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**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
RICHMOND DIVISION**

----- )  
In re: ) Chapter 11  
 )  
TOYS “R” US, Inc., *et al.*,<sup>1</sup> ) Case No. 17-34665 (KLP)  
 )  
Debtors. ) (Jointly Administered)  
----- )

**THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS’  
REPLY IN FURTHER SUPPORT OF ITS MOTION FOR AN  
ORDER PURSUANT TO BANKRUPTCY RULE 2004**

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In further support of the Committee’s Motion for authority to serve Rule 2004 discovery requests, the Committee respectfully states as follows:<sup>2</sup>

**Introduction**

1. The Committee appreciates the Debtors’ support for the Motion and stated willingness to support the Committee’s investigation efforts (*see* Dkt. No. 1258 at ¶ 1), but regrets that it is compelled to file this Reply to express its disagreement with the Debtors’ description of their document production to date. The Committee also responds to the Debtors’ discussion of the investigation that is being conducted by certain directors who were appointed in connection with

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<sup>1</sup> The Debtors in these cases, along with the last four digits of each Debtor’s tax identification number, are set forth in the Order (I) Directing Joint Administration of Chapter 11 Cases and (II) Granting Related Relief [Dkt. No. 78].

<sup>2</sup> Capitalized terms not defined herein shall have the meanings set forth in the Committee’s Motion [Dkt. No. 1162].

the commencement of these Chapter 11 Cases. The Committee welcomes those directors' views. However, as the Court already knows, the Debtors have waived, in connection with the debtor-in-possession financing, the Debtors' right to bring claims against certain pre-petition lenders, and, therefore, it is left to the Committee to preserve this potentially important source of value for the Debtors' estates.

### **The Debtors' Document Production**

2. As it has from its inception, the Committee remains committed to working cooperatively with the Debtors and any third party to streamline its investigation in a cost-efficient manner. To that end, the Committee initially made *informal* document requests to the Debtors on October 6, 2017, despite a deadline of 120 days from the Final DIP Orders (February 21 and 22, 2018) imposed on the Committee to complete its investigation of certain potential claims. The Committee's Motion was filed to protect the Committee's rights as the deadline approaches when it became clear that the Debtors' pace of production might not allow the Committee to meet that timeline. Regrettably, the Debtors have chosen to minimize the Committee's legitimate concerns.

3. While the Committee appreciates the Debtors' efforts to date and commitment to continue to cooperate, the Debtors' production has been more limited than they suggest. The Debtors state that they have produced over 3,400 documents or 155,000 pages to the Committee to date and that, of those figures, 2,500 documents or 60,000 pages were already produced at the time the Committee filed its Motion. (*See id.* ¶ 15). These figures reflect the total number of documents/pages available in the Debtors' internet-based "data room," which serves multiple uses. Only a subset of the documents in the data room are responsive to the Committee's investigation-related requests.

4. In addition, far more important than the number of pages produced is the significance of the documents produced. For example, since the Motion was filed, the Debtors made multiple property leases available, which comprise over 1,000 new documents and 65,000 pages. But these documents – while generally relevant – are not at the investigation’s core. It is those core documents that, in many cases, are still missing and have not been produced as quickly as the Committee would have hoped or needs.

5. The core documents that have not been produced to date include, without limitation:

- i. Documents relating to solvency analyses or opinions. Only two such documents have been produced to date. Key information underlying such analyses has not yet been produced.
- ii. Presentations concerning the Pre-petition Transactions, including by the Debtors’ financial and restructuring advisor, Lazard Frères & Co. LLC, or presentations exchanged with the Debtors’ Pre-Petition Transaction counterparties and other advisors. Only a handful of these presentations have been produced.
- iii. Correspondence between key Debtor personnel and the Debtors’ counterparties and advisors on the Pre-Petition Transactions. These documents have not yet been produced.
- iv. Third-party appraisals of Debtors’ real property. Only one such appraisal was produced, but it was not from the time of the Pre-Petition Transactions.

As these examples reflect, the Debtors are producing some documents, but the Committee remains concerned about the speed with which they are doing so, particularly with respect to the most important documents. The Committee is hopeful that the Motion and the Court’s Order will serve as a catalyst for the swift completion of production of the remaining important documents.

#### **The Debtors’ Investigation**

6. The Committee recognizes that the Debtors appointed various additional directors in connection with the commencement of these Chapter 11 Cases. The Committee looks

forward to hearing those directors' views of the Investigation Subjects. However, as the Court is aware, on the very first day of these Chapter 11 Cases the Debtors entered into broad and sweeping waivers of claims against certain pre-petition lenders. Those waivers were further memorialized in the Final DIP Orders entered by the Court. The Committee is not aware of any formal investigation that preceded these waivers. Nor did the Debtors appear to preserve for their recently appointed directors the right to pursue such claims. Therefore the responsibility falls squarely on the Committee to investigate and, if we determine warranted, seek to prosecute these claims on behalf of the estates. While it is currently premature to express views on the merits of the claims, it is appropriate at this time for the Company and the directors to cooperate fully with the Committee in the examination of all potential causes of action.

#### **Conclusion**

7. The Committee has worked with the Debtors and various third parties to craft a modified, agreed-upon form of proposed Order, annexed hereto as Exhibit A, which the Committee respectfully requests that the Court enter. For the Court's convenience, the Committee also annexes as Exhibit B a redline of the proposed Order reflecting the changes to the original form of proposed Order that was annexed to the Motion.

Dated: December 18, 2017  
Richmond, VA

Respectfully submitted,

/s/ Cullen D. Speckhart  
Cullen D. Speckhart (VSB No. 79096)  
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*Counsel to the Official  
Committee of Unsecured Creditors*

**Exhibit A**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
RICHMOND DIVISION**

In re:	)	
	)	Chapter 11
	)	
TOYS “R” US, Inc., <i>et al.</i> , <sup>1</sup>	)	Case No. 17-34665 (KLP)
	)	
Debtors.	)	(Jointly Administered)
	)	

**[PROPOSED] ORDER PURSUANT TO BANKRUPTCY RULE 2004 AUTHORIZING  
THE ISSUANCE OF DOCUMENT REQUESTS, NOTICES OR SUBPOENAS FOR THE  
PRODUCTION OF DOCUMENTS AND THE PROVISION OF TESTIMONY BY THE  
DEBTORS AND OTHERS**

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Upon the motion (the “**Motion**”) of the Official Committee of Unsecured Creditors (the “**Committee**”) of the debtors and debtors-in-possession (collectively, the “**Debtors**” or the “**Company**”) in the above-captioned chapter 11 cases (the “**Chapter 11 Cases**”) seeking entry of an order, pursuant to 11 U.S.C. §§ 105(a) and 1103(c); Rules 2004, 9006(c)(1), and 9013 of the Federal Rules of Bankruptcy Procedure (the “**Rules**”) authorizing the Committee to issue document requests, notices and subpoenas compelling the production of documents and the provision of testimony by the Debtors and certain other entities and persons; the Court finds that: (a) it has jurisdiction to consider the Motion and the relief represented therein pursuant to 28 U.S.C. §§ 157 and 1334; (b) this is a core proceeding pursuant to 28 U.S.C. § 157(b); (c) venue is proper before this court pursuant to 28 U.S.C. §§ 1408 and 1409; (d) proper and adequate notice of the Motion and the hearing thereon has been given and no other or further notice is necessary; and (e)

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<sup>1</sup> The Debtors in these cases, along with the last four digits of each Debtor’s tax identification number, are set forth in the Order (I) Directing Joint Administration of Chapter 11 Cases and (II) Granting Related Relief [Dkt. No. 78].

upon the record herein, and after due deliberation thereon, good and sufficient cause exists for the granting of the relief as set forth herein. Therefore:

IT IS HEREBY ORDERED THAT:

1. The relief requested in the Motion is hereby GRANTED.
2. The Committee hereby is authorized to issue document requests, notices and subpoenas compelling the production of documents and the provision of testimony concerning the Pre-petition Transactions, the Intercompany Balances and the Sponsor Transfers (as each of those terms is defined in the Motion) (collectively, the “**Investigation Subjects**”) by the Debtors and their subsidiaries, certain of these entities’ current or former directors, officers, employees, and advisors, and third parties involved in the Investigation Subjects.
3. Service of the document requests, notices or subpoenas by email, with a follow-up by Federal Express (or similar overnight service), is authorized upon counsel for any parties that have appeared in these cases and shall be deemed good and sufficient service.
4. This Order is without prejudice to the rights of the Committee to apply to the Bankruptcy Court for further discovery.
5. This Order is without prejudice to the right of any recipient of any document requests, notices and subpoenas compelling the production of documents and the provision of testimony concerning the Investigation Subjects (the “**Discovery**”) to assert any and all objections, motions and defenses to such Discovery.
6. Counsel for the Committee shall endeavor to coordinate the date of any production of documents or provision of testimony with the recipient of the Discovery (or its counsel) in good faith.

7. The requirement under Local Bankruptcy Rule 9013-1(G) to file a memorandum of law in connection with the Motion is hereby waived.

8. This Court shall retain jurisdiction with respect to all matters relating to the interpretation or implementation of this Order.

9. This Order shall be effective immediately upon entry.

Dated: \_\_\_\_\_, 2017  
Richmond, Virginia

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THE HONORABLE KEITH L. PHILLIPS  
UNITED STATES BANKRUPTCY JUDGE

WE ASK FOR THIS:

/s/ DRAFT

Cullen D. Speckhart (VSB No. 79096)

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*Counsel to the Official*

*Committee of Unsecured Creditors*

**CERTIFICATION OF ENDORSEMENT  
UNDER LOCAL BANKRUPTCY RULE 9022-1(C)**

I hereby certify that the foregoing proposed order has been endorsed by or served upon all necessary parties.

/s/ DRAFT

**Exhibit B**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
RICHMOND DIVISION**

-----	)	
In re:	)	Chapter 11
	)	
TOYS “R” US, Inc., <i>et al.</i> , <sup>1</sup>	)	Case No. 17-34665 (KLP)
	)	
Debtors.	)	(Jointly Administered)
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**[PROPOSED] ORDER PURSUANT TO BANKRUPTCY RULE 2004 AUTHORIZING  
THE ISSUANCE OF DOCUMENT REQUESTS, NOTICES OR SUBPOENAS FOR THE  
PRODUCTION OF DOCUMENTS AND THE PROVISION OF TESTIMONY BY THE  
DEBTORS AND OTHERS**

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Upon the motion (the “**Motion**”) of the Official Committee of Unsecured Creditors (the “**Committee**”) of the debtors and debtors-in-possession (collectively, the “**Debtors**” or the “**Company**”) in the above-captioned chapter 11 cases (the “**Chapter 11 Cases**”) seeking entry of an order, pursuant to 11 U.S.C. §§ 105(a) and 1103(c); Rules 2004, 9006(c)(1), and 9013 of the Federal Rules of Bankruptcy Procedure (the “**Rules**”) authorizing the Committee to issue document requests, notices and subpoenas compelling the production of documents and the provision of testimony by the Debtors and certain other entities and persons; the Court finds that: (a) it has jurisdiction to consider the Motion and the relief represented therein pursuant to 28 U.S.C. §§ 157 and 1334; (b) this is a core proceeding pursuant to 28 U.S.C. § 157(b); (c) venue is proper before this court pursuant to 28 U.S.C. §§ 1408 and 1409; (d) proper and adequate notice of the Motion and the hearing thereon has been given and no other or further notice is necessary; and (e)

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<sup>1</sup> The Debtors in these cases, along with the last four digits of each Debtor’s tax identification number, are set forth in the Order (I) Directing Joint Administration of Chapter 11 Cases and (II) Granting Related Relief [Dkt. No. 78].

upon the record herein, and after due deliberation thereon, good and sufficient cause exists for the granting of the relief as set forth herein. Therefore:

IT IS HEREBY ORDERED THAT:

1. The relief requested in the Motion is hereby GRANTED.

2. The Committee hereby is authorized to issue document requests, notices and subpoenas compelling the production of documents and the provision of testimony concerning the Pre-petition Transactions, the Intercompany Balances and the Sponsor Transfers (as each of those terms is defined in the Motion) (collectively, the “**Investigation Subjects**”) by the Debtors and their subsidiaries, certain of these entities’ current or former directors, officers, employees, and advisors, and third parties involved in the Investigation Subjects.

3. Service of the document requests, notices or subpoenas by email, with a follow-up by Federal Express (or similar overnight service), is authorized upon counsel for any parties that have appeared in these cases and shall be deemed good and sufficient service.

4. This Order is without prejudice to the rights of the Committee to apply to the Bankruptcy Court for further discovery.

5. This Order is without prejudice to the right of any recipient of any document requests, notices and subpoenas compelling the production of documents and the provision of testimony concerning the Investigation Subjects (the “Discovery”) to assert any and all objections, motions and defenses to such Discovery.

6. Counsel for the Committee shall endeavor to coordinate the date of any production of documents or provision of testimony with the recipient of the Discovery (or its counsel) in good faith.

~~5.7.~~ The requirement under Local Bankruptcy Rule 9013-1(G) to file a memorandum of law in connection with the Motion is hereby waived.

~~6.8.~~ This Court shall retain jurisdiction with respect to all matters relating to the interpretation or implementation of this Order.

~~7.9.~~ This Order shall be effective immediately upon entry.

Dated: \_\_\_\_\_, 2017  
Richmond, Virginia

\_\_\_\_\_  
THE HONORABLE KEITH L. PHILLIPS  
UNITED STATES BANKRUPTCY JUDGE

WE ASK FOR THIS:

Respectfully submitted,

/s/ Cullen D. Speckhart  
Cullen D. Speckhart (VSB No. 79096)  
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*Counsel to the Official  
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**CERTIFICATION OF ENDORSEMENT  
UNDER LOCAL BANKRUPTCY RULE 9022-1(C)**

I hereby certify that the foregoing proposed order has been endorsed by or served upon all necessary parties.

/s/ Cullen D. Speckhart