IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re YARDBIRD GROUP LLC, *et al.*,[1] Debtors.	Chapter 11 Case No. 26-11479 (BLS) (Jointly Administered) **Hearing Date: Oct. 13, 2026 at 1:30 p.m. ET** **Objection Deadline: Oct. 6, 2026 at 4:00 p.m. ET** **Re: D.I. 14**

LIMITED OBJECTION OF THE UNITED STATES TRUSTEE TO DEBTORS' MOTION FOR ENTRY OF ORDERS (I)(A) APPROVING BIDDING PROCEDURES FOR THE SALE OF SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS, (B) DESIGNATING THE STALKING HORSE BIDDER, (C) SCHEDULING AN AUCTION AND APPROVING THE FORM AND MANNER OF NOTICE THEREOF, (D) APPROVING ASSUMPTION AND ASSIGNMENT PROCEDURES, (E) SCHEDULING A SALE HEARING AND APPROVING THE FORM AND MANNER OF NOTICE THEREOF, AND (F) GRANTING RELATED RELIEF; AND (II)(A) APPROVING THE SALE OF THE DEBTORS' ASSETS FREE AND CLEAR OF LIENS, CLAIMS, INTERESTS, AND ENCUMBRANCES, (B) APPROVING THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES, AND (C) GRANTING RELATED RELIEF

Andrew R. Vara, the United States Trustee for Region 3 ("U.S. Trustee"), through his counsel, files this limited objection ("Objection") to the *Debtors' Motion for Entry of Orders (I)(A) Approving Bidding Procedures for the Sale of Substantially all of the Debtors' Assets, (B) Designating the Stalking Horse Bidder, (C) Scheduling an Auction and Approving the Form and Manner of Notice Thereof, (D) Approving Assumption and Assignment Procedures, (E) Scheduling a Sale Hearing and Approving the Form and Manner of Notice Thereof, and (F) Granting Related Relief; and (II)(A) Approving the Sale of the Debtors' Assets Free and Clear of*

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number include: Yardbird Group LLC (7139); Southern Operations, LLC (5384); Yardbird Beverly Hills, LLC (9735); Yardbird DFW, LLC (2545); Yardbird DC, LLC (2651); Yardbird Chicago, LLC (6273); Yardbird Denver LLC (8819), YB Las Vegas, LLC (4071), Yardbird DFW Management LLC (8949), Yardbird DFW Concession LLC (1952), and The Bird Singapore LLC (8264). The location of the Debtors' service address in these chapter 11 cases is 3355 Las Vegas Boulevard South, Las Vegas, Nevada 89109.

Liens, Claims, Interests, and Encumbrances, (B) Approving the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, and (C) Granting Related Relief [D.I. 14] ("Motion") and in support of the Objection states:

PRELIMINARY STATEMENT

1. The Debtors seek approval of an expense reimbursement for the Debtors' proposed Stalking Horse SH Acquisition, LLC ("Stalking Horse"), which is an entity owned and controlled by the Debtors' pre-petition lenders and their DIP lender (collectively, "DIP Lenders"). The Stalking Horse intends to make a credit bid of over $15 million, the total pre-petition and post-petition amounts allegedly owed by the Debtors.

2. The proposed $275,000 expense reimbursement ("Expense Reimbursement") if the Stalking Horse is outbid at auction should not be allowed. An allowable Expense Reimbursement incentivizes a party which would not have an independent motivation to make a stalking horse bid to invest the time and money to do the due diligence necessary to make a stalking horse bid, to protect it from losing its due diligence investment by being outbid at the auction. Here, the Stalking Horse is related to the Debtors' pre-petition lenders, which negotiated the terms of the DIP credit agreement prior to bankruptcy and have been providing credit to the Debtors since at least 2022. Accordingly, the Stalking Horse did not need to undertake any additional due diligence to make a bid, did not need an incentive to make a bid, and should not be compensated or reimbursed if it is not the winning bidder at the auction. The Stalking Horse is independently motivated to participate at the auction, to protect its asserted secured position in the Debtors' assets. Moreover, under the proposed DIP financing orders, the Stalking Horse's owners, the DIP Lenders, will advance $1.8 million in new money to the Debtors. As a result, the Expense Reimbursement and the financing fees (commitment/exit)

together constitute a 19.2% charge imposed on any successful bidder other than the Stalking Horse. There is nothing in the Bankruptcy Code which permits such a rich windfall to a fully-protected Stalking Horse.

3. Because the Stalking Horse does not need an allowed administrative claim to incentivize the firm to make the stalking horse bid, the Expense Reimbursement is not "actually necessary to preserve the value of the estate," as required by Third Circuit law. *See In re O'Brien Envtl. Energy, Inc.*, 181 F.3d 527, 535 (3d Cir. 1999).

4. Second, if the Court allows an expense reimbursement, the Stalking Horse should be required to provide support for claimed expenses to the Debtors, the Committee, and the U.S. Trustee, with a fifteen-day period to object unless the period is extended by consent or Court order.

5. Third, the U.S. Trustee objects to treating any expense reimbursement allowed by the Court as a super-priority administrative claim because there is no basis in the Bankruptcy Code for such treatment.

JURISDICTION AND STANDING

6. Under (i) 28 U.S.C. § 1334, (ii) applicable order(s) of the United States District Court for the District of Delaware 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 Motion and this Objection.

7. Pursuant to 28 U.S.C. § 586(a)(3), the U.S. Trustee is charged with administrative oversight of the bankruptcy system in this District. Such oversight is part of the U. S. Trustee's overarching responsibility to enforce the laws as written by Congress and interpreted by the courts. *See In re Columbia Gas Systems, Inc.,* 33 F.3d 294, 295-96 (3d Cir. 1994) (noting that the U. S. Trustee has "public interest standing" under 11 U.S.C. § 307 which goes beyond mere

pecuniary interest); *In re Revco D.S., Inc.*, 898 F.2d 498, 500 (6th Cir. 1990) (describing the U. S. Trustee as a "watchdog").

8. Under 11 U.S.C. § 307, the U. S. Trustee has standing to be heard on the Motion.

BACKGROUND

9. On September 21, 2026 ("Petition Date"), the Debtors filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. The Debtors continue to operate their business(es) as debtors-in-possession pursuant to 11 U.S.C. §§ 1107 and 1108.

10. To date, the U.S. Trustee has not appointed an official committee of unsecured creditors in these cases.

11. On September 21, 2026, the Debtors filed the Motion [D.I. 14]. In the Motion, the Debtors identified the Stalking Horse and proposed that it be entitled to make a credit bid up to approximately $15 million. Mot. ¶¶ 2, 17; Mot. Ex. A (Asset Purchase Agreement) § 3.1. As of the Petition Date, the total pre-petition amount due to the DIP Lenders was over $13.3 million. Altro "First Day" Decl. ¶ 19 [D.I. 2]. In the Motion, the Debtors propose a bid protection for the Stalking Horse (the designee of the DIP Lenders) which consists of the Expense Reimbursement of up to $275,000. Mot. ¶ 44. Under the terms of the DIP financing agreement, the DIP Lenders will loan the Debtors $1.8 million in new money ($1 million under the Interim DIP Order and an additional $800,000 under the Final DIP Order). Interim Financing/Cash Collateral Order Preamble ¶ (a) [D.I. 53]. The DIP Lenders will also receive a 2% closing fee and 2% exit fee. *Id.* ¶ 6(e)(iii). As a result, if the proposed Expense Reimbursement is approved, the DIP Lenders will receive a combined 19.2% of the $1.8 million "new money" financing. Under these circumstances, the Court should not approve the relief requested by the Debtors.

ARGUMENT

A. Stalking Horse Is Not Entitled to Bid Protections.

12. The U.S. Trustee objects to the Motion because the Expense Reimbursement is not justified under governing Third Circuit law. The Stalking Horse is an entity controlled by the Debtors' pre-petition and post-petition secured lender(s). The credit-bidding lender(s) do not need to be incentivized to protect their secured claim(s).

13. To award a break-up fee or expense reimbursement to a potential bidder, the Court must determine that the fee or expense was an actual and necessary cost and expense of preserving the estate. *See In re O'Brien Envtl. Energy, Inc.*, 181 F.3d 527 (3d Cir. 1999). In *O'Brien*, the Third Circuit Court of Appeals held that "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." *Id.* at 535.

14. The burden is on the moving party to prove that any proposed expense reimbursement may be allowed as an administrative expense. In addition, although "the considerations that underlie the Debtors' judgment may be relevant to the bankruptcy court's determination on a request for break-up fees and expenses," "the business judgment rule should not be applied as such in the bankruptcy context." *Id.*

15. Moreover, as recognized by the Third Circuit in *O'Brien*:

> [E]ven if the purpose for the break-up fee is not impermissible, the break-up fee may not be needed to effectuate that purpose. For example, in some cases a potential purchaser *will bid whether or not break-up fees are offered* . . . . In such cases, the award of a break-up fee cannot be characterized as necessary to preserve the value of the estate.

181 F.3d at 535 (emphasis added); *see In re Reliant Energy Channelview LP*, 200 F.3d 594 (3d Cir. 2010) (affirming disallowance of retroactive grant of break-up fee that was sought after the stalking horse bidder had already bid for the assets).

16. As a secured lender owed more than $15 million, the Stalking Horse will bid to protect its secured claim whether or not the Expense Reimbursement is allowed. Because the Stalking Horse did not need an incentive to protect the value of its collateral through the stalking horse bid, the Expense Reimbursement is not "actually necessary to preserve the value of the estate," as required under *O'Brien.*

17. The Debtors do not demonstrate that Expense Reimbursement is necessary to preserve the value of the Debtors' estates. In the Declaration of Vineet Batra in support of the proposed bidding procedures [D.I. 15], the Debtors fail to provide any permissible justification for the Expense Reimbursement. Rather, Mr. Batra merely states that the stalking horse bid protections are "appropriate and reasonable in light of the circumstances." Batra Decl. ¶ 20. Further, he states that the Stalking Horse was not willing to proceed without the bid protection. *Id*. ¶ 18. The instant facts demonstrate that the opposite is true. The Expense Reimbursement does not incentivize a bid from an interested but potentially uncommitted entity which is not independently motivated to bid. Rather, the Expense Reimbursement provides an allowed, contingent claim of $275,000 to the one party which, due to the credit bid of the DIP Lenders' claims, *would be bidding in the absence of the bid protection*, thereby chilling interest in the Debtors' assets.

B. <u>The Expense Reimbursement Should Be Subject to Review.</u>

18. The proposed expense reimbursement in the amount of $275,000 appears to be excessive, considering that the Stalking Horse had no need to undertake any significant due

diligence to make a stalking horse bid. The Stalking Horse's owners -- the DIP Lenders -- had undoubtedly performed extensive due diligence when they agreed to provide the Debtors' pre-petition funding and, subsequently, the DIP facility. Simply put, all necessary diligence had been completed prior to the Petition Date. The Expense Reimbursement, together with the DIP financing commitment and exit fees, constitutes a 19.2% cost for the Debtors' entry into the financing agreement. Accordingly, if the Court allows an expense reimbursement, the Stalking Horse should be required to provide support for claimed expenses to the Debtors, the Committee, and the U.S. Trustee, with a fifteen-day period to object unless the period is extended by consent or Court order.

C. The Expense Reimbursement Is Not Entitled to Superpriority Treatment Under the Bankruptcy Code.

19. Finally, to the extent that the Debtors are seeking to have the Expense Reimbursement treated as a superpriority administrative claim, such request should be denied. Even if the Court were to approve some portion of the Expense Reimbursement, there is no basis under the Bankruptcy Code to allow same as a superpriority administrative claim.

20. The Third Circuit has ruled that break-up fees (or reimbursement expenses) 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 *O'Brien*, 181 F.3d 527 (3d Cir. 1999))). The analysis of break-up fees under Section 503(b) "must be made in reference to *general administrative expense jurisprudence*." *O'Brien*, 181 F.3d at 535 (emphasis added). Further, the Court "do[es] not have the authority to 'create a right to recover from [a] bankruptcy estate where no such right exists under the Bankruptcy Code.' As a result, termination 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.*, 904 F.3d 298, 313 (3d Cir. 2018) (quoting *O'Brien*, 181 F.3d at 535)*, cert. denied*, 578 U.S. 970 (2019).

21. 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 Code. Those sections are addressed exclusively to claims of (a) entities providing post-petition financing and (b) pre-petition secured lenders for adequate protection for diminution in collateral value during the bankruptcy case. Bid protections in connection with sales do not fall under either of the two aforementioned categories, and therefore the Expense Reimbursement cannot receive superpriority administrative claim status under the Bankruptcy Code.

22. "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).

23. Permitting the Stalking Horse's proposed Expense Reimbursement claim to prime the allowed claims of other administrative expense claimants has no basis in the Bankruptcy Code, is inconsistent with Third Circuit precedent, and should not be permitted.

RESERVATION OF RIGHTS

24. The U.S. Trustee leaves the Debtors to their burden to (i) amend or supplement this Objection and (ii) conduct discovery.

CONCLUSION

WHEREFORE, the U.S. Trustee respectfully requests that this Court deny the bid protection(s) and award such other relief as this Court deems appropriate under the circumstances.

Dated: September 29, 2026
Wilmington, Delaware

Respectfully submitted,

ANDREW R. VARA
UNITED STATES TRUSTEE
REGIONS 3 and 9

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CERTIFICATE OF SERVICE

I, Jonathan W. Lipshie, counsel to Andrew R. Vara, the United States Trustee for Region 3, hereby certifies that, on this 29th day of September, 2026, I caused a true and correct copy of the foregoing *Limited Objection* to be served on the parties listed below via electronic mail.

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