Dkt. 45 at page 83 of 141. In other words, the first Overbid will have to be greater than the Break-Up Fee (\$210,000), expense reimbursement (\$150,000.00) and \$250,0000.00. As such, the first Overbid must be at least \$610,000.00. Any subsequent bids/bid increments apparently will be announced at the Auction. See *id.* at page 18 of 141. The Debtors should be required to announce the amount of subsequent bids/bid increments now with the right to revise subsequent bids upon consultation with the Consultation Parties at the Auction. The Debtors should also be required to explain the reason for selecting the first overbid to be \$250,000.

CONCLUSION

WHEREFORE, the United States Trustee respectfully submits that the Court deny the Bidding Procedures Motion and grant such other relief as the Court deems just and necessary.

Respectfully Submitted,

**ANDREW R. VARA,
UNITED STATES TRUSTEE
REGIONS 3 & 9**

By: /s/ Jeffrey M. Sponder
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Dated: February 10, 2026