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*Proposed Counsel for the Chapter 11  
Trustee*

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

In re:

FIRESTAR DIAMOND, INC., *et al.*

Debtors.<sup>1</sup>

Chapter 11

No. 18-10509 (SHL)

(Jointly Administered)

**NOTICE OF CHAPTER 11 TRUSTEE'S REVISED BIDDING  
PROCEDURES FOR SALE OF ASSETS OF A. JAFFE, INC.**

Richard Levin, not individually but solely in his capacity as chapter 11 trustee (the "**Trustee**") for the above-captioned debtors (the "**Debtors**"), intends to sell all or substantially all the assets of the Debtor A. Jaffe, Inc., as is, where is, free and clear of all liens, claims, interests, or other encumbrances at a public sale, on substantially the terms and conditions and through the procedure described in the attached "TRUSTEE'S REVISED BIDDING PROCEDURES FOR SALE OF ASSETS OF A. JAFFE, INC." ("**Revised Bidding Procedures**").

On June 25, 2018, the Trustee filed the Trustee's Bidding Procedures for Sale of Assets of A. Jaffe, Inc. (Dkt. 237-1), which included the incorrect deadline to submit a Qualified Bid to the Trustee in Paragraph E. The correct deadline is July 5, 2018 at 5:00 p.m. EDT, not July 3, 2018 at

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<sup>1</sup> The Debtors in these jointly administered chapter 11 cases, along with each Debtor's respective chapter 11 case number and the last four digits of each Debtor's federal tax identification number are: (i) Firestar Diamond, Inc. (Case No. 18-10509) (2729); (ii) A. Jaffe, Inc. (Case No. 18-10510) (4756); and (iii) Fantasy, Inc. (Case No. 18-10511) (1673).

5:00 pm. EDT. The Revised Bidding Procedures correct this error.

**Additional information on A. Jaffe, Inc. and its chapter 11 case is available at**  
<http://www.omnimgt.com/firestardiamond>.

Dated: June 25, 2018  
New York, New York

Respectfully submitted,

JENNER & BLOCK LLP

By: /s/ Marc Hankin

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*Proposed Counsel for the Chapter 11  
Trustee*

**TRUSTEE'S REVISED BIDDING PROCEDURES FOR SALE OF ASSETS OF A. JAFFE, INC.**

Richard Levin, not individually but solely in his capacity as Chapter 11 Trustee of A. Jaffe, Inc.,<sup>1</sup> intends to sell all or substantially all the assets of the Debtor A. Jaffe, Inc., as is, where is, free and clear of all liens, claims, interests, or other encumbrances at a public sale, on substantially the terms and conditions and through the procedure described below. The Trustee reserves the right to modify the terms, conditions, and procedures as he determines, in his sole discretion, may be necessary to promote a fair sale process and to maximize the value of the estate.

**A. Terms and Conditions of Sale**

On May 11, 2018, A. Jaffe, as debtor in possession, filed an Asset Purchase Agreement (the "**Agreement**") with the Bankruptcy Court. A copy of the Agreement was filed with the Bankruptcy Court [ECF 157] and is available through the Bankruptcy Court's PACER system, and at [http://www.omningt.com/cmsvol2/pub\\_47243/669473\\_157.pdf](http://www.omningt.com/cmsvol2/pub_47243/669473_157.pdf).

The Trustee intends to sell substantially all the assets of A. Jaffe, Inc., and assign substantially all the executory contracts of A. Jaffe, Inc., described in the Agreement (the "**A. Jaffe Assets**") on substantially the same terms and conditions as provided in the Agreement, other than price, form of consideration, and deadline for closing. The Agreement provided for a price in cash and a secured note. The Trustee will consider a secured note for a portion of the purchase price, but in evaluating a bid, the Trustee will discount the value of any note substantially as compared with cash. Bidders may propose a deadline for closing consistent with the schedule set forth in this Notice. The sale is subject to the Bankruptcy Court's approval.

The Trustee will sell the assets as is, where is, without representations or warranty of any kind, except to the extent provided in Article IV of the Agreement, as modified for the Trustee as seller.

The Trustee will provide Qualified Bidders, upon request, a copy of the Agreement in Microsoft Word, revised to account for the change of the identity of the Seller, and of the Schedules to the Agreement.

**B. Due Diligence and Review of Assets**

The bidding and sale process that resulted in the Agreement involved numerous potential bidders, who signed Nondisclosure Agreements and were permitted to review information in a virtual data room. The Trustee does not intend to re-open the data room to previous or new bidders or to invite new or renewed due diligence.

However, since the prior auction on May 3, 2018, the composition of the A. Jaffe Assets, particularly inventory and accounts receivable, has changed through the ordinary course operation of the business. Before the bid deadline, the Trustee will provide Qualified Bidders with updated information about the A. Jaffe Assets, and will entertain reasonable questions and requests for physical inspection, solely with respect to changes in assets since May 1, 2018. In preparing a bid, a bidder should provide appropriate adjustment mechanisms for any additional changes in inventory and accounts receivable.

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<sup>1</sup> In re A. Jaffe, Inc., chapter 11 case no. 18-10510-SHL, United States Bankruptcy Court for the Southern District of New York ("**Bankruptcy Court**")

**C. Key Dates and Deadlines**

June 25, 2018 through July 2, 2018	Review period
July 5, 2018 at 5:00 p.m. (or such later time as the Trustee, in his sole discretion, allows)	Bid Deadline
July 8, 2018 at 5:00 p.m.	Deadline for Debtors to notify Potential Bidders of their status as Qualified Bidders
July 11, 2018 at 10:00 a.m.	Auction, if necessary
July 13, 2018 at 4:00 p.m.	Deadline to file auction results with the Court
Additional dates to be determined and announced to qualified bidders, executory contract counterparties, and parties in interest	Deadlines for: <ul style="list-style-type: none"> <li>• objections to the sale, including objections to assumption and assignment of executory contracts,</li> <li>• Trustee’s Replies to Objections, and</li> <li>• hearing on the sale (the Trustee intends to request a hearing on or before July 27, 2018)</li> </ul>

**D. Bidder Qualifications**

Any bidder who became a Qualified Bidder under the Bidding Procedures approved by the Bankruptcy Court by Order entered March 29, 2018 [ECF 84], available at through the Bankruptcy Court’s PACER system or at [http://www.omnimgt.com/cmsvol2/pub\\_47243/663978\\_84.pdf](http://www.omnimgt.com/cmsvol2/pub_47243/663978_84.pdf), is a Qualified Bidder for this sale.

Other bidders may qualify as Qualified Bidders by submitting to the Trustee evidence of financial capability that is satisfactory to the Trustee in his sole discretion.

**E. Qualified Bids**

A bid qualifies as a Qualified Bid only if it (i) is received by the Trustee at [rlevin@jenner.com](mailto:rlevin@jenner.com), with copy to his counsel [mglass@jenner.com](mailto:mglass@jenner.com), on or before 5:00 p.m. EDT on July 35, 2018, (ii) includes at least the following, and (iii) is determined by the Trustee, in his sole discretion, to qualify as a Qualified Bid.

- (1) Bid. A formal, binding, and unconditional bid that—
  - (i) identifies the legal identity of the bidder and of each entity participating in connection with the bid (including any equity holder or other financial backer if the bidder is an entity specifically formed for purposes of effectuating the purchase and the complete terms of any such participation);
  - (ii) except for acceptance by the Trustee and approval by the Bankruptcy Court, is not subject to any contingencies or conditions to closing, including further due diligence, financing, employment-related, or third-party or regulatory approval;
  - (iii) is irrevocable until the earliest to occur of the first business day after (a) the closing of a sale of the A. Jaffe Assets, (b) the Trustee’s notification to the bidder of the Trustee’s decision not to accept the bid, and (c) August 10, 2018;

(iv) states the bidder is ready, willing, and able to perform its obligations under the asset purchase agreement submitted with the bid;

(v) states that the bidder agrees to serve as a backup bidder ("**Backup Bidder**") if its bid is selected as the next highest or next best bid after the winning bid;

(vi) includes the bidder's agreement that (a) any modification to the bid at the Auction is equally binding and irrevocable as the initial bid and (b) if the Trustee accepts the bid (as it may be increased before acceptance) and the bidder fails to consummate the proposed transaction by the Closing Date specified in the asset purchase agreement, the bidder shall forfeit the Deposit to the Trustee as liquidated damages; and

(vii) includes contact information for the person(s) the Trustee may contact with questions about the bid.

- (2) Asset Purchase Agreement. (i) An executed copy of an asset purchase agreement which is not materially more burdensome to the chapter 11 estate than the Agreement or inconsistent with these Bidding Procedures (the "**Bid APA**"), with a specific description of assets to be included in the bid; and (ii) a comparison showing the differences between the Bid APA and the Agreement, as modified by the Trustee.
- (3) Sale Order. A proposed sale order and a comparison showing the differences between the proposed sale order and the proposed sale order that was attached to the Sale Motion<sup>2</sup> [ECF 60] as Exhibit C.
- (4) Disinterestedness Declaration. On a form to be provided by the Trustee, a declaration under penalty of perjury identifying any connections or agreements with the Debtors, any other known bidder, or any officer or director of the foregoing.
- (5) Good Faith Deposit. A good faith deposit in the amount of 10% of the purchase price shown in the Bid APA ("**Deposit**"), in the form of a certified or cashier's check, payable to "Richard Levin, as Chapter 11 Trustee". The Trustee will return the Deposit of each bidder promptly following the earliest of (a) the closing of a sale of the A. Jaffe Assets, (b) the close of the Auction, except for the Deposits of the winning bidder and the Back-up Bidder, and (c) the cancellation of the sale.

The Trustee will consider bids for less than all the A. Jaffe Assets, such as all or part of the A. Jaffe on-premises inventory or the A. Jaffe intellectual property, including the intellectual

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<sup>2</sup> Debtors' Motion For Entry Of Orders Pursuant To 11 U.S.C. §§ 105, 363 And 365, And Bankruptcy Rules 2002, 6004 And 6006: (A) Fixing The Time, Date And Place For Hearing To Consider Bidding Procedures In Connection With The Debtors' Sale Of Substantially All Of Their Assets; (B)(I) Establishing Bidding Procedures; (II) Approving The Form And Manner Of Notices And (III) Setting Hearing Date For The Hearing On Approval Of The Sale Of Substantially All Of The Debtors' Assets; And (C)(I) Approving The Sale And Assignment Of The Debtors' Assets Free And Clear Of All Liens, Claims, Interests, And Encumbrances And (II) Granting Related Relief, filed March 23, 2018 [ECF 60], available through the Bankruptcy Court's PACER system or at [http://www.omnimgt.com/cmsvol2/pub\\_47243/663095\\_60.pdf](http://www.omnimgt.com/cmsvol2/pub_47243/663095_60.pdf).

property listed in the Schedules to the Agreement, if the bids would result in a higher overall recovery to the estate. Any such bids must include the same information as described above for a bid for all or substantially all A. Jaffe assets.

The Trustee intends to provide copies of Qualified Bids to the United States Trustee and to certain parties in interest in the chapter 11 cases.

**F. Auction**

If the Trustee receives more than one Qualified Bid, then by July 8, 2018, 5:00 P.M. EDT, the Trustee will notify the bidders who submitted the Qualified Bids that they may participate in an auction with the other Qualified Bids ("**Auction**"). The Auction, if held, will be at the offices of Jenner & Block LLP, 919 Third Ave., 38th Floor, New York, New York 10022 on **July 11, 2018 at 10:00 a.m. EDT**. The Auction will be conducted openly and will be transcribed by a court reporter.

Each Qualified Bidder who wishes to participate in the Auction must appear in person through a duly authorized representative and must confirm at the Auction, on the record, that (i) it has not engaged in any collusion with respect to the bidding or the sale; and (ii) its Qualified Bid represents a binding, good faith, and bona fide offer to purchase the A. Jaffe Assets, if its bid is selected as the highest bid.

The Trustee will determine the rules of the Auction and, before the Auction, will notify the Qualified Bidders who have elected to participate in the Auction of the rules and procedures for the Auction, including rules for opening and subsequent bids, breaks, caucuses, the conclusion of the Auction, and the announcement of the results of the Auction, which the Trustee will determine in his sole discretion and will be substantially the same as customary rules and procedures for bankruptcy auctions. The Trustee may modify the rules at any time.

The Trustee will determine the highest and best bid in his sole discretion but in doing so, may consult with parties in interest in the chapter 11 cases. The resulting winning bidder should be prepared to execute its Bid APA, as it may be modified during the auction, at the conclusion of the Auction. Failure to do so may result in the Trustee's rejection of the bid and the selection of a different winning bidder.

The Trustee will permit only Qualified Bidders and their representatives, the Examiner and such parties in interest as the Trustee invites and their respective representatives to attend the Auction.

At the conclusion of the Auction, the Trustee may determine and announce which bid or combination of bids constitute the backup bid (the "**Backup Bid**").

Within two business days after the Auction or after the Trustee's earlier determination not to hold an auction, the Trustee will file with the Bankruptcy Court a notice of the results of the auction or the sale process, as applicable, and seek the Bankruptcy Court's approval of the accepted Bid APA and the sale.