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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.*,) Case No. 17-34665 (KLP)
)
Debtors.¹) (Joint Administration Requested)
.....)

**STATEMENT OF OFFICIAL COMMITTEE OF UNSECURED CREDITORS
IN RESPONSE TO (I) DEBTORS’ MOTIONS SEEKING AUTHORITY TO
OBTAIN POSTPETITION FINANCING AND RELATED RELIEF
AND (II) CERTAIN OTHER “FIRST DAY” MOTIONS**

¹ 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].

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**”) hereby files this statement in response to: (i) the Debtors’ motions (the “**DIP Motions**”) [Dkt. Nos. 29, 32] for entry of orders authorizing the North American Debtors and Tru Taj Debtors to obtain postpetition financing (the “**North American DIP Facilities**” and “**International DIP Facility,**” respectively, and together, the “**DIP Facilities**”); and (ii) certain other of the Debtors’ first day motions for relief.² In support of its statement, the Committee respectfully represents as follows:

STATEMENT

1. The Committee supports the Debtors’ decision to seek postpetition financing, as the Debtors have a compelling need to obtain capital as they enter the busiest time of the year for their business. Accordingly, from the date of its inception, the Committee has worked diligently with the Debtors and their pre- and postpetition lenders to reach consensus regarding the terms on which the estates should be permitted to borrow. The Committee is pleased to report that those efforts have borne fruit, and the parties have reached agreement on modified – and substantially improved – terms for both the North American and International DIP Facilities. These terms, coupled with additional negotiated protections in the critical and foreign vendor and other first day orders, will maintain a level playing field among various parties-in-interest during the case, thereby protecting and preserving the rights of unsecured creditors and maximizing the value available to unsecured creditors, including those providing support postpetition.

² Capitalized terms used but not defined herein have the meanings ascribed to them in the DIP Motions, and, as applicable, in the Debtor’s Foreign Vendor Motion [Dkt. No. 5], Critical Vendor Motion [Dkt. No. 6] and Cash Management Motion [Dkt. No. 22].

2. The Committee approached its negotiations with the Debtors and their lenders with two principal goals: *first*, to ensure that the Company had sufficient funds to operate during the all-important holiday season and to develop a sustainable long-term business plan; and *second*, to preserve the rights of all creditors to rely on and assert their legal and equitable rights in the Debtors' property at later stages of these cases. In these uncertain first months of the case – at a time when the Debtors have not yet begun to engage in restructuring talks with creditors and their business plan remains a work in progress – it is imperative that the principal focus of management, creditors, and professionals be on maximizing value in the holiday season and developing a viable long-term business plan and capital structure for the reorganized Company. The DIP Facilities should create no distractions, should impose no premature deadlines for litigation, and should not prejudge or compromise the respective rights of prepetition creditors.

3. The DIP Facilities, in their original incarnation, fell short of these goals. Faced with limited options, the Debtors made a number of significant concessions to their prepetition lenders at the expense of the large and diverse base of unsecured creditors for whom the Committee speaks. Among other things, the Debtors were required to preemptively waive their unsecured creditors' right to seek to assert the "equities of the case" exception of section 552(b) of the Bankruptcy Code, the right to surcharge collateral pursuant to section 506(c) of the Code, and the common law right to marshal. In addition, secured creditors sought to use the proposed orders to obtain liens on the proceeds of avoidance actions, and to impose unduly restrictive time and budgetary limitations on the investigation of prepetition lender claims and liens. The proposed orders also gave the DIP Lenders liens on previously unencumbered assets – underscoring the particular need for additional protections for unsecured creditors in this case. Indeed, the Debtors' unsecured creditors – including the hundreds of landlords and vendors whose contributions and

sacrifices will be essential to the success of these cases and who are expected to provide hundreds of millions of dollars of unsecured postpetition credit – were entitled to far more robust protections than those originally offered.

4. The Committee, through extensive discussions with the Debtors and their secured lenders, has obtained those protections, negotiating a variety of meaningful improvements to the interim financing orders. These include, among others, the following:

- Carveouts to section 506(c) and 552(b) waivers. The original DIP orders called for complete waivers of estate rights under section 506(c) and 552(b) of the Bankruptcy Code. The Prepetition Secured Parties have now agreed to certain important limits on those waivers. The revised DIP orders (the terms of which are slightly different from one another) give the Committee standing and the right to assert certain section 506(c) and 552(b) rights against the Prepetition Secured Parties on behalf of the estate with respect to unpaid administrative claims of trade vendors and landlords (subject to lender defenses). With respect to the North American DIP, those rights may be asserted to the extent of (i) the outstanding administrative expense claims of trade vendors and landlords, *less* (ii) the aggregate amount of payments the Debtors made on the prepetition unsecured claims of such trade vendors and landlords (including pursuant to the critical and foreign vendors orders, or other orders).
- Marshaling with respect to excess ABL collateral and avoidance action proceeds. The original DIP orders called for complete waivers of the equitable doctrine of marshaling. The DIP Lenders and Prepetition Secured Parties have now agreed to certain important limits on those waivers. With respect to avoidance actions, the revised DIP orders will each reflect the agreement of the DIP Lenders and Prepetition Secured Parties (to the extent entitled to adequate protection) to proceed first against DIP collateral and Prepetition Collateral to satisfy their claims, and only then to look to the proceeds of avoidance actions. Further, with respect to the North American DIP Order, the Term DIP Lenders have agreed to first seek recoveries from any excess ABL collateral before seeking recoveries from any other collateral. These concessions have the potential to free up significant unencumbered assets for the benefit of unsecured creditors in connection with a plan of reorganization.
- Expanded Challenge Period and Budget. The original DIP orders contained unduly restrictive investigation periods and budgets, which limited the Committee professionals' use of collateral to investigate and challenge the claims and liens of the Prepetition Secured Parties. The revised DIP orders each now allow the Committee an investigation period of 120 days from entry of the final order (increased from 60 days from appointment of the Committee in the case of the International DIP and 75 days from the entry of the interim order in the case of the North American DIP) and an investigation budget of \$500,000 (increased from \$100,000 in the case of the International DIP and \$50,000 in the case of the North American DIP). Both orders

will also provide that the filing of a standing motion tolls the challenge period. In addition, the orders clarify that the budget only applies to investigations of the secured lenders' claims and liens – and does not apply to any other investigations undertaken by the Committee, including, among other things, any investigations of intercompany claims, intercompany and affiliate transactions, and any estate claims against the equity owners or any other parties. The orders likewise provide that the Committee is not precluded from asserting administrative expense claims for any fees and expenses in excess of the investigation budgets.

- No liens on leases. The original DIP orders granted blanket liens on leases, a provision that the Debtors' landlords widely opposed and the DIP Lenders and Prepetition Secured Parties have now agreed to modify. The International DIP Order will provide that the DIP Lenders and Prepetition Secured Parties are granted liens not on real property leases, but only on the proceeds of those leases. The North American DIP Order will provide landlords with 21 days' prior written notice and the opportunity to object to the grant of liens on leases to the extent such grant would be inconsistent with applicable law or the terms of the leases. The Committee understands that these changes are satisfactory to the landlord community in this case.
- Additional time to grant liens on foreign non-debtor collateral. The original International DIP Order required the Tru Taj Debtors to use reasonable best efforts to grant additional liens to the DIP Lenders on certain foreign non-debtor collateral in accordance with certain "DIP Documents," including the DIP Notes Indenture. The DIP Notes Indenture initially required that such additional liens be granted within 45 days of the Petition Date, after which the Debtors would be required to pay a fee to the Taj DIP Lenders. As revised, the DIP Notes Indenture will now provide the Debtors 15 additional days to grant those liens (and, if they fail to do so, to refinance the Euro ABL facility) – providing the Debtors with the flexibility to save 2 points (or \$7.5 million) in payment to the Taj DIP Lenders on the \$375 million International DIP.
- Consultation and access rights. The original DIP Orders afforded the Committee limited oversight and access to ongoing financial information, reporting, and DIP documentation. The DIP Lenders have since agreed to provide the Committee with, as applicable: (i) the information and access to reporting supplied to the DIP Lenders, (ii) consent rights over the form of the intercompany DIP Documents, (iii) review and consultation rights over amendments to the DIP Documents, and (iv) notice of any fees and indemnity claims of the DIP Agents and DIP Lenders.
- Right to seek recharacterization of adequate protection payments. The original DIP Orders restricted the Committee's ability to argue that certain adequate protection payments (e.g., interest and fees) should be recharacterized as payment of principal on the secured portion of the Prepetition Noteholders' claim to the extent that the Prepetition Noteholders are undersecured. The revised DIP Orders, however, now provide that all such rights to seek to recharacterize the adequate protection payments are expressly preserved.

5. In addition to these changes to the DIP Facilities, the Committee has also negotiated a series of related improvements to the final orders associated with the Debtors' critical and foreign vendor motions and cash management motion.³ Among other things:

- The Committee has implemented a protocol for reviewing the status of proposed payments to and negotiations with Critical Vendors and Foreign Vendors, providing the Committee with ongoing information and insight into the Debtors' relationships with their key vendors. The Critical Vendor and Foreign Vendor orders have also been modified to ensure appropriate confidentiality restrictions relating to sensitive vendor-specific information.
- The original proposed Trade Agreement that the Debtors may require vendors to execute before making any critical or foreign vendor payments contained onerous terms that could operate to prejudice or waive the rights of those vendors. To protect against this risk, the Committee negotiated certain amendments to the Trade Agreement, including provisions: (i) limiting the duration during which vendors are required to perform, clarifying in particular that vendors will not be required to perform when, among other things, there is "a default under any of the Company's debtor-in-possession financing facilities that results in the Company losing access to funds available under any such facility," (ii) preserving suppliers' ability to seek adequate assurance of payment and similar relief under applicable law in the event of a specific performance action by the Company, and (iii) removing any requirement that vendors agree to vote all claims in favor of any chapter 11 plan proposed by the Debtors.
- The Cash Management Order has been revised to reserve the Committee's rights regarding allocation of expenses between the Debtor entities and treatment and source of payments relating to prepetition and postpetition intercompany transactions.

6. With the changes set forth herein, among others, the Committee has accomplished its goal of improving the terms of the proposed DIP Financings and other "first day relief" for the benefit of unsecured and administrative creditors, and has thus determined not to object to the DIP Motions or other of the Debtors' motions for first day relief. The Committee understands that the

³ The Committee likewise reviewed each of the other motions for which the Debtors are seeking final relief, and negotiated and implemented changes to each of the orders that will provide the Committee with appropriate consent rights for certain payments being made on account of prepetition obligations (subject to negotiated thresholds), as well as oversight of any material modifications to the Debtors' prepetition business programs. These modifications will allow the Committee to monitor – and intervene, when necessary – the Debtors' ongoing business operations during the Chapter 11 Cases.

Debtors intend to submit revised proposed orders reflecting these (and other) agreed changes in advance of the final hearing.

Dated: October 23, 2017

Respectfully submitted,

/s/ Cullen D. Speckhart

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