



1 SHEPPARD, MULLIN, RICHTER &
2 HAMPTON LLP

3 A Limited Liability Partnership
4 Including Professional Corporations

5 ORI KATZ,

6 Cal. Bar No. 209561

7 MICHAEL M. LAUTER,

8 Cal. Bar No. 246048

9 JACQUELINE G. LUTHER,

10 Cal. Bar No. 271844

11 SHADI FARZAN,

12 Cal. Bar No. 301610

13 Four Embarcadero Center, 17th Floor
14 San Francisco, California 94111-4109

15 Telephone: 415.434.9100

16 Facsimile: 415.434.3947

17 Email okatz@sheppardmullin.com

18 mlauter@sheppardmullin.com

19 jluther@sheppardmullin.com

20 sfarzan@sheppardmullin.com

21 Proposed Attorneys for Debtor
22 Imperial Toy LLC

The following constitutes the order of the Court.

Signed: November 20, 2019

M. Elaine Hammond

M. Elaine Hammond
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

In re:

Bankruptcy Case No. 19-52335

IMPERIAL TOY LLC,

Chapter 11

Debtor.

**ORDER GRANTING DEBTOR'S FIRST DAY
EMERGENCY MOTION TO APPROVE (I) BID
PROCEDURES IN CONNECTION WITH SALE
OF DEBTOR'S ASSETS; (II) BREAK-UP FEE;
AND (III) RELATED RELIEF**

Date: November 19, 2019

Time: 10:00 a.m.

Place: United States Bankruptcy Court

Courtroom 11

280 S. First Street

San Jose, CA 95113

1 Upon the *First Day Emergency Motion To Approve (I) Bid Procedures In Connection With Sale*
2 *Of Debtor's Assets; (II) Break-Up Fee; And (III) Related Relief* (the "Motion")¹ filed by the above-
3 captioned debtor and debtor in possession (the "Debtor") on November 18, 2019 as Docket No 3, and
4 the Court having reviewed the Motion; and the Court having held a hearing on the Motion at the above-
5 captioned date and time with appearances as noted on the record; and the Court having determined the
6 relief provided in this Order is in the best interests of the Debtor, its estate, its creditors, and other parties-
7 in-interest; and it appearing that proper and adequate notice of the Motion has been given and that no
8 other or further notice is necessary; and upon the record herein; and after due deliberation thereon; and
9 good and sufficient cause appearing therefore;

10 **THE COURT HEREBY MAKES THE FOLLOWING FINDINGS OF FACT AND**
11 **CONCLUSIONS OF LAW:**

12 A. The Court has jurisdiction over this matter pursuant to 28 U.S.C. section 1334(b) and the
13 *Order Referring Bankruptcy Cases and Proceedings to Bankruptcy Judges*, General Order 24 (N.D.
14 Cal.), and Local Rule 5011-1(a). Venue is proper pursuant to 28 U.S.C. sections 1408 and 1409. This
15 matter is a core proceeding within the meaning of 28 U.S.C. section 157(b)(2).

16 B. The statutory predicates for the relief requested in the Motion are (i) sections 105, 363
17 and 365 of the Bankruptcy Code; (ii) Bankruptcy Rules 2002, 6004, 6006, 9014 and 9018; and (iii) Local
18 Rules 6004-1 and 6006-1.

19 C. Good and sufficient notice of the Motion, the hearing on the Motion, and the relief granted
20 by this Order has been given, and no further notice is required. A reasonable opportunity to object or be
21 heard regarding the relief granted by this Order (including, without limitation, with respect to the
22 proposed Break-Up Fee (as defined herein)) has been afforded to those parties entitled to notice. A
23 reasonable and fair opportunity to object to the Motion and the relief granted in this Order has been
24 afforded under the circumstances. Accordingly, no further notice of the Motion, the hearing on the
25 Motion, or the relief granted by this Order shall be required.

26 D. The Debtor's reasons for approval of Bidding Procedures, in the form annexed hereto as
27 **Exhibit 1**, based on the record before the Court, satisfy the Court that the Bidding Procedures: (i) are in

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¹ Capitalized terms used but not defined herein have the meaning ascribed to them in the Motion.

1 the best interests of the Debtor and its creditors and its estate; and (ii) represent a prudent exercise of the
2 Debtor's business judgment. The Debtor has articulated good, sufficient, and reasonable business
3 justifications for the selection of the Stalking Horse Bidder as the lead bidder and the proposed
4 procedures related thereto, which are designed to permit the Debtor to solicit the highest or otherwise
5 best bid for its assets through the Bid Procedures.

6 E. The Break-Up Fee is fair and reasonable and provides a benefit to the Debtor's estate and
7 creditors and was a critical element in the Stalking Horse Bidder's decision to enter into the APA.

8 F. The Debtor's payment of the Break-Up Fee under the conditions set forth in the APA, the
9 Motion, and this Order is (a) an actual and necessary cost of preserving the Debtor's estates, within the
10 meaning of section 503(b) of the Bankruptcy Code, (b) of substantial benefit to the Debtor's estates and
11 creditors and all parties in interest herein, (c) reasonable and appropriate, and (d) necessary to ensure
12 that the Stalking Horse Bidder will continue to pursue the proposed APA to undertake the sale of the
13 Assets. Notwithstanding anything to the contrary in this or any other order of this Court, the Break-Up
14 Fee shall constitute an administrative expense with priority pursuant to section 503(b) of the Bankruptcy
15 Code.

16 G. To the extent that the Debtor consummates an Alternative Transaction or a chapter 11
17 plan in connection with or as a result of an Alternative Transaction, the Break-Up Fee shall not be
18 deemed to constitute collateral of any entity (including the DIP Lender or the Prepetition Secured Parties
19 (as such terms are defined in the *Interim Order (I) Authorizing And Approving Debtor Post-Petition*
20 *Financing; (II) Granting Liens And Security Interests And Providing Superpriority Administrative*
21 *Expense Status; (III) Authorizing Use Of Cash Collateral And Affording Adequate Protection; (IV)*
22 *Modifying Automatic Stay; And (V) Scheduling Final Hearing* (the "Interim Financing Order") and any
23 other order granting the relief in such order on a final basis (together with the Interim Financing Order,
24 collectively, the "Financing Orders")), and the Break-Up Fee shall be deemed to be held in trust solely
25 for the benefit of the Stalking Horse Bidder. Upon entry of this Order, the DIP Lender and the Pre-
26 petition Secured Parties shall be deemed to have consented to waive any and all of their respective rights
27 (if any) with respect to the Break-Up Fee if payable under this Order, and shall be deemed to

1 acknowledge that the Break-Up Fee (if payable) shall be held in trust solely for the benefit of the Stalking
2 Horse Bidder.

3 H. The entry of this Order is in the best interests of the Debtor and its estate, creditors, and
4 interest holders and all other parties in interest herein.

5 Based upon the foregoing and after due consideration and good cause appearing therefor:

6 **IT IS ORDERED, ADJUDGED AND DECREED BY THE COURT, that:**

7 1. The Motion is GRANTED, subject to certain revisions to the assumption and assignment
8 noticing provisions requested in the Motion, which are reflected in the Bid Procedures attached hereto
9 as Exhibit 1.

10 2. Upon waiver of the condition contained at section 7.1 of the APA (the “Diligence
11 Contingency”), the Stalking Horse Bidder shall be deemed a Qualified Bidder pursuant to the Bidding
12 Procedures for all purposes.

13 3. The Bid Procedures apply to the Qualified Bidders and the conduct of the sale of the
14 Assets and the Auction.

15 4. Subject to the Bid Procedures and approval of the sale at the Sale Hearing, the entry into
16 the APA is hereby approved. The APA serves the Debtor as the “stalking horse” sale agreement.

17 5. Notwithstanding anything to the contrary in the Financing Orders, to the extent due and
18 payable under Sections 7.3(c)(viii) and 10.2(d) of the APA, and upon waiver of the Diligence
19 Contingency, (a) the Debtor is authorized to pay to the Stalking Horse Bidder the Break-Up Fee (as
20 defined in the Agreement) out of the deposit provided with respect to, or the proceeds of, an Alternative
21 Transaction or the proceeds of a chapter 11 plan in connection with or as a result of an Alternative
22 Transaction, (b) the Break-Up Fee shall not constitute the collateral of, or be subject in any way to any
23 lien of, the DIP Lender or the Pre-Petition Secured Parties (as defined under the Financing Order), and
24 (c) the Break-Up Fee shall be held, and shall be deemed to be held, in trust solely for the benefit of the
25 Stalking Horse Bidder.

26 6. The Break-Up Fee shall be entitled to priority as an administrative expense of the Debtor
27 pursuant to section 503(b) of the Bankruptcy Code.

28 7. In the event there is a conflict between this Order and the Motion or the APA, this Order

1 shall control and govern.

2 8. Nothing in this Order, the APA or the Motion shall be deemed to or constitute the
3 assumption or assignment of an executory contract or unexpired lease.

4 9. This Court shall retain jurisdiction with respect to all matters arising or related to the
5 implementation or interpretation of this Order.

6 10. The Debtor and the Stalking Horse Bidder are authorized to take all actions necessary to
7 effectuate the relief granted pursuant to this Order.

8 11. This Order shall be effective immediately upon entry, and any stay of orders provided for
9 in Bankruptcy Rules 6004 or 6006 or any other provision of the Bankruptcy Code or Bankruptcy Rules
10 is expressly lifted. The Debtor is not subject to any stay in the implementation, enforcement or realization
11 of the relief granted in this Order, and may, in their discretion and without further delay, take any action
12 and perform any act authorized under this Order. For the avoidance of doubt, the Break-Up Fee approved
13 by this Order shall be immediately appealable and failure to appeal in accordance with the Bankruptcy
14 Rules or other applicable law shall constitute a waiver of such rights.

Exhibit 1

(Bid Procedures)

The Bid Procedures approved in this Order are as follows:

1. Break-Up Fee. A break-up fee payable to the Stalking Horse Bidder upon and pursuant to the events set forth in this Order in an amount equal to the lesser of: (i) five percent (5%) of the aggregate purchase price set forth in the APA; or (ii) Six Hundred Fifty Thousand Dollars (\$650,000.00).
2. Overbids. A minimum initial overbid increment of Seven Hundred Fifty Thousand Dollars (\$750,000.00).
3. Bid Increments. Minimum subsequent bid increments of One Hundred Thousand Dollars (\$100,000.00).
4. Qualified Bids. In order to participate in the Auction, an interested bidder must be designated by the Debtor, after consultation with the Consultation Parties, as a “Qualified Bidder.” In order to be a Qualified Bidder, the interested bidder must submit a bidding package (a “Qualified Bid”) to the Debtor that includes the following on or before 5:00 p.m. (Pacific Time) on December 12, 2019 (the “Bid Deadline”): (i) an executed form of Asset Purchase Agreement without financing, diligence, or other contingencies, that (a) provides for a sale price in a cash amount of not less than \$13,750,000, (b) provides for consummation of the proposed sale transaction by no later than December 18, 2019, and (c) is capable of being executed by Seller immediately, and (ii) confirmation of financing committed or immediate funding available that indicates its financial ability to pay the Purchase Price. In addition, a Qualified Bid must be irrevocable, must waive substantial contribution claims, and not provide for any break-up fees or expense reimbursement (other than the Stalking Horse Bid of Ja-Ru, Inc.), must consent to the jurisdiction of the Bankruptcy Court to resolve all disputes, must identify with particularity which contracts the proposed bidder would assume and provide in detail the bidder’s proposal for cure amounts and adequate assurance of future performance with respect to such contracts, and must comply with any pre-petition privacy policy of the Debtor’s applicable to the Assets being purchased. Ja-Ru, Inc. (the “Stalking Horse Bidder”) – once all contingencies under the APA have been eliminated, and the Pre-Petition Secured Parties (as defined in the Interim DIP

1 Financing Order) are automatically deemed to be Qualified Bidders. Without the written consent of
2 the Debtor, in consultation with the Consultation Parties and with the consent of the Pre-Petition ABL
3 Agent, a Qualified Bidder may not modify, amend, or withdraw its Qualified Bid, except for proposed
4 amendments to increase the consideration contemplated thereby, or otherwise improve the terms of,
5 the Qualified Bid; provided, that any Qualified Bid may be improved at the Auction. The Debtor
6 reserves the right, in consultation with the Consultation Parties, to negotiate with any Qualified Bidder
7 in advance of the Auction to cure any deficiencies in a bid that is not initially deemed a Qualified Bid.
8 As soon as reasonably practicable after the Bid Deadline, the Debtor shall notify the Consultation
9 Parties, the Stalking Horse Bidder, and all Qualified Bidders, in writing, as to whether or not any bids
10 other than that of the Stalking Horse Bidder constitute Qualified Bids. The Debtor will also announce
11 the full list of Qualified Bidders at the outset of the Auction, if applicable, and the Sale Hearing.

12 5. Winning Bid. The winning bid shall be the highest bid (the “Winning Bid”); provided,
13 however, that if (i) the highest bid made by a qualified bidder other than Stalking Horse Bidder minus
14 the Break-Up Fee is less than (ii) the highest bid of Stalking Horse Bidder, then the bid of Stalking
15 Horse Bidder shall be the Winning Bid, so that, no matter how high bidding may go, a successful
16 winning bid will result in a payment to the Stalking Horse Bidder of the Break-Up Fee.

17 6. Cash Bids. All bids made by the Stalking Horse Bidder as part of the Sale Hearing will
18 be authorized to be comprised of (i) a cash payment and (ii) a credit bid authorized pursuant to
19 paragraph 11 below.

20 7. Good Faith Deposit. In order to be deemed a qualified bidder, each prospective bidder
21 must provide a “good faith deposit” (a “Deposit”) in an amount no less than One Million Dollars
22 (\$1,000,000.00) to be deposited into an escrow account established by the Debtor in immediately
23 available funds no later than the Bid Deadline.

24 8. Payment of Break-Up Fee from Deposit of Overbidder. In the event that the Stalking
25 Horse Bidder is not the prevailing bidder and an Order is entered authorizing Seller to consummate an
26 Alternative Transaction, the Break-Up Fee owed to Ja-Ru, Inc. as Stalking Horse Bidder shall be paid
27 from no source other than: (a) immediately from the prevailing party’s deposit, or (b) from the
28 proceeds of an Alternative Transaction approved from the Court.

1 9. Sale Hearing and Auction. The hearing on the Sale Motion (the “Sale Hearing”) will
2 commence on December 16, 2019 at 1:30 p.m. (Pacific Time). If competing Qualified Bids are
3 received by the Bid Deadline, an auction for the Debtor’s Assets (the “Auction”) will be held on
4 December 13, 2019, commencing at 10:00 a.m. (Pacific Time) at the office of Debtor’s counsel or
5 some other location to be designated in advance by the Debtor. Each Qualified Bidder participating at
6 the Auction will be required to confirm that it has not engaged in any collusion with respect to the
7 bidding or the Sale. Qualified Bidders may participate in person or by authorized representative.
8 Bidding shall commence at the amount of the highest Qualified Bid received by the Bid Deadline (the
9 “Baseline Bid”), with all subsequent bids in incremental amounts of not less than the amount set forth
10 in Paragraph 3 of these Bid Procedures. If the Debtor does not receive any Qualified Bids other than
11 the Stalking Horse Bid, the Debtor will not conduct the Auction, and will request at the Sale Hearing
12 that the Stalking Horse Bid be designated as the Winning Bid.

13 10. Revisions to Bid Procedures. The Debtor, in consultation with the Stalking Horse
14 Bidder and the Consultation Parties, reserves the right to make reasonable revisions to the proposed
15 Bidding Procedures as circumstances may warrant; provided, however, that any material modifications
16 to the Bid Procedures shall require the consent of the Pre-Petition ABL Agent (as defined in the
17 Interim DIP Financing Order). The Debtor shall promptly notify parties in interest (including the
18 Consultation Parties) and prospective bidders of any such modifications.

19 11. Credit Bidding. The Stalking Horse Bidder (as DIP Lender), and each of the Pre-
20 Petition Secured Parties (as such term is defined in the Interim DIP Financing Order) have the right to
21 credit bid any portion and up to the full amount of their secured debt at the Auction as provided in
22 Section 363(k) of the Bankruptcy Code, subject to the satisfaction of all liens having priority over the
23 lien that is being credit bid; provided, however, that any credit bidder shall have the right to credit bid
24 its claim only with respect to the collateral by which such claim is secured.

25 12. Consultation Parties. The Debtor shall consult with the Pre-Petition Secured Parties and
26 counsel to any Official Committee of Unsecured Creditors (the “Committee”) appointed in the case
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1 (collectively, the “Consultation Parties”)² as set forth in these Bid Procedures; provided however, that
2 the Debtor shall not be required to consult with any Consultation Party during the Auction to the extent
3 such Consultation Party has submitted a bid or has had a bid submitted on its behalf for so long as such
4 bid remains open, if the Debtor determines in its reasonable business judgment that consulting with
5 such Consultation Party regarding any issue, selection, or determination would be likely to have a
6 chilling effect on potential bidding or otherwise be contrary to the goal of maximizing the value of the
7 Debtor’s estate. To the extent the Bid Procedures require the Debtor to consult with any Consultation
8 Party in connection with making a determination or taking an action, or in connection with any other
9 matter related to the Bid Procedures or the Auction, the Debtor shall do so in a timely manner prior to
10 making such determination or taking such action. The Consultation Parties shall be permitted and
11 authorized to provide the information available from any Qualified Bidder to their counsel, and
12 advisors on a confidential basis, and, subject to an appropriate non-disclosure agreement, the members
13 of the Official Committee of Unsecured Creditors, provided, however, that the Debtor shall retain the
14 right and power to choose the winning bidder, subject to the approval of the Bankruptcy Court and, for
15 any Sale based on a bid other than the Stalking Horse Bid, consent of the Pre-Petition ABL Agent.

16 13. Due Diligence. The Debtor will provide any potential bidder such due diligence access
17 or additional information as the Debtor deems appropriate, which will be substantially the same
18 information for all potential bidders interested in the same Assets or segment(s) but may include
19 differentiations between the diligence provided to strategic and financial bidders, as appropriate, and
20 contractual obligations to limit access to certain proprietary information. The due diligence period will
21 extend through and including the Bid Deadline. Additional due diligence will not be provided after the
22 Bid Deadline, unless otherwise deemed reasonably appropriate by the Debtor, in consultation with the
23 Consultation Parties.

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26 ² Unless and until a member of the Committee delivers a written notice to the Debtor irrevocably waiving such member’s
27 right to bid on the Assets and participate at the Auction, the Committee’s professionals and advisors (i) may not share or
28 disclose any information they receive in their capacity as Consultation Parties with such Committee member, (ii) shall exclude
such Committee member from any and all discussions within the Committee relating to the Auction and Sale of the Assets,
and (iii) shall restrict, limit and prohibit the dissemination to such member of any confidential information relating to the
Auction and Sale of the Assets.

1 14. Back-Up Bids. The Qualified Bidder(s) with the next highest or otherwise best
2 Qualified Bid or collection of Qualified Bids, as determined by the Debtor, in consultation with the
3 Consultation Parties, at the time of the Auction, will be required to serve as a back-up bidder (each, a
4 “Back-Up Bidder”) and keep its bid open and irrevocable until the earlier to occur of (i) thirty (30)
5 days after the Sale Hearing and (ii) closing on the Winning Bid with the Winning Bidder; provided,
6 however, that the Stalking Horse Bidder will only be required to serve as a Back-Up Bidder if it
7 submits a new Qualified Bid at the Auction. If the Winning Bidder fails to consummate the Sale, the
8 Debtor will be authorized and directed to consummate the Sale with the Back-Up Bidder without
9 further order of the Bankruptcy Court; provided, however, that any Sale to a Back-Up Bidder (except
10 to the extent the Stalking Horse Bidder is selected as Back-Up Bidder with the Stalking Horse Bid as
11 its Qualified Bid) shall be subject to the consent of the Pre-Petition ABL Agent.

12 15. Return of Deposits. Deposits shall be returned to each bidder not selected by the Debtor
13 as the Winning Bidder or the Back-Up Bidder no later than five (5) business days following the entry
14 of the Sale Order. The Deposit of the Back-Up Bidder shall be held by the Debtor until three (3)
15 business days after closing of the Sale to the Winning Bidder. In the event a Winning Bidder fails to
16 perform as required by the Bid Procedures or its Asset Purchase Agreement, such Winning Bidder
17 shall forfeit its Deposit without regard to the Debtor’s ultimate damages, and the Debtor’s estate shall
18 retain all other rights, remedies, claims, counterclaims, and defenses against such Winning Bidder,
19 including the right to seek equitable or injunctive relief.

20 16. Assumption and Assignment Objections. The Debtor must file a list of all executory
21 contracts that may potentially be assumed, together with proposed cure amounts, as a supplement to
22 the sale motion filed on November 18, 2019 [Dkt No. 15] by no later than November 26, 2019, which
23 shall be served on all said parties. Any counterparty to a contract identified by the Debtor in that
24 supplement must file any objection to the proposed cure amount, the proposed adequate assurance to
25 be provided, or another aspect of the assumption and assignment in writing with the Court, and serve
26 copies of such objection on the Debtor, the Consultation Parties, and the Stalking Horse Bidder by no
27 later than December 10, 2019 (six days prior to the Sale Hearing set on December 16, 2019). All such
28 objections that have not yet been resolved prior to the Sale Hearing will be resolved at the Sale

1 Hearing. Any counterparty that does not submit an objection timely will be deemed to consent to the
2 assignment and assumption of its contract to the Winning Bidder and to the proposed cure amount in
3 said supplement.

4 *****END OF ORDER*****

COURT SERVICE LIST

ECF Participants