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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., <i>et al.</i> , ¹)	Case No. 17-34665 (KLP)
)	
Debtors.)	(Jointly Administered)
)	

**ORDER (A) APPROVING THE DEBTORS’
SENIOR EXECUTIVE INCENTIVE PLAN AND (B) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”)² of Toys “R” Us, Inc. and certain of its affiliates, as debtors and debtors in possession (collectively, the “Debtors”), for the entry of an order (this “Order”), under sections 363(b) and 503(c)(3) of the Bankruptcy Code, (a) approving and authorizing the Debtors’ proposed senior executive incentive plan (the “SEIP”), (b) authorizing

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are set forth in the *Debtors’ Motion for Entry of an Order (I) Directing Joint Administration of Chapter 11 Cases and (II) Granting Related Relief* filed contemporaneously herewith. The location of the Debtors’ service address is One Geoffrey Way, Wayne, NJ 07470.

² Capitalized terms used but otherwise not defined herein shall have the meanings set forth in the Motion.

the Debtors to make payments to certain management employees under the SEIP, (c) granting administrative expense priority status to all payment obligations of the Debtors under the SEIP, and (d) granting related relief, all as more fully set forth in the Motion; and the Court having considered the Cumberland Declaration; and the upon having found that it has jurisdiction to consider this Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334; and the Court having found that consideration of the Motion and the relief requested therein is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and that it may enter a final order consistent with Article III of the United States Constitution; and the Court having found that venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409; and the Court having found that the Debtors provided due and proper notice of the Motion that is adequate and appropriate under the particular circumstances; and the Court having held a hearing to consider the relief requested in the Motion (the “Hearing”); and upon consideration of the record of the Hearing, and all proceedings had before the Court; and the Court having found and determined that the relief sought in the Motion is in the best interests of the Debtors’ estates, their creditors, and other parties in interest, and that the legal and factual bases set forth in the Motion and the Cumberland Declaration and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before the Court; and any objections to the relief requested herein having been withdrawn or overruled on the merits; and after due deliberation and sufficient cause appearing therefor, it is **HEREBY ORDERED THAT:**

1. The Motion is granted as set forth in this Order.
2. The SEIP is approved in its entirety; *provided* that the SEIP shall be modified as described herein.
 - a. The Maximum Threshold shall be increased from \$616 million to \$641 million.

- b. The payout levels shall be changed as follows: (i) the Chief Executive Officer shall receive 125 percent of base salary at the Target Threshold and 210 percent at the Maximum Threshold; (ii) the Executive Vice Presidents shall receive 150 percent of base salary at the Target Threshold and 210 percent at the Maximum Threshold; (iii) the Senior Vice Presidents shall receive 85 percent of base salary at the Target Threshold and 127.5 percent at the Maximum Threshold; and (iv) the Vice Presidents shall receive 70 percent of base salary at the Target Threshold and 105 percent at the Maximum Threshold. In each case, the percentage payout shall be inclusive of amounts paid on account of the Emergence Bonus (defined below).
- c. An aggregate amount of \$5 million (the “Emergence Bonus”) of the SEIP bonus opportunity pursuant to paragraph 2(b) above shall be paid only upon the effectiveness of a chapter 11 plan of reorganization, or as soon as reasonably practicable thereafter (the “Effective Date”). The Emergence Bonus shall be paid on the Effective Date regardless of whether the Threshold, Target, or Maximum Threshold is achieved.
- d. For the avoidance of doubt, the aggregate SEIP payments, including the Emergence Bonus, shall not exceed \$14.093 million at the Target Threshold or \$21.214 million at the Maximum Threshold.
- e. Any SEIP payments related to the fourth quarter shall be subject to the same clawback period and terms as the prepetition retention payments. Any subsequent SEIP bonus payments for 2018 shall be subject to a six month clawback period on terms otherwise the same as the retention payments. If a SEIP Participant is terminated without cause, such SEIP Participant shall not be required to repay any of its SEIP payments. All clawback periods terminate upon the effectiveness of a plan of reorganization.
- f. No quarterly payments shall be made on account of the SEIP if the Debtors’ postpetition debtor-in-possession financing facilities have been affirmatively accelerated prior to such payments being made.
- g. The Debtors will provide advisors to the Creditors’ Committee, the ad hoc group of term B-4 lenders (the “B-4 Lenders”), the ad hoc group of B-2 and B-3 lenders (the “Ad Hoc Group of B-2 and B-3 Lenders”), and the Ad Hoc Group of Taj Noteholders³ with Global Management EBITDA and Regional EBITDA calculations for review 10 business days before any payments are made on account of the SEIP. The Creditors’ Committee, the B-4 Lenders, and the Ad Hoc Group of Taj Noteholders reserve the right to raise any issues or objections to such calculations with the Debtors or the Court. To the extent quarter four bonuses are paid prior to the completion of the 2017 annual financial statement audit, any adjustments affecting the

³ As defined in the *Amended Verified Statement of the Ad Hoc Group of Taj Noteholders Pursuant to Bankruptcy Rule 2019* [Docket No. 919].

above calculations and the bonuses due will increase or decrease any bonuses due in subsequent quarters, to the extent amounts were under or overpaid.

- h. The Debtors shall submit 2018 quarterly metrics to advisors to the Ad Hoc Group of B-2 and B-3 Lenders, the Ad Hoc Group of Taj Noteholders, the Creditors' Committee, and the B-4 Lenders 15 days in advance of the beginning of the quarter. The Debtors shall submit a notice to the Court within three days of the beginning of the quarter indicating the applicable quarterly metrics and whether the Ad Hoc Group of Taj Noteholders, the Creditors' Committee, and the B-4 Lenders have agreed to the proposed metrics. Absent their consent, the Court shall determine, at the next regularly scheduled omnibus hearing, whether the applicable quarterly metrics satisfy section 503(c)(3) and 363 of the Bankruptcy Code. All rights are reserved for the Ad Hoc Group of Taj Noteholders, the Creditors' Committee, and the B-4 Lenders to oppose the 2018 quarterly metrics on any grounds, including with respect to the applicable standards for approval of such metrics.
- i. No other bonus programs will apply to the SEIP Participants during the period covered by the SEIP; *provided* that the foregoing shall not apply to any emergence-based management equity incentive plan.
- j. The Debtors shall consult with the Ad Hoc Group of Taj Noteholders, the Creditors' Committee, and the B-4 Lenders if a SEIP Participant is replaced or if a SEIP Participant's opportunity level increases.

3. Any and all payment obligations of the Debtors under the SEIP shall constitute administrative expenses of the estates.

4. Global EBITDA is adjusted EBITDA, defined as net earnings before interest expense, income tax, depreciation and amortization, further adjusted to exclude the effects of certain income and expense items that could make it more difficult to assess the Debtors' actual operating performance including certain items which are generally non-recurring, with all such adjustments subject to Creditors' Committee and B-4 Lenders approval or, if not provided, Court approval.

5. The SEIP shall include a "catch-up" provision in which SEIP Participants will earn bonus amounts for prior periods (i.e., first and second quarters of 2018), without duplication of

any amounts previously paid, at the end of the third quarter of 2018 if the applicable objectives are satisfied on a cumulative basis for the first through third quarters of 2018.

6. Any SEIP payments will be allocated 71 percent to Toys “R” US-Delaware, Inc. and 29 percent to TRU Taj, LLC on an aggregate basis; *provided, however*, that the Debtors, the Creditors’ Committee, the Ad Hoc Group of Taj Noteholders, and the B-4 Lenders reserve rights to modify these allocations upon consensual agreement or upon further order of the Court.

7. This Order shall not apply to Debtor Toys “R” Us (Canada) Ltd. Toys “R” Us (Canada) Ltee (“Toys Canada”). Toys Canada shall be permitted to maintain, implement and perform such compensation programs and arrangements as may be authorized or permitted in proceedings in respect of Toys Canada pursuant to the *Companies’ Creditors Arrangement Act* (Canada) pending before the Ontario Superior Court of Justice (Commercial List).

8. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) are satisfied by such notice.

9. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Order are immediately effective and enforceable upon its entry.

10. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Order.

11. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

Dated: _____
Richmond, Virginia

Dec 8 2017 /s/ Keith L. Phillips
United States Bankruptcy Judge

Entered on Docket: Dec 8 2017

WE ASK FOR THIS:

/s/ Jeremy S. Williams

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

Pursuant to 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/ Jeremy S. Williams