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

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In re:	:	Chapter 11
TOYS “R” US, INC., et al.,	:	
Debtors.	:	Case No. 17-34665 (KLP)
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**DECLARATION OF RICHARD L. WYNNE IN SUPPORT OF  
DEBTORS’ MOTION**

I, Richard L. Wynne, do hereby state and declare as follows:

1. I am a member of the law firm Hogan Lovells US LLP and admitted to this court *pro hac vice*.
2. I serve as counsel to Mattel, Inc. (“**Mattel**”), the largest unsecured trade creditor in these cases and the co-chair of the Official Committee of Unsecured Creditors of Toys “R”

Us, Inc. (“**Toys Inc.**”) *et al.* (the “**Committee**”<sup>1</sup>) and respectfully submit this declaration in further support of *Debtors’ Motion For Entry Of An Order (I) Approving (A) The Settlement Agreement, (B) Opt-Out Procedures Applicable To The Settlement Agreement, and (C) A Substantial Contribution Claim Under Section 503(B)(3)(D) Of The Bankruptcy Code; and (II) Granting Related Relief*, filed July 17, 2018 (the “**Motion**”).

3. I am a non-party to these chapter 11 cases and am fully familiar with the facts set forth herein.

4. Mattel is submitting this Declaration and a pleading contemporaneously herewith in support of the Motion to provide further information to the Court with respect to certain subjects, specifically (i) Mattel’s views on and support for the Settlement Agreement, (ii) the negotiations leading to the interrelated compromises comprising the global Settlement Agreement, (iii) the potential causes of action and claims held by trade vendors and the rationale for settling those claims as part of the Settlement Agreement, and (iv) the specific and important role Mattel and certain other administrative trade vendors played in achieving the overall Settlement Agreement, and why those efforts entitle the participating vendors to recover from the substantial contribution pool.

5. As presented to the Court during hearings held on March 15 and March 20, 2018, the Committee, Mattel and many other administrative trade vendors were deeply troubled by the precipitous liquidation of the entirety of the Debtors’ U.S. operations. But the events that took place before this Court were really the tip of the iceberg of a more tumultuous, in fact unprecedented, series of events. I have been involved as counsel to debtors, official and ad hoc creditors’ committees and significant individual creditors (including, with respect to the latter,

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<sup>1</sup> Hereinafter, capitalized terms shall have the same meaning as ascribed to them in the Motion unless otherwise defined herein.

several who acted as committee chairs or co-chairs) in some of the largest chapter 11 cases of the past 30 years.<sup>2</sup> Some of these cases were largely—or ultimately became—consensual; others were incredibly litigious. In one of the cases in which I was involved—*Adelphia*—there was so much litigation, as seven bankruptcy plans were rejected by the creditors, that Bankruptcy Judge Gerber, in confirming the 8th proposed plan, opined that it was one of the “most challenging-and contentious-in bankruptcy history.” *In re Adelphia Commc’ns Corp.*, 368 B.R. 140, 147 (Bankr. S.D.N.Y. 2007). The situation presented in this case was equally extraordinary in my experience, and easily could have resulted in years of chaotic and expensive litigation. Therefore, at Mattel’s request, I personally attended all of the relevant hearings and meetings, and led the negotiations for Mattel. I had substantial and frequent in-depth discussions with the Debtors’ senior counsel, Messrs. Sprayregen and Sussberg, as well as representatives for the B-4 Lenders, the Committee’s counsel and financial advisors, the Independent Directors’ counsel, and the Ad Hoc Vendor Group, among others, to deal with the many issues facing administrative creditors and the estate, and ultimately to negotiate a constructive resolution to these cases. My testimony herein is based upon this involvement.

6. As discussed in greater detail below, as a result of the discussions and negotiations with all parties, and after careful consideration of the options and alternatives, Mattel concluded the interrelated compromises and settlements which comprise the Settlement

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<sup>2</sup> Such cases include: Residential Capital, LLC (approximately \$18 billion in debt, representing Committee co-chair FGIC owed over \$2 billion); Adelphia Communications Corporation (approximately \$15 billion in debt, represented Non-Agent Lenders Committee of 400 Lenders owed approximately \$4.3 Billion in Senior Secured Debt); Conseco, Inc. (approximately \$52 billion in assets, represented Debtors); The Fleming Companies (approximately \$4 billion in debt, represented Debtors); Chemtura Corporation (approximately \$10 billion in debt, represented Ad Hoc bondholders committee which received 95% of Reorganized Chemtura’s equity, plus cash payments); Williams Communications, Inc. (approximately \$6 billion in debt, represented Creditors Committee); Relativity Media, LLC (approximately \$900 million in debt, represented Debtors); Carolco Pictures, Inc. (approximately \$400 million in debt, represented Creditors Committee); Metro-Goldwyn-Mayer, Inc. (approximately \$6 billion in debt, represented Twentieth Century Fox); American Apparel, Inc. (approximately \$500 million in debt, represented Debtors); Del Taco, Inc. (approximately \$100 million in debt, represented largest creditor and Committee Chair).

Agreement are, in essence, the “least bad alternative.” While Mattel appreciates the very hard work and constructive efforts of the many parties and professionals who contributed to this resolution, this was not Mattel’s—or anyone else’s—desired outcome for the case. But importantly, this Settlement Agreement will allow the estate and all creditors to avoid years of expensive and contentious litigation, thereby preserving (the already meager) creditor recoveries, and should serve as a key building block towards a fundamentally consensual and constructive global resolution for these Debtors.

## **BACKGROUND**

### **Mattel’s Relationship with the Debtors and its Claims in These Cases**

7. Mattel is one of the world’s largest toy companies, and was historically one of the Debtors’ most significant trade vendors, including for such product lines as Barbie, American Girl, Hot Wheels, Matchbox, and many comic and action figures, as well as the Fisher-Price line of baby products. Mattel has retained Hogan Lovells to represent it in connection with the Debtors’ bankruptcy cases, as well as to advise it with respect to the performance of its duties as a member of the Committee.<sup>3</sup>

8. At the time of the Debtors’ bankruptcy filing, the Debtors owed Mattel approximately \$140 million on account of unpaid trade receivables, which includes approximately \$27.5 million entitled to priority under 11 U.S.C. § 503(b)(9). Mattel has also now filed administrative proofs of claim against the Debtors exceeding \$90 million.

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<sup>3</sup> Mattel first retained Jones Day in September 2017 to represent it in connection with this chapter 11 case. I was a partner with Jones Day at the time that these cases commenced, and subsequently joined the firm of Hogan Lovells as of April 21, 2018, at which time Mattel retained Hogan Lovells.

### **Mattel's Involvement in the Debtors' Bankruptcy Cases**

9. As the Court is aware, in recent years, the Debtors ran a very complex global business, competing in many different markets. They also faced myriad difficult challenges. They have a large and complex global supply chain, and ever-changing markets and consumer demands. They had an increasingly overleveraged capital structure. And they were insolvent on a balance sheet basis. Mattel was sensitive to these issues and, from the outset of these cases, was committed to trying to facilitate the Debtors' restructuring effort.

10. Thus, from the inception of these cases, Mattel—both in its individual capacity as a creditor, and in its capacity as co-chair of the Committee—sought to work with the Committee's financial and legal professionals and the Debtors to formulate a turnaround business plan that would allow the Debtors to survive and thrive. To this end, in addition to advancing very significant trade credit to the Debtors post-petition, Mattel devoted substantial resources to the reorganization effort. Mattel reassigned a senior business executive, Gregg Stefanick, to serve full time as Mattel's committee representative, and regularly involved others in senior management to assist Mattel and the Committee with respect to the Debtors' bankruptcy cases.

11. When these chapter 11 cases began, Mattel was encouraged by the significant amount of debtor-in-possession financing the Debtors had secured, and the Debtors' statements and projections that the funding would provide a 16 month "runway" for the reorganization effort. Looking down that runway, Mattel was very actively involved in the Committee's efforts with respect to evaluating the Debtors business plan and restructuring options, working closely with the Committee's financial advisors to develop proposals to enhance the Debtors' online presence, to reduce and rationalize the Debtors' store and distribution center footprint, to

rejuvenate the remaining U.S. store operations and to explore the divestiture of certain overseas business units as going concerns. In addition to attendance at and active participation in weekly co-chair and Committee meetings, Mattel separately had regular, substantive meetings with the Committee's professional advisors (Kramer Levin, FTI and Moelis) in order to maximize the efficacy of the restructuring effort.<sup>4</sup> As a result, since September, there have generally been daily substantive calls with me or my partner Erin Brady, Mattel personnel, and advisors to the Committee and/or one or more of the constituents in the case. Mattel also served on the Committee's business plan subcommittee that was working with the Committee and Debtors financial advisors on a new business plan, and hosted a series of in depth business unit meetings where the Committee's financial professionals met with a diverse group of Mattel business executives who had substantive expertise in various aspects of the toy business, many of whom specifically dealt with the Debtors, in order to facilitate and improve the financial professionals work on a turnaround business plan. Finally, in addition to these many outward facing meetings, Mattel's senior legal, financial and business executives also held internal meetings with Ms. Brady and me three times a week to discuss developments, the Debtors' progress toward a restructuring and the ways Mattel could be supportive of the Debtors' efforts.

#### **Mattel's Immediate Reaction to the Debtors' Decision to Liquidate U.S. Operations**

12. Until being informed at the beginning of March of the extent of the Debtors' extensive business losses, and their concomitant sinking financial projections and existing and impending defaults, Mattel believed that there was a viable path for the Debtors to emerge from chapter 11 in the United States, and had been diligently seeking to work to support that goal. In fact, the Committee had been actively negotiating a plan of reorganization for the Taj related

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<sup>4</sup> At many times during the case, the meeting frequency increased due to pressing events.

debtors, working with the Independent Directors and the Taj Lenders directly, in addition to the Debtors' professionals.

13. Mattel (and other creditors) were frankly shocked when they learned in early March that the Debtors believed they had no choice but to immediately liquidate their U.S. operations. Having provided the Debtors with significant post-petition trade credit, as it was required to do under the parties' critical trade vendor agreement, Mattel was markedly concerned about its ability to recover on its post-petition exposure (which included both trade receivables and unpaid critical trade payments). Specifically, Mattel had \$45 million in scheduled payments that it was due to receive in March, including \$13 million due by March 12, 2018, and was scheduled to ship approximately \$16 million to the Debtors during March. Mattel had over \$500,000 per day scheduled to be shipped on March 5, 6, 7 and 8, 2018. Those shipments still had to be made due to the terms of the Critical Vendor Agreement as the Debtors had not yet defaulted on their payment obligations, even though Mattel appeared certain to never receive payment for such goods.

14. Not knowing the position the Committee would ultimately take with respect to its concerns, or the Debtors' decision to liquidate more generally, and based on the large size of the potential administrative insolvency facing the Debtors, Mattel (as described in more detail below) immediately began exploring its alternatives to maximize its recoveries as a trade vendor. The alternatives Mattel considered, at the outset, included the propriety of seeking to move to appoint a trustee or examiner, or to convert the chapter 11 cases to chapter 7, as well as whether claims existed against the Debtors, or other parties.

15. At the same time, Mattel and my firm began a series of significant and continuous discussions with representatives of the Debtors, the B-4 lenders, the Committee, and other trade

vendors (both Committee members and others) regarding the events that had led the Debtors to liquidate, its concerns regarding the Debtors' actions in the period leading up to the liquidation announcement and the best response thereto. During the March 2-4, 2018 weekend, there were extensive discussions among myself, counsel to LEGO, as well as the Committee's counsel and financial advisors with respect to the Debtors' deteriorating financial situation, their professed need for a waiver from the B-4 Lenders of certain covenants, the going forward projections, and ultimately the proposed waiver agreement draft circulated by the Debtors.

16. During those first few days, I specifically raised with Debtors' counsel a number of critical issues for Mattel (and other similarly situated post-petition trade vendors), including (i) whether and for how long the Debtors had continued placing and accepting orders with Mattel and other vendors while knowing that they likely would not be able to pay for the goods produced and delivered, (ii) the amount of shipments that Mattel was obligated to make (in light of its critical trade agreement) notwithstanding the Debtors' inability to pay for them, (iii) whether or not the Debtors would be notifying vendors generally about the seeming inability to pay for goods already shipped and received and (iv) what plans the Debtors had for goods in transit or yet to be delivered. I informed Debtors' counsel that Mattel was considering filing an emergency motion to convert the chapter 11 cases to cases under chapter 7 or to appoint a trustee, and that it was also considering filing a complaint to impose a constructive trust or other similar remedy available for vendors, seeking immediate relief. During this same period, I also had substantial discussions with Debtors' counsel, advisors to the Committee and the B-4 Lenders, LEGO, Huffy and other administrative vendor creditors concerning the nature of the default or alleged default, and what options existed to obtain a waiver and avoid a liquidation.



17. We did not know what position the Committee might take with respect to these events. As it turned out, given that the DIP financing order restricted to the Committee the parties that could bring certain estate causes of action (*See* Committee Statement at ¶¶ 5-7), and because there were possibly valuable estate claims, the Committee ended up playing a vital role in negotiating the DIP Amendments, the interim and final orders approving the Wind Down Motion, and ultimately the Settlement Agreement. But we had no way of knowing in the early stages of the crisis if Mattel would be going alone seeking conversion or suing on constructive trust, joining with other vendors like LEGO and Huffy to do so, or working in coordination with the Committee.

18. Debtors' counsel, Committee counsel and other Committee advisors exerted substantial efforts to deal with this extraordinary situation, and asked Mattel and other creditors to delay taking any immediate action while an attempt was made to quickly assess and explore alternatives to the U.S. Wind Down, and, if necessary, structure an orderly liquidation process. I was informed on either March 4th or March 5th by Debtors' counsel that the Debtors were committed to creating a pool of funds carved out from the DIP Lenders collateral to pay merchandise vendors. This recognition by the Debtors and the B-4 Lenders that it was appropriate for trade vendors to receive some priority in payment on account of the goods shipped post-petition was a critical first step. That evolved into the Debtors' first proposal before the Bankruptcy Court that provided for a carve-out estimated to be valued at approximately \$156 million from the B-4 Lenders' collateral to pay for goods shipped or received after March 5, 2018. This interim resolution was presented to the Court on March 20, 2018 as part of the Debtors' initial U.S. Wind Down Motion filed on March 15, 2018 (Docket No. 2050) and the Motion seeking to enter into various modifications and waivers with respect to

the Debtors DIP financing (Docket No. 2189) and discussed with the Court beginning at page 197 of the transcript of the March 20, 2018 hearing (Docket No. 2341).<sup>5</sup>

19. It is important to note that none of Mattel, any other trade vendors or the Committee itself had, as part of the foregoing discussions, agreed that the contemplated priority payments should be limited to goods received on or after March 5, 2018. Nor did any of these parties agree on how any priority funds would be paid. At the time of the initial filing of the Debtors' motions and at the initial hearings, the Committee, Mattel and other vendor creditors reserved rights with respect to those issues, and more global issues, as it was difficult to assess the best path going forward to maximize value. The parties' discussions continued after the March 20, 2018 hearing, during which time the parties considered, among other things, whether to bring a chapter 7 conversion or trustee motion, whether it was possible to negotiate an alternative compromise within the existing chapter 11 cases, and the wide range of possible outcomes resulting from these actions. But on one issue there was significant agreement expressed by the trade vendors who held administrative claims: any carve-out from the Lenders' collateral or administrative claims pool should be shared equally among all of the administrative vendor creditors, not only those whose goods were shipped or received after March 5, 2018.

20. While the continued discussions were mostly constructive and suggested a consensual resolution of Mattel and other unpaid administrative creditors' concerns might ultimately be possible, Mattel, at the same time, asked Hogan Lovells to continue its efforts to

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<sup>5</sup> There were also numerous other issues, many technical with respect to the shipment of goods, in transit goods, and the treatment of mixed containers of goods that had to be negotiated and resolved, and Mattel worked with the Debtors and Committee counsel to ensure that the rights of trade vendors were as protected as possible given the chaotic circumstances. Mattel filed at Docket No. 2221 a Joinder to the Limited Objection and Reservation of Rights of the Committee with respect to the Wind Down Motion that raised some of these issues. Many other positions that Mattel originally raised in its draft objection or otherwise with the Debtors were ultimately adopted by the Committee, and were the subject of direct negotiations with the Committee counsel and Debtors' counsel. Many were ultimately reflected in modifications and clarifications to the various orders and procedures that were put before the Court. Mattel was integrally involved throughout that process, from the very beginning, in attempting to both maximize value for the estates and protect its rights and the rights of trade vendors generally.

consider, to research, and to prepare to implement a number of alternative strategies, including bringing claims against the Debtors, their directors and officers, and/or their lenders in its capacity as an unpaid administrative creditor (presumably in conjunction with other similarly-situated vendors). Notably, while the Committee was, for its part, also exploring whether estate claims existed against the Debtors, their officers or their directors, and the availability of certain relief under the DIP Financing Agreements and Orders, the Committee was not in a position<sup>6</sup> to analyze or prosecute the types of individual vendor claims that we at Hogan Lovells were asked to examine. We tasked an experienced group of bankruptcy litigators with this analysis, as outlined below.

#### **Efforts to Collaborate with the Ad Hoc Vendor Group**

21. At the same time, I focused my efforts and those of my restructuring partner Erin Brady on seeking to consensually resolve Mattel's concerns. A significant step was to seek to work with other aggrieved and unpaid administrative creditors, several of whom formed the Ad Hoc Vendor Group. I had initially started speaking to some of those vendors following the March 20, 2018 hearing. The Ad Hoc Vendor Group at that time was very focused on seeking to convert the chapter 11 cases to cases under chapter 7, and/or seeking to appoint a chapter 11 trustee, the same options that Mattel, the Committee and others were considering. The Debtors, Committee, Ad Hoc Vendor Group and others had agreed to a short standstill period, continuing the April 11, 2018 hearing to April 19, 2018, so that the parties could explore alternatives (*see*

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<sup>6</sup> During this time period, the U.S. Trustee took the position, which we disagreed with, that the Committee should not have a significant role in the issues surrounding the liquidation if the only potential benefit was to unpaid administrative creditors, and that the Committee's role should be limited and circumscribed. We believed, however, that it was vital for the Committee to act as an independent fiduciary and ensure that the Debtors and secured lenders, alone, did not make all relevant decisions to the disadvantage of the estate and all other creditors, and it was by no means certain as to what the economic results of any potential course of action would be. As it turned out, the Committee's advisors played a vital and constructive role in ensuring a stable process and in evaluating and negotiating with respect to various estate causes of action, and benefitted not only its constituency but the estates as a whole.

Transcript, Docket No. 2677, at pp. 8-10). Immediately after the April 11, 2018 hearing, I participated along with Tom Pitta, counsel to another Committee member, in a lengthy, substantive discussion with the Ad Hoc Vendor Group.

22. Because Mattel was in the same position as all other unpaid trade vendors (and we believed was the largest unpaid vendor), my goal in meeting with the Ad Hoc Vendor Group was to seek to combine efforts, avoid duplication of effort, and have them work together with us, the Committee, and other large vendors (including Committee members, LEGO and Huffy) who were also active participants in this effort. One key factor that we discussed was that only the Committee had standing under the DIP Order to make certain challenges to the debtor-in-possession financing on behalf of unsecured creditors generally. That was a significant factor, among others, weighing against a chapter 7 conversion, as that would have resulted in the elimination of the Committee, and thus no party would have had standing to challenge the Lenders' liens and claims on certain grounds. In addition, it was very important that the interim resolution between the Debtors and the secured lenders creating the administrative priority fund, or carve-out, did not include releases for the B-4 Lenders, thus preserving any potential claims or causes of action.

23. Immediately after that initial meeting on April 11, 2018, I met with counsel to the Committee and the Debtors about how to move forward and form as large a group of administrative creditors as possible to work together to explore the various options. We agreed that the Ad Hoc Vendor Group should be provided access to the Committee's financial professionals and other non-public financial information under a Non-Disclosure Agreement. This enabled them to be "brought up to speed" on the relevant financial information and the results of the Committee's substantial prior analysis and progress, and for that group to work

with the Committee, Mattel, LEGO, and Huffy as all other options were evaluated and considered. Throughout this following period, I had regular discussions and communications with all relevant parties on behalf of Mattel.

### **The Individual Vendor Claims**

24. Following several in-depth discussions with the Ad Hoc Vendor Group and the Committee, and on a parallel path with the ongoing discussions and negotiations among the various parties, members of our litigation team at Hogan Lovells were tasked with researching and developing a legal framework for asserting multiple potential claims and causes of action to be brought on behalf of vendors against the Debtors, their officers and directors, and possibly the B-4 Lenders. We agreed to take primary responsibility for researching and exploring these claims on a very expedited basis in early May 2018.

25. The vendor claims (the “**Vendor Claims**”) that we explored on behalf of Mattel included:

- a. Negligent Misrepresentation against Debtors and certain of its directors and officers;
- b. Constructive Trust against Debtors;
- c. Declaratory Judgment against B-4 Lenders;
- d. Unjust Enrichment against the B-4 Lenders;
- e. Breach of Fiduciary Duty (by the estate) against the directors and officers and sponsors; and
- f. Equitable Subordination of the B-4’s Prepetition Secured Claim Under Bankruptcy Code § 510(c) (by the estate).

26. We recognized, however, that to succeed on the merits of the Vendor Claims, we would have to engage in significant and costly fact discovery because many of the Vendor Claims required us to prove subjective intent and/or inequitable conduct by the Debtors, officers and directors of the Debtors, or the B-4 Lenders. And even if sufficient facts were discovered, a successful outcome at trial was nevertheless uncertain and possibly years away. But, for these same reasons, it was our judgment that the Vendor Claims would most likely survive a motion to dismiss or summary judgment and posed a legitimate risk to the Debtors' estates, officers and directors of the Debtors, and/or the B-4 Lenders.

27. Although we, on behalf of Mattel, conducted the research to develop the Vendor Claims, our anticipation was that if litigation were to be brought, it would become something akin to a class action, such that the Ad Hoc Vender Group and other unpaid trade vendors could participate as well.

28. On a separate track, the Committee's professionals analyzed potential estate causes of action against the Debtors and other parties, as a supplement to the prior work that had been done to analyze claims against the sponsors or other parties as part of the normal Committee diligence. We coordinated extensively with Committee counsel in our respective efforts, as there was factual overlap with the Committee's investigation and analysis, but the Vendor Claims were separate claims that could not have been asserted by the Committee on behalf of the estate.

29. We conducted a thorough analysis of the Vendor Claims under the laws of various jurisdictions, and presented our initial views at a meeting with the Committee on May 11, 2018. Based on discussions at that meeting, we further revised and refined our analysis and then presented our position at a meeting with LEGO, Huffy, the Committee professionals and the

Ad Hoc Vendor Group on May 16, 2018. Based on the parties' discussions during this meeting, and requests for follow-up information, we continued to investigate and develop the Vendor Claims after the May 16, 2018 meeting.

30. In the days that followed, we coordinated and participated in multiple conference calls with the Ad Hoc Vendor Group, LEGO, Huffy and/or Committee counsel to discuss the Vendor Claims and the drafting of an Adversary Complaint to underscore the risks to the Debtors and the B-4 Lenders should the parties fail to reach an amicable resolution to the issues arising out of the Debtors' precipitous liquidation. At the same time, various settlement proposals and constructs were discussed by all parties, including Committee counsel who had a leading role in seeking to obtain a constructive resolution and avoid destructive and costly litigation. The Debtors made it clear that their goal was to avoid lengthy and protracted litigation and to seek to maximize value by (i) selling whatever business units could be sold as going concerns, (ii) liquidating what could not be sold or preserved as a going concern, and (iii) ultimately having a plan or plans confirmed. Thus, the Debtors were also motivated to seek to facilitate a resolution of potential claims.

31. On May 22, 2018, Erin Brady, Gregg Stefanick and I attended a meeting in New York between and among the Debtors, the Committee, representatives of the Ad Hoc Vendor Group, LEGO, Huffy and the B-4 Lenders and their respective professionals to discuss the Vendor Claims and to explore a broader consensual resolution. The process that began that day ultimately resulted in the Settlement Agreement before the Court.

32. I believe that the parties' robust discussions relating to the merits of the Vendor Claims, the significant expense associated with litigating them, and the dramatic downside for all parties if there was not a consensual, large scale resolution of the outstanding disputes, had a

substantial impact on the Settlement Parties' ultimate decision to enter into the proposed Settlement Agreement.<sup>7</sup> (*See, e.g.*, Motion ¶ 21.) Given this dynamic, and the totality of the facts and circumstances, I believe the parties reached a sensible, constructive and pragmatic resolution that is in the best interests of the unsecured creditors, administrative creditors, and the Debtors' estates.

33. While several members of the Ad Hoc Vendor Group and Committee participated extensively in the settlement negotiations and contributed in various and significant ways, the Vendor Claims were researched, considered, examined, analyzed, and presented by Hogan Lovells. I believe that the threat of these Vendor Claims and the litigation costs, delays and uncertainties relating thereto was a substantial factor that led to the enhanced recovery in the Settlement Agreement, and the benefits it provides to all parties.

#### **Benefit to the Administrative and Unsecured Creditors**

34. The efforts of Mattel, Huffy, LEGO, and the Ad Hoc Vendor Group in coordination with the Committee have resulted in a significant benefit to administrative and unsecured creditors. Claims trading values are not always reliable or necessarily precise indicators of value in chapter 11 cases, given the lack of non-public information and the inherent uncertainties in value while cases are pending. But the price being offered or paid by claims traders, when indicative of large or dramatic changes in expected recovery values, are more directionally accurate as the claims buyers react to events and calculate their projected returns on a purchase of a claim. I have been informed that the price being offered for administrative claims prior to the Settlement Agreement was as low as 3% to 5%. However, since the announcement of the Settlement Agreement, claims traders are seeking to buy administrative

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<sup>7</sup> It is something of an understatement to state that both the Debtors and the B-4's counsel vigorously disputed the legal and factual merits of any possible claims against their respective clients, or representatives. *See* Debtors Motion at ¶ 23.



claims at a price of 19%. While trading prices are not determinative of the final value of administrative claims, as the buyers seek to profit from the purchase, this dramatic increase in value being offered is a concrete indication of the substantial increase in value that the Settlement Agreement provides for the entire administrative creditor community.

35. Additionally, the waiver of preference liability in the Settlement Agreement is a significant benefit to general unsecured creditors. Trade vendors were largely caught by surprise by the Debtors' chapter 11 filings, as there was little to no warning, and, to make matters worse, the filing occurred when the vendors were ramping up shipments for the fall holiday season. Thus, Mattel (as well as many other vendors) believes that it likely has little, if any, actual preference exposure as most of those shipments and payments should have been in the ordinary course of business, and/or covered by the new value defense. However, the reality is that were the cases to be converted, any chapter 7 trustee might well have simply sued every recipient of a payment within 90 days of the bankruptcy filing in order to induce as many settlements as possible, given the inconvenience and costly necessity for vendors scattered all over the world to hire local counsel, accountants and experts to defend themselves. The preference waiver included within the Settlement Agreement was therefore an integral benefit to the unsecured creditors that the Committee, Mattel, Huffly, LEGO and the Ad Hoc Vendor Group negotiated for and ultimately achieved.

**Mattel Is Entitled To Reimbursement Of Its Attorneys' Fees, As Provided for in the Settlement Agreement Or, Alternatively, Reimbursement Is Appropriate As A Result Of Its Substantial Contribution To The Debtors' Cases**

36. Mattel's efforts contributed substantially and uniquely to the culmination of the Settlement Agreement, which maximizes recoveries and provides substantial benefits to all parties. Mattel's efforts were not necessary only for Mattel to resolve its claim, but inured to the benefit of all administrative and unsecured creditors. Thus, as discussed in the accompanying

pleading, Mattel believes that it is appropriate that its legal fee and expenses in this regard (the “**Vendor Fees**”) be approved as part of the Settlement Agreement pursuant to Rule 9019, and that the Debtors’ agreement to pay these fees as a component of the Settlement Agreement (and without the need for a separate application) was a reasonable exercise of its business judgment. In fact, Mattel’s vigorous participation in the settlement negotiations satisfies all of the factors required to establish a substantial contribution claim: (1) the resulting Settlement Agreement provides for a minimum guaranteed payment to holders of administrative claims with the potential for increased recovery; (2) Mattel acted to the benefit of the “interest-holders of which class it was a member” by achieving the settlement for all of the holders of administrative claims; (3) as demonstrated by the fees it incurred and the potential that the Motion would be denied, Mattel acted without guarantee of payment from the estate; (4) the value paid to the holders of administrative claims in the Settlement Agreement far exceeds the value Debtors were prepared to allow against the estate and provides substantial value to the Debtors’ estate by raising and resolving issues in this case that affected all parties, and by reducing litigation costs and uncertainty; and (5) Mattel’s efforts were not duplicative of any other party.

37. Mattel is only seeking reimbursement of its legal fees and expenses incurred with respect to (i) addressing the U.S. Wind Down and liquidation, (ii) investigating the Vendor Claims and (iii) negotiating the Settlement Agreement (the “**Wind Down Tasks**”). Mattel is not seeking reimbursement for amounts owed to any accountants or other professionals. Further, its counsel (at both Jones Day and Hogan Lovells) charged Mattel its standard rates for similar matters, and Mattel has applied to this fee request all discounts to which Mattel would ordinarily be entitled. Attached as Exhibits A-C are a series of charts showing all fees and expenses incurred with respect to this matter from March 1, 2018 through August 7, 2018, the portion of

these fees and expenses related to the Wind Down Tasks, and a breakout of the attorneys who represented Mattel and their hourly rates. Attached as Exhibit D is the agreed allocation of Vendor Fees amongst Mattel, Huffly and LEGO based on the agreement amongst these parties and the Ad Hoc Vendor Group to allocate \$1.4 million of the total \$2 million allotted for reimbursement of Vendor Fees to the Ad Hoc Vendor Group, and the remaining \$600,000 to Mattel, Huffly and LEGO. Because the costs have substantially exceeded the estimates, and now are projected to exceed \$3 Million, Mattel and others will not be receiving full payment for even this portion of the incurred fees. As shown in these Exhibits, Mattel is only seeking reimbursement of its pro rata share of \$740,000 (and not the total fees and expenses incurred for the Wind Down Tasks, or overall, in that time period) for the services described herein.

38. Critically, Mattel is not seeking reimbursement of any legal costs or fees unrelated to Mattel's efforts with respect to the Debtors' liquidation and those efforts that ultimately led to the Settlement Agreement. Mattel is not seeking reimbursement for tasks arising out of its role as a Committee member, nor is it seeking reimbursement for individual creditor projects such as conducting a preference analysis or preparing administrative claims. Mattel is not seeking any reimbursement for any of its very substantial fees and costs incurred prior to March 1, 2018, nor prospectively for dealing with the Debtors' plan of reorganization or the implementation of the Settlement Agreement. Mattel has agreed in exchange for its Vendor Fees not to seek any other or additional substantial contribution claims in these cases, which claims could be much larger. Mattel's Vendor Fees are just a small fraction of the total Toys "R" Us related legal expenses Mattel has incurred in the course of these cases. And even still, because the fees being sought by the entire group substantially exceed the available pool,

Mattel—like all other vendors entitled to payment under the Settlement Agreement—will not recover in full on its Vendor Fee claim.

39. The results obtained by the efforts of this group of administrative creditors working together is deserving of a substantial contribution award under any set of standards. The “Big Picture” is that the Settlement Agreement resolves the unprecedented crisis of administrative insolvency resulting from the Debtors inability to pay \$800 million in post-petition vendor and other payables. Mattel had a unique leadership role in helping to coalesce a sufficiently substantial group of administrative creditors to be able to credibly negotiate a very beneficial global settlement with the Debtors and the secured lenders. Without a group of sizeable heft, there would have been no such negotiation and full resolution possible. Some of the participants in the group were large creditors on the Committee, many were not, but it took the combined efforts of the entire group to obtain this very favorable result (as compared to the alternatives). There is no doubt that the alternative to this resolution would have been years of contentious and expensive litigation and the incurrence of tens of millions of dollars in professional fees, with no certainty of any greater recovery for administrative creditors, or of any recovery whatsoever. The efforts of the group were made necessary in part because the U.S. Trustee took the position that the Creditors’ Committee could not represent the interests of the administrative creditors but should only be concerned with estate claims and causes of action. While disagreeing with that position, this meant that Committee members who had large unpaid administrative claims, principally Mattel, LEGO, and Huffy, could not rely upon Committee counsel, but had to involve themselves individually and substantially.

40. Mattel has had a very active role throughout these cases, but is restricting its fee claim to the truly extraordinary and unique circumstances presented by the Debtors’ liquidation,

and the events that began on March 1, 2018. Mattel is not seeking reimbursement for any fees incurred after the Settlement Approval hearing on August 7, 2018, even though there will be substantial additional fees incurred relating to the Settlement Agreement's implementation and the proposed plan of reorganization.

41. Case law is clear that Committee members are not disabled from making substantial contribution motions and Mattel is not seeking to be reimbursed for ordinary actions as a Committee member. Mattel seeks reimbursement of fees solely with respect to its actions as an administrative creditor, in dealing with the liquidation, in leading the effort to have a group negotiate with respect to these issues, in taking the lead role in researching and evaluating the claims that individual vendors might have with respect to the events, in coordinating with the Committee and its professionals to combine efforts and work together with the Ad Hoc Vendor group to maximize recovery for administrative and unsecured creditors, and finally to negotiate together with the Debtors and B-4 Lenders. Without a group of sizeable administrative creditors, this resolution would not have been possible, and it was through the efforts of a small subset of creditors that the benefits to the estate and the administrative creditors were created.

I declare under penalty of perjury that foregoing is true and correct. Executed this 6th day of August, 2018, at Washington, D.C.

  
\_\_\_\_\_  
Richard L. Wynne

**EXHIBIT A**

**LEGAL FEES AND EXPENSES INCURRED BY MATTEL FROM MARCH 1, 2018 TO DATE<sup>1</sup>**

<b>TOTAL FEES AND EXPENSES FOR ALL TOYS “R” US PROJECTS BILLED BY JONES DAY AND HOGAN LOVELLS</b>	<b>\$1,223,678.46</b>
<b>TOTAL FEES AND EXPENSES FOR ALL TOYS “R” US PROJECTS BILLED BY MICHAEL WILSON<sup>2</sup></b>	<b>\$14,481.00</b>
<b>BREAKOUT OF MATTEL VENDOR FEES<sup>3</sup> ELIGIBLE FOR REIMBURSEMENT UNDER THE SETTLEMENT AGREEMENT</b>	<b>\$842,957.30</b>

<sup>1</sup> Due to the timing of this submission, Hogan Lovells has not yet finalized all of the invoices for which Mattel is entitled to distribution. Where final numbers are not available, Hogan Lovells has provided Mattel with its best estimates.

<sup>2</sup> All of Mr. Wilson’s time qualify as Vendor Fees (as defined herein).

<sup>3</sup> “**Mattel Vendor Fees**” refers to fees and expenses that Mattel incurred relating to the Debtors’ liquidation, Wind Down, its investigation of vendor claims and its negotiation of the Settlement Agreement.

**EXHIBIT B**

**JONES DAY AND HOGAN LOVELLS LEGAL FEES  
INCURRED BY MATTEL BY MONTH FROM MARCH 1, 2018 TO DATE<sup>4</sup>**

<b>MONTH</b>	<b>ALL FEES AND EXPENSES INCURRED</b>	<b>MATTEL VENDOR FEES</b>	<b>OTHER FEES AND EXPENSES</b>
<b>MARCH 2018</b>	\$327,710.30	\$205,057.85	\$122,652.45
<b>APRIL 2018</b>	\$141,574.14	\$102,226.90	39,347.24
<b>MAY 2018</b>	\$421,415.25	\$321,849.55	\$99,565.70
<b>JUNE 2018</b>	\$85,271.05	\$40,012.00	\$45,259.05
<b>JULY 2018</b>	\$132,273.73	\$51,233.00	\$81,040.73
<b>AUGUST 2018</b>	\$115,434.03	\$108,097.00	\$7,337.03
<b>TOTAL</b>	<b>\$1,223,678.46</b>	<b>\$828,476.30</b>	<b>\$395,202.20</b>

<sup>4</sup> Due to the timing of this submission, Hogan Lovells has not yet finalized all of the invoices for which Mattel is entitled to distribution. Where final numbers are not available, Hogan Lovells has provided Mattel with its best estimates.

**EXHIBIT C**

**RATE AND TIME DETAIL BY BILLER**



**JONES DAY**

March Invoice Revised	\$ 355,069.20	<b>Vendor Fees:</b>	<b>\$205,057.85</b>
Discount	\$ 33,723.69		
Total Invoice	\$ 321,345.51		

ATTORNEY TIME DETAIL

Name	Matter	Billing Rate	March Hours	Time Subtotal
Olaf Benning	539659-670001	\$ 775.00	31.30	\$ 24,257.50
Erin Brady	539639-670001	\$ 975.00	102.10	\$ 99,547.50
Roger Dobson	539639-670001	\$ 1,000.00	1.50	\$ 1,500.00
Steven Domanowski	539639-670001	\$ 900.00	12.00	\$ 10,800.00
Rick Wynne	539639-670001	\$ 1,325.00	124.10	\$ 164,432.50
Caitlin Cahow	539639-670001	\$ 600.00	16.80	\$ 10,080.00
Joseph Florczak	539639-670001	\$ 625.00	5.90	\$ 3,687.50
Martin Kemmerer	539639-670001	\$ 475.00	5.00	\$ 2,375.00
William Schumacher	539639-670001	\$ 550.00	39.20	\$ 21,560.00
<b>TOTALS</b>			<b>337.90</b>	<b>\$ 338,240.00</b>

April Invoice Revised	\$ 120,118.50	<b>Vendor Fees:</b>	<b>\$76,005.00</b>
Discount	\$ 13,474.80		
Total Invoice	\$ 106,643.70		

ATTORNEY TIME DETAIL

Name	Matter	Billing Rate	April Hours	Time Subtotal
Olaf Benning	539639-670001	\$ 775.00	14.00	\$ 10,850.00
Erin Brady	539639-670001	\$ 975.00	18.10	\$ 17,647.50
Rick Wynne	539639-670001	\$ 1,325.00	55.10	\$ 73,007.50
Hirokazu Ina	539639-670001	\$ 800.00	4.00	\$ 3,200.00
William Schumacher	539639-670001	\$ 550.00	8.30	\$ 4,565.00
Tina Wong	539639-670001	\$ 375.00	7.10	\$ 2,662.50
K. Osada	539639-670001	\$ 350.00	0.90	\$ 315.00
<b>TOTALS</b>			<b>107.50</b>	<b>\$ 112,247.50</b>

**HOGAN LOVELLS COMMITTEE WORK**

April 21-30 Invoice \$ 9,176.00  
 Discount \$ (458.80)  
 Total Invoice \$ 8,717.20

ATTORNEY TIME DETAIL

Name	Matter	Billing Rate	April Hours	Totals
Erin Brady	029776.000002	\$ 925.00	2.50	\$ 2,312.50
Rick Wynne	029776.000002	\$ 1,295.00	5.30	\$ 6,863.50
<b>TOTALS</b>			<b>7.80</b>	<b>\$ 9,176.00</b>

May Invoice \$ 104,806.00  
 Discount \$ (5,240.30)  
 Total Invoice \$ 99,565.70

ATTORNEY TIME DETAIL

Name	Matter	Billing Rate	May Hours	Totals
Erin Brady	029776.000002	\$ 925.00	35.80	\$ 33,115.00
John Beck	029776.000002	\$ 830.00	17.10	\$ 14,193.00
Rick Wynne	029776.000002	\$ 1,295.00	44.40	\$ 57,498.00
<b>TOTALS</b>			<b>97.30</b>	<b>\$104,806.00</b>

June Invoice \$ 49,747.00  
 Discount \$ (2,487.35)  
 Total Invoice \$ 47,259.65

ATTORNEY TIME DETAIL

Name	Matter	Billing Rate	June Hours	Totals
Erin Brady	029776.000002	\$ 925.00	14.00	\$ 12,950.00
John Beck	029776.000002	\$ 830.00	7.20	\$ 5,976.00
Rick Wynne	029776.000002	\$ 1,295.00	23.80	\$ 30,821.00
<b>TOTALS</b>			<b>45.00</b>	<b>\$ 49,747.00</b>

July Invoice \$ 88,002.50  
 Discount \$ (4,400.13)  
 Total Invoice \$ 83,602.38

ATTORNEY TIME DETAIL

Name	Matter	Billing Rate	July Hours	Totals
Erin Brady	029776.000002	\$ 925.00	44.30	\$ 40,977.50
Rick Wynne	029776.000002	\$ 1,295.00	33.00	\$ 42,735.00
Ron Cappiello	029776.000002	\$ 390.00	11.00	\$ 4,290.00
<b>TOTALS</b>			<b>88.30</b>	<b>\$ 88,002.50</b>

August Invoice \$ 13,412.50  
 Discount \$ (670.63)  
 Total Invoice \$ 12,741.88

ATTORNEY TIME DETAIL

Name	Matter	Billing Rate	August Hours	Totals
Erin Brady	029776.000002	\$ 925.00	1.20	\$ 1,110.00
Rick Wynne	029776.000002	\$ 1,295.00	9.50	\$ 12,302.50
<b>TOTALS</b>			<b>10.70</b>	<b>\$ 13,412.50</b>

**HOGAN LOVELLS VENDOR FEE REIMBURSEMENT CLAIMS**

April 21-30 Invoice \$ 27,602.00  
 Discount \$ (1,380.10)  
 Total Invoice \$ 26,221.90

ATTORNEY TIME DETAIL

Name	Matter	Billing Rate	April Hours	Totals
Erin Brady	029776.000003	\$ 925.00	1.00	\$ 925.00
Rick Wynne	029776.000003	\$ 1,295.00	20.60	\$ 26,677.00
<b>TOTALS</b>			<b>21.60</b>	<b>\$ 27,602.00</b>

May Invoice \$ 338,789.00  
 Discount \$ (16,939.45)  
 Total Invoice \$ 321,849.55

ATTORNEY TIME DETAIL

Name	Matter	Billing Rate	May Hours	Totals
Erin Brady	029776.000003	\$ 925.00	32.40	\$ 29,970.00
John Beck	029776.000003	\$ 830.00	26.90	\$ 22,327.00
Rick Wynne	029776.000003	\$ 1,295.00	101.40	\$131,313.00
Seth Cohen	029776.000003	\$ 825.00	68.10	\$ 56,182.50
Michael Hefter	029776.000003	\$ 1,050.00	19.60	\$ 20,580.00
Nicole Schiavo	029776.000003	\$ 815.00	60.20	\$ 49,063.00
Jonathan Coppola	029776.000003	\$ 495.00	39.50	\$ 19,552.50
Sean Feener	029776.000003	\$ 495.00	16.30	\$ 8,068.50
Christine Sifferman	029776.000003	\$ 495.00	3.50	\$ 1,732.50
<b>TOTALS</b>			<b>367.90</b>	<b>\$338,789.00</b>

June Invoice \$ 40,012.00  
 Discount \$ (2,000.60)  
 Total Invoice \$ 38,011.40

ATTORNEY TIME DETAIL

Name	Matter	Billing Rate	June Hours	Totals
Erin Brady	029776.000003	\$ 925.00	6.10	\$ 5,642.50
Rick Wynne	029776.000003	\$ 1,295.00	25.10	\$ 32,504.50
Michael Hefter	029776.000003	\$ 1,050.00	1.00	\$ 1,050.00
Nicole Schiavo	029776.000003	\$ 815.00	1.00	\$ 815.00
<b>TOTALS</b>			<b>33.20</b>	<b>\$ 40,012.00</b>

July Invoice \$ 51,233.00  
 Discount \$ (2,561.65)  
 Total Invoice \$ 48,671.35

ATTORNEY TIME DETAIL

Name	Matter	Billing Rate	July Hours	Totals
Erin Brady	029776.000003	\$ 925.00	16.00	\$ 14,800.00
Rick Wynne	029776.000003	\$ 1,295.00	18.00	\$ 23,310.00
Seth Cohen	029776.000003	\$ 825.00	8.30	\$ 6,847.50
Nicole Schiavo	029776.000003	\$ 815.00	7.70	\$ 6,275.50
<b>TOTALS</b>			<b>50.00</b>	<b>\$ 51,233.00</b>

August Invoice \$ 108,097.00  
 Discount \$ (5,404.85)  
 Total Invoice \$ 102,692.15

ATTORNEY TIME DETAIL

Name	Matter	Billing Rate	August Hours	Totals
Erin Brady	029776.000003	\$ 925.00	34.80	\$ 32,190.00
Rick Wynne	029776.000003	\$ 1,295.00	42.50	\$ 55,037.50
John Beck	029776.000003	\$ 830.00	22.10	\$ 18,343.00
Nicole Schiavo	029776.000003	\$ 815.00	3.10	\$ 2,526.50
<b>TOTALS</b>			<b>102.50</b>	<b>\$108,097.00</b>

**EXHIBIT D**

**ALLOCATION OF VENDOR FEES TO MATTEL, HUFFY AND LEGO**

	<b>ESTIMATE OF ELIGIBLE VENDOR FEES WHEN ALLOCATION AMONG ADMINISTRATIVE VENDOR GROUP AGREED TO</b>	<b>ESTIMATED PRO RATA VENDOR FEE REIMBURSEMENT BASED ON \$600,000 ALLOCATION OF VENDOR POOL FOR MATTEL, LEGO AND HUFFY<sup>5</sup></b>
<b>MATTEL</b>	\$740,000.00	\$437,438.42
<b>LEGO</b>	\$100,000.00	\$59,113.30
<b>HUFFY</b>	\$175,000.00	\$103,448.28
<b>TOTAL</b>	<b>\$1,015,000.00</b>	<b>\$600,000</b>

<sup>5</sup> The pro rata recovery for Mattel, LEGO and Huffly is 59%, which is calculated by dividing the parties' total estimated fees of \$1,015,000 by the \$600,000 available to distribute amongst them. As shown in these Exhibits, Mattel's fees exceeded its \$740,000 estimate. Mattel has agreed, however, that its Vendor Fee claim will be capped at the amount shown in this chart.