IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
CTN HOLDINGS, INC., *et al.*,[1]	Case No. 25-10603 (TMH)
Debtors.	Jointly Administered Re: D.I. 65 Hearing Date: May 12, 2025 Obj. Deadline: May 6, 2025 at 11:00 a.m. ET (for U.S. Trustee)

UNITED STATES TRUSTEE'S OBJECTION TO DEBTORS' MOTION FOR ENTRY OF AN ORDER APPROVING(I)(A) THE DEBTORS' ENTRY INTO STALKING HORSE AGREEMENT AND RELATED EXPENSE REIMBURSEMENT AND BREAK-UP FEE; (B) THE BIDDINGPROCEDURES IN CONNECTION WITH THE SALE OF SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS, (C) THE PROCEDURES FOR THE ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES, (D) THE FORM AND MANNER OF NOTICE OF THE SALE HEARING, ASSUMPTION PROCEDURES, AND AUCTION RESULTS, AND (E) DATES FOR AN AUCTION AND SALE HEARING; (II)(A) THE SALE OF SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS FREE AND CLEAR OF ALL CLAIMS, LIENS, LIABILITIES, RIGHTS, INTERESTS, AND ENCUMBRANCES AND (B) THE DEBTORS' ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES; AND (III) GRANTING RELATED RELIEF

Andrew R. Vara, the United States Trustee for Region Three (the "U.S. Trustee"), through his undersigned counsel, hereby objects (this "Objection") to the *Debtors' Motion for Entry of an Order Approving (I)(A) the Debtors' Entry Into Stalking Horse Agreement and Related Expense Reimbursement and Break-Up Fee; (B) the Bidding Procedures in Connection with the Sale of Substantially All of the Debtors' Assets, (C) the Procedures for the Assumption and Assignment of Executory Contracts and Unexpired Leases, (D) the Form and Manner of Notice of the Sale*

[1] The Debtors in these chapter 11 cases, along with the last four digits of the Debtors' federal tax identification numbers, are CTN Holdings, Inc. (9122), CTN SPV Holdings, LLC (8689), Make Earth Green Again, LLC (4441), Aspiration QFZ, LLC (1532), Aspiration Fund Adviser, LLC (4214), Catona Climate Solutions, LLC (3375) and Zero Carbon Holdings, LLC (1679). The mailing address for the Debtors is 548 Market Street, PMB 72015, San Francisco, CA 94101-5401.

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Hearing, Assumption Procedures, and Auction Results, and (E) Dates for an Auction and Sale Hearing; (II)(A) the Sale of Substantially All of the Debtors' Assets Free and Clear of all Claims, Liens, Liabilities, Rights, Interests, and Encumbrances and (B) The Debtors' Assumption and Assignment of Certain Executory Contracts and Unexpired Leases; and (III) Granting Related Relief ("Bid Procedures Motion") [D.I. 65], and in support of this Objection, respectfully states:

PRELIMINARY STATEMENT

1. The U.S. Trustee objects to the approval of the Bid Protections because (i) the standard for their payment under section 503(b) of the Bankruptcy Code has not been met and (ii) the Bid Protections are not entitled to superpriority administrative expense status.

JURISDICTION, VENUE AND STANDING

2. This Court has jurisdiction to hear and determine the Bid Procedures Motion and this Objection pursuant to: (i) 28 U.S.C. § 1334; (ii) applicable order(s) of the United States District Court of the District of Delaware issued pursuant to 28 U.S.C. § 157(a); and (iii) 28 U.S.C. § 157(b)(2).

3. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1408 and 1409.

4. Pursuant to 28 U.S.C. § 586, the U.S. Trustee is charged with overseeing the administration of chapter 11 cases filed in this judicial district. The 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. *See Morgenstern v. Revco D.S., Inc. (In re Revco D.S., Inc.)*, 898 F.2d 498, 500 (6th Cir. 1990) (describing the U.S. Trustee as a "watchdog").

5. The U.S. Trustee has standing to be heard on the Bid Procedures Motion pursuant to 11 U.S.C. § 307. *See United States Trustee v. Columbia Gas Sys., Inc. (In re Columbia Gas Sys.,*

Inc.), 33 F.3d 294, 295-96 (3d Cir. 1994) (noting that U.S. Trustee has "public interest standing" under 11 U.S.C. § 307, which goes beyond mere pecuniary interest).

BACKGROUND

6. On March 30 and 31, 2025, the Debtors commenced the above-captioned cases by filing voluntary chapter 11 petitions in this Court.

7. On April 10, 2025, the U.S. Trustee appointed an official committee of unsecured creditors ("Committee"). D.I. 59.

8. The Debtors filed the Bid Procedures Motion on April 11, 2025, and through it, the Debtors propose to establish procedures to facilitate the sale of substantially all of their assets. Although the U.S. Trustee understands, upon information and belief, that the proposed "Key Dates" to the sale will be revised, as presented in the Motion, the entire sales process is about a month from approval of the Bid Procedures to the Sale Hearing.

9. In addition to approval of certain procedures in aid of the sales process, the Debtors seek approval of certain protections for the benefit of the Stalking Horse Bidder[2] ("Bid Protections").

10. The proposed Stalking Horse Bidder, an entity called Inherent Aspiration, LLC ("Inherent"), and the Debtors have a prepetition history. The Debtors and Inherent, as one of the Prepetition Secured Note Holders, entered into Third Amended and Restated Senior Secured Note and Guaranty dated October 30, 2024. Staglik First Day Decl. [D.I. 22] ¶ 35. The Debtors estimate that the total outstanding amount under the Prepetition Secured Note Obligations is approximately $61.5 million. Of this amount, Inherent holds approximately $12 million in outstanding Prepetition

[2] Unless otherwise defined herein, capitalized terms shall have the meaning ascribed to them in the Bid Procedures Motion.

Secured Notes, and the Debtors state that Inherent "has valid perfected and unavoidable liens on substantially all of the Debtors' assets." *Id*. ¶ 37.

11. Inherent is also the Debtors' DIP lender. To that end, Inherent has agreed to provide the Debtors with a debtor-in-possession loan, in an amount not to exceed $18,015,000.00. The debtor-in-possession loan consists of $13,805,000 in rolled-up prepetition obligations and the remainder in "new-money" financing. DIP Motion [D.I. 21] ¶ 21. This Court approved the DIP Motion on an interim basis; approval of the DIP Motion on a final basis remains pending. The Committee filed its *Omnibus Objection to the Debtors' (I) DIP Financing Motion And (II) Sale Procedures Motion* on May 2, 2025 [D.I. 113].[3]

12. Inherent proposes to purchase all of the Debtors' assets, including causes of action against the Debtors' directors and officers, for a credit bid of $20 million and amounts to be determined for assumption of certain liabilities and associated cure payments. Bid Procedures Mot. ¶ 19. The First Day Declaration indicates that one of the Debtors' founding investors, Joseph Sanberg, is the subject of a criminal complaint dated as of late February 2025, and the "Debtors' current leadership and employees were unaware of, and the Debtors are themselves victims of, [Mr. Sanberg's] alleged conduct." First Day Decl. ¶ 19.

13. To protect Inherent' s bid, the Debtors propose to pay Inherent a cash break-up fee of $600,000 ("Break-Up Fee") and all reasonable and documented costs of and out-of-pocket expenses incurred by Inherent, in an amount not to exceed $400,000 ("Expense Reimbursement"). Bid Procedures Mot. ¶ 19. Under the Interim DIP Order, Inherent is also entitled to payment of

[3] The Committee's Omnibus Objection argues, among other things, that the rolled-up prepetition obligations of the DIP Loan are excessive compared to the new money provided under the DIP Facility and that the sales process contemplates an unjustifiably truncated timeline and excessive Break-Up Fee and Expense Reimbursement for Inherent.

DIP Fees and Expenses, and it is unclear whether that entitlement also includes expenses related to the APA or the sales process.

14. The Break-Up Fee and the Expense Reimbursement have superpriority administrative expense status. Bid Procedures Mot. Ex. B (APA) § 7.3.

ARGUMENT

I. The Break-Up Fee and Expense Reimbursement Should Not Be Authorized Under Applicable Law

15. Break-up fees must be sought and analyzed under Section 503(b). *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 *In re O'Brien Envt'l Energy, Inc.*, 181 F.3d 527 (3d Cir. 1999)).

16. The analysis of break-up fees under Section 503(b) "must be made in reference to general administrative expense jurisprudence. In other words, the allowability of break-up fees, 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 (emphasis added). "[T]ermination fees are subject to the same general standard used for all administrative expenses under 11 U.S.C. § 503[.]" *In re Energy Future Holdings Corp. ("EFH I")*, 904 F.3d 298, 313 (3d Cir. 2018). 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.

17. Break-up fees are ordinarily predicated on a stalking horse attracting other bidders to an auction or enhancing the value of the estate in some other way. But that does not satisfy Third Circuit precedent: the requesting party must show that a break-up fee is "actually necessary" to preserve the value of the estate. *O'Brien*, 181 F.3d at 535. There is no certainty that a break-

up fee will be actually necessary. For example, a secured creditor may not need an inducement to credit bid for its collateral. Even if a break-up fee would benefit the estate, the Court must still determine "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.* at 314 (citing *O'Brien*, 181 F.3d at 535) (quotation marks omitted).

18. *In In re Energy Future Holdings Corp. ("EFH II"),* 990 F.3d 728, 744 (3d Cir. 2021), 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 744. 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*.

19. The unsuccessful bidder in *EFH II* 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

estates. *Id*. at 745-46. 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 estates more than it had harmed the estates. *Id*. at 748.

20. Here, Inherent – in its capacity as prepetition lender and DIP lender -- would have made a bid regardless of whether the Bid Protections were offered because Inherent has an interest in protecting its investment in these Debtors at any ensuing auction. Inherent will be the winning bidder or, if it is outbid, the additional proceeds of the sale will be used to pay down their prepetition claims and DIP financing claims.

21. Inherent is a prepetition lender. Inherent conducted some measure of diligence in connection with its purchase of approximately 20% of the outstanding secured notes. Further, in the weeks leading to the filing of these cases, Inherent has been actively negotiating and conducting diligence to position itself as the prepetition bridge lender and DIP Lender. These facts militate against a finding that the Expense Reimbursement is necessary to preserve the value of the Debtors' estates.

22. The Bid Protections are not truly bid protections, but rather blocking devices to make it more costly for other bidders to propose a qualified bid. Approving a Breakup Fee and Expense Reimbursement[4] of almost $1 million to be paid by any winning bidder other than Inherent will impermissibly chill the bidding process. Accordingly, under the *O'Brien* standard, the bid protections should not be approved.

[4] While the Expense Reimbursement should not be approved for the reasons stated above, if the Court disagrees and approves such relief, all expenses to be reimbursed should be documented, with such documentation provided to the Debtors, the Committee (if any), and the U.S. Trustee for a 10-day review period with rights to object fully reserved, prior to authorization of payment.

II. The Bid Protections Are Not Entitled to Superpriority Administrative Expense Status

23. Section 503(b) does not provide for superpriority status. Such status is provided for only in sections 364(c)(1) and 507(b) of the Bankruptcy Code. Those sections are addressed exclusively to (a) parties providing post-petition financing and (b) secured creditors who have received insufficient "adequate protection" for the post-petition diminution in the value of their collateral. Neither DIP financing nor adequate protection is implicated here.

24. "The filing of a petition for bankruptcy protection under Chapter 11 of the Code . . . precludes all efforts to obtain or distribute property of the estate other than as provided by the Bankruptcy Code. This statutory control over the right to recover property from the debtor's estate is integral to the purposes and goals of federal bankruptcy law." *O'Brien*, 181 F.3d at 532 (citations omitted).

25. Section 105(a) cannot be invoked to expand the Bankruptcy Code. *See In re Combustion Engineering, Inc.*, 391 F.3d 190, 236 (3rd Cir. 2004) ("The general grant of equitable power contained in § 105(a) cannot trump specific provisions of the Bankruptcy Code, and must be exercised within the parameters of the Code itself"); *see also Law v. Siegel*, 571 U.S. 415, 421 (2014) ("We have long held that 'whatever equitable powers remain in the bankruptcy courts must and can only be exercised within the confines of' the Bankruptcy Code.") (citations omitted).

26. Here, permitting the Bid Protections to prime other administrative expense claimants has no basis in the Bankruptcy Code and is inconsistent with Third Circuit precedent.

III. The Sales Process, Including the Timeline, Must Maximize Estate Value

27. Section 363(b)(1) of the Bankruptcy Code permits a debtor-in-possession to sell property of the estate outside the ordinary course of business. The debtor-in-possession bears the burden of proof to show that the sale is in the best interests of the creditors and the estate:

> "The sale of assets which is not in the debtor's ordinary course of business requires proof that: (1) there is a sound purpose for the sale; (2) the proposed sale price is fair; (3) the debtor has provided adequate and reasonable notice; and (4) the buyer has acted in good faith. The element of 'good faith' is of particular importance as the Third Circuit made clear in *In re Abbotts Dairies of Pennsylvania, Inc*., 788 F.2d 143, 149-50 (3d Cir. 1986)."

In re Exaris Inc., 380 B.R. 741 (Bankr. Del. 2008) (some citations omitted).

28. Initially, the Court must determine that the bidding procedures will bring the best and highest price for the debtors' assets. The debtors must show that the assets have been fully marketed and that the sale is sufficiently publicized in order to prove that the assets will be sold for a fair and reasonable price. *See In re Abbotts Dairies, Inc*., 788 F.2d 143, 147 (3d Cir. 1986).

29. The speed at which the Debtors propose to sell all of their assets creates a risk that potential buyers will not be reached, or that all potential purchasers will not have adequate time to perform due diligence, thereby reducing competition for purchase of the Debtors' assets. This risk is compounded by the lack of formal prepetition marketing of the Debtors' assets. The net result could thus be a reduction in competitive bidding, and, concomitantly, in the proceeds to be realized from the sale of those assets.

30. Therefore, absent the development of evidence on the record establishing that this expedited sales process is poised to benefit the estates, the U.S. Trustee submits that this Court should not approve the deadlines contained within the Bidding Procedures.

RESERVATION OF RIGHTS

31. The U.S. Trustee leaves the Debtors to their burden of proof and reserves any and all rights to, *inter alia*, (i) amend or supplement this Objection and (ii) to conduct any and all discovery.[5]

CONCLUSION

WHEREFORE, the U.S. Trustee respectfully requests that the Court enter an order (i) denying approval of the Bid Protections and (ii) granting such other and further relief as the Court deems just and equitable.

Dated: May 6, 2025
Wilmington, Delaware

Respectfully submitted,

ANDREW R. VARA
UNITED STATES TRUSTEE
REGIONS 3 & 9

By: */s/ Rosa Sierra-Fox*

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[5] The U.S. Trustee has raised several other issues in connection with the Bid Procedures Motion. As of this filing, the U.S. Trustee believes that those issues raised but not specifically raised herein have been resolved, but a conforming redline of the proposed order has not yet been filed on the docket. Out of an abundance of caution, the U.S. Trustee reserves the right to raise any and all unresolved issues at the hearing on the Bid Procedures Motion.

CERTIFICATE OF SERVICE

I, Rosa Sierra-Fox, hereby attest that on May 5, 2025, I caused to be served a copy of this Objection by electronic service on the registered parties via the Court's CM/ECF system and upon the following parties in the manner specified:

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