Case 22-1c
The Swap

Rebel Gear Corporation (Rebel) is a clothing manufacturer and distributor. The company specializes in college-branded clothing and jewelry.

On August 1, 2018, Rebel entered into an agreement with Lion Accessories Corporation (Lion) (the "Agreement"), an unrelated third party that specializes in college-branded accessories. Before entering into the Agreement, Rebel had explored opportunities to dispose of its jewelry line (Jewelry Line).

Rebel agreed to sell its Jewelry Line to Lion, and Lion agreed to sell its water bottle line (Water Bottle Line) to Rebel. In addition, Rebel agreed to pay Lion $6 million, with $2 million paid at closing and the remainder payable over three annual installments.

Under the terms of the Agreement, Rebel received specific assets (the "Acquired Set") directly related to the manufacture and sale of the Water Bottle Line, namely:

- Inventory.
- Tangible property, including equipment, prototypes, and tools used exclusively in the Water Bottle Line.
- Intellectual property.
- Customer lists, vendor lists, market research, and other specified intangible assets.

Under the terms of the Agreement, Rebel did not receive any of the following:

- Assets not exclusively used in the manufacture and sale of the Water Bottle Line.
- Cash or accounts receivable.
- Real property.
- Tax assets/liabilities, including any net operating losses.
- Employment contracts, or otherwise any workforce.
- Liabilities of Lion related to the manufacture and sale of the Water Bottle Line originating before the closing date of the Agreement.

All of the assets in the Acquired Set are understood to carry more than a nominal value.

Under the Agreement, Rebel was not provided with a facility at which to manufacture the Water Bottle Line. Specifically, the facility owned by Lion to manufacture the Water Bottle Line was not included in the Agreement, but the equipment for the Water Bottle Line was included. Rebel must obtain a manufacturing facility specifically for the Water Bottle Line, which is expected to entail significant cost and delay.

Valuation of the Agreement

Before entering into the Agreement, Rebel and Lion valued their respective product assets and determined that the Water Bottle Line was valued at $27 million and the Jewelry Line was valued at $21 million. Rebel's total cash payment to Lion is determined to be $6 million (the difference in the two values).

Transition Services, Supply, and Distribution Agreements

Concurrent with the Agreement, Rebel and Lion entered into a Transition Services Agreement, as well as a Supply Agreement and a Distribution Agreement (collectively, the "TSA"). Under the terms of the TSA, services that Lion will provide to Rebel for a period of up to two years from the closing date of the Agreement include:

- Certain administrative tasks.
- At Rebel's request, Lion will manufacture the Water Bottle Line on behalf of Rebel for an agreed-upon price per unit. Lion will procure raw materials from Lion's third-party suppliers. Rebel will provide sales forecasts to Lion that will determine the number of units to be manufactured. Rebel must also submit purchase orders for all purchases to Lion.
- Regulatory, product engineering, and quality engineering support.

Rebel or Lion may cancel the TSA at any time with 15 days' notice with no early termination penalty.

Other Relevant Facts

Shortly after the closing date of the Agreement, Lion terminated the employment of all (two) Water Bottle Line sales employees. These two employees were subsequently hired by Rebel and will, along with Rebel's four existing sales employees, be responsible for selling the Water Bottle Line.

The TSA, specifically the manufacturing activities component, was established, in part, to allow Rebel time to obtain a manufacturing facility at which to produce the Water Bottle Line.

Required:

Does the Acquired Set meet the definition of a business and thus the acquisition of the Acquired Set is a business combination? Why or why not?