

TRADEMARK ASSIGNMENT COVER SHEET

Electronic Version v1.1
Stylesheet Version v1.2

ETAS ID: TM501340

SUBMISSION TYPE:	NEW ASSIGNMENT		
NATURE OF CONVEYANCE:	COURT ORDER		
CONVEYING PARTY DATA			
Name	Formerly	Execution Date	Entity Type
OYO Sportstoys, Inc.		11/14/2018	Corporation:
RECEIVING PARTY DATA			
Name:	OYO TOYS, INC.		
Street Address:	108 FOREST AVE.		
City:	HUDSON		
State/Country:	MASSACHUSETTS		
Postal Code:	01749		
Entity Type:	Corporation: MASSACHUSETTS		
PROPERTY NUMBERS Total: 2			
Property Type	Number	Word Mark	
Serial Number:	85417217	OYO	
Serial Number:	86333211	HERO	
CORRESPONDENCE DATA			
Fax Number:			
<i>Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent using a fax number, if provided; if that is unsuccessful, it will be sent via US Mail.</i>			
Phone:	6177200091		
Email:	connaughton@lambertpatentlaw.com		
Correspondent Name:	David J. Connaughton, Jr.		
Address Line 1:	92 State Street		
Address Line 2:	Suite 200		
Address Line 4:	Boston, MASSACHUSETTS 02109		
NAME OF SUBMITTER:	David J. Connaughton, Jr.		
SIGNATURE:	/David J. Connaughton, Jr./		
DATE SIGNED:	12/10/2018		
Total Attachments: 31			
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UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS

In re

OYOTOYO, INC., et al.,

Debtors.

Chapter 11

Case No. 17-41261-EDK
(Jointly administered)

**ORDER ALLOWING MOTION TO COMPROMISE CONTROVERSIES AND
RESTRUCTURE ASSET SALE WITH WINNING BIDDER AND
AUTHORIZING (A) SALE OF ALL OF THE DEBTORS' ASSETS FREE AND
CLEAR OF LIENS, CLAIMS AND INTERESTS, (B) ASSUMPTION AND
ASSIGNMENT OF EXECUTORY CONTRACTS AND (C) RELATED RELIEF**

**I. RECITALS – IT IS HEREBY FOUND AND DETERMINED, AS
FOLLOWS:**

A. General Factual Background

1. Oyotoyo, Inc. (“*Oyotoyo*”) and OYO Sportstoys, Inc. (“*OYO Sports*” or “*Oyo Sportstoys*” and with Oyotoyo, the “*Debtors*”), the debtors and debtors-in-possession in the above-captioned jointly administered bankruptcy proceedings (the “*Bankruptcy Cases*”), filed the following motions (collectively, the “*Motions*”):

- a. Debtors’ Motion For (I) Order Approving Break-Up Fee, Minimum Overbids, Establishing Bidding Procedures, And Granting Related Relief, and (II) Order Approving Sale of Substantially All Assets Free and Clear of All Liens, Claims, Encumbrances and Interests and Granting Related Relief [Dkt. 81] (“Sale Motion”) on February 15, 2018; and*

b. Debtors' Motion to Assume and Assign Executory Contracts and Unexpired Leases to the Winning Bidder [Dkt. 112] ("Contracts Motion") on March 16, 2018.¹

2. Pursuant to the Sale Motion, the Debtors sought entry of an order, (i) approving the proposed break-up fee (the "**Break-Up Fee**"), (ii) approving certain proposed minimum bid increments, (iii) approving certain bidding procedures (the "**Bidding Procedures**") by which the Debtors will solicit and select the highest or otherwise best offer for the sale (the "**Sale**") of substantially all of the Debtors' assets, (iv) approving the form and manner of notice to be provided in connection with the Sale, (v) scheduling a final hearing (the "**Sale Hearing**") to approve the Sale to the winner bidder, and (vi) granting related relief. At the Sale Hearing, the Debtors requested that this Court enter an order (the "**Sale Order**"), (i) authorizing the sale of Debtors' assets free and clear of liens, pledges, security interests, charges, options, claims, encumbrances, and other interest (collectively, the "**Interests**") to the Winning Bidder (as defined below), (ii) authorizing the assumption and assignment of certain executory contracts and unexpired leases, if any, and (iii) granting related relief.

3. In the Contracts Motion, the Debtors sought entry of an order authorizing the Debtors to assume and assign certain executory contracts and

¹ Unless otherwise indicated, capitalized terms have the meanings ascribed to them in the Sale Motion, the Amended Sale Motion and the Contracts Motion, respectively.

unexpired leases identified by the Winning Bidder (the “*Designated Contracts*”) in connection with the Sale.

4. On March 5, 2018, this Court entered its “*Order Approving Break-Up Fee, Minimum Overbids, Establishing Bidding Procedures, and Granting Related Relief, and (II) Order Approving Sale of Substantially All Assets Free and Clear of All Liens, Claims, Encumbrances and Interests and Granting Related Relief*” [Dkt. 108] (“*Bidding Procedures Order*”).

B. The Sale Process

5. From the multiple certificates of service and declarations of service filed on the docket of these jointly administered cases, it appears that notice of the Motions, the Sale, the proposed assumption and assignment of the Designated Contracts, and the hearings thereon (including, without limitation, the Sale Hearing), and the opportunity for interested persons or entities to submit bids for the Debtors’ assets in response to the “stalking horse” offer from Imports Dragon was due, adequate and proper, and in accordance with the Orders of this Court and applicable statutes and rules, and no further or other notice appears to be necessary, desirable or required. Service and notice of the Motions, the Sale Hearing, and the right to submit bids complied with § 102(1) of the Bankruptcy Code and Bankruptcy Rules 2002, 6004, 6006, and 9006 and the orders of this Court. No other or further notice is required. The notice provided is appropriate under the circumstances and was reasonably calculated to provide actual notice of the Motions and Sale Hearing to all interested and affected persons, entities, and other parties in interest.

6. A reasonable opportunity has been afforded to any interested party to make a higher or otherwise better offer to purchase the Purchased Assets and to assert an objection to or be heard regarding the relief requested in the Sale Motion.

7. The Debtors have marketed the Purchased Assets and conducted the sale process in compliance with, and has complied with all of their obligations under, the Bidding Procedures Order with respect to the sale process. The Debtors have properly exercised their reasonable business judgment in determining to sell substantially all of the Debtors' assets and in determining that the Winning Bidder's offer represents the highest and best offer for the Purchased Assets.

8. The approval of the Sale Motion was in the best interests of the Debtors' estates, the Debtors' creditors, and other parties in interest in that:

a. The Binding LOI was negotiated, proposed, and entered into in good faith, from arm's length bargaining positions by the Debtors and the Winning Bidder (or its affiliate OYO Toys, Inc.);

b. The Debtors had the opportunity to contract with any other party interested in purchasing the Purchased Assets to be sold pursuant to the terms similar to the approved Binding LOI;

c. The Bid Procedures approved in connection with the sale of the Purchased Assets enabled the Debtors to solicit higher and better offers for the Purchased Assets, and provided for adequate notice and an opportunity to be heard in connection with the sale of the Purchased Assets;

d. The Buyers each are third-party purchasers unrelated to the Debtors, except after the closing of the Amended Sale (hereinafter, the “**Closing**”), the Buyers (defined below) intend to employ the Debtors’ current senior management (including the Debtors’ Chief Executive Officer Thomas Skripps and Martin Hanssmann) and other employees of the Debtors; and

e. The purchase price is fair and reasonably equivalent value for the purchase of the Purchased Assets.

9. The purchase and sale transactions contemplated in the Binding LOI and approved in this Sale Order:

a. do not constitute a merger of consolidation of the Debtor, its estate, the Buyer, or any of them;

b. are not fraudulent or collusive attempts by any entity to avoid the Debtors’ liabilities or the claims against the Debtors’ estate; and

c. do not result in the total or virtual extinguishment of tort remedies against the Debtor and its bankruptcy estate.

10. Neither of the Buyers is a mere extension of the Debtors, their estates, or any of them.

C. The Sale and Objections to the Sale:

11. On March 16, 2018, the Debtors filed their “*Notice of Winning Bidder*” [Dkt. 111], identifying Nine Associates, LLC as the Winning Bidder (the “**Winning Bidder**” and with its affiliate, Oyo Toys, Inc., the “**Buyers**” and individually either of them, a “**Buyer**”), after completion of the sale process described in the Bidding Procedures Order and the Bid Procedures.

12. The following objections (collectively, the “**Sale Objections**”) were filed to the Sale Motion:

- a. *Major League Baseball Properties, Inc.’s Limited Objection to Debtors’ Motion for (I) Order Approving Break-Up Fee, Minimum Overbids, Establishing Bidding Procedures, and Granting Related Relief, and (II) Order Approving Sale of Substantially All Assets Free and Clear of All Liens, Claims, Encumbrances and Interests and Granting Related Relief [Dkt. 93] (“MLBP Sale Objection”)* filed by Major League Baseball Properties, Inc. (“**MLBP**”);
- b. *Limited Objection to Motion to Sell [Dkt. 94]* filed by Mars 2000, Inc. (“**Mars**”);
- c. *Objection [Dkt. 124] (“NFLP Objection”)* filed by NFL Properties LLC (“**NFLP**”).

13. The following objections (collectively, the “**Contract Objections**”) were asserted to the Contracts Motion:

- a. NFLP Objection;
- b. *Limited Brief/Memorandum Objection and Reservation of Rights of Google LLC f/k/a Google Inc. [Dkt. 126] (“Google Objection”)*.
- c. *Major League Baseball Properties, Inc.’s Limited Objection and Reservation off Rights to (A) Debtors’ Motion to Assume and Assign Executory Contracts and Unexpired Leases to the Winning Bidder, and (B) Debtors’ Motion to Compromise Controversies and Restructure Asset Sale with Winning Bidder [Dkt No. 191] (the “MLBP Supplemental Objection”) and, together with the MLBP Sale Objection, the “MLBP Objections”)*.

D. OYO Sports’ Capital Structure

14. OYO Sports’s capital structure is relatively straightforward. Oyotoyo has no secured creditors. There are three entities asserting liens and security interests in OYO Sports’ assets, as follows:

- a. Liquid Capital Exchange, Inc.: OYO Sports has sold certain of its accounts receivable to its factor, (Liquid Capital Exchange, Inc., hereinafter “**LC**”). This Court previously entered orders authorizing

and approving the postpetition factoring of OYO Sports' accounts receivable to LC (*See*, Dkt. No's 33, 74). LC claims it has a security interest and postpetition lien in substantially all of OYO Sports' assets to secure amounts owed to it under the Agreement. LC claims it holds approximately 15% of the face value of the purchased receivable in a reserve, pending collection of the receivable. LC holds this reserve to protect itself in the event a customer fails to pay a factored receivable timely or in full. LC stopped factoring OYO Sports' receivables in September 2018 and continues to collect the proceeds of receivables it purchased previously. As of November 1, 2018, LC is owed approximately \$162,000 associated with its purchase of approximately \$245,000 in accounts receivable, which LC is currently collecting. Thus, the Debtors believe LC is oversecured, and are entitled to a refund from LC of approximately \$83,000 of excess collections before allowable deductions. LC contends that there is significant risk its obligation will not be fully satisfied through the collection of purchased receivables, including because certain account debtors expect OYO Sports to be an ongoing supplier and if OYO Sports ceases to operate, those account debtors will not pay outstanding receivables in full. In the event that LC cannot collect an amount sufficient to satisfy the amounts it is owed, it has recourse to the Debtors for such deficiency.

- b. Martin Hanssmann: Hanssmann is an officer and creditor of OYO Sports and a shareholder of Oyotoyo. Prior to the Petition Date, Hanssmann made a secured loan to OYO Sports of approximately \$125,000, secured by a security interest in substantially all of OYO Sportstoys' assets, junior only to the security interest granted to LC. The Court authorized Hanssmann to advance funds and make purchases for the Debtors postpetition, and for the Debtors to repay Hanssmann as administrative expenses. Currently, Hanssmann asserts he has a balance of approximately \$621,000 of unpaid postpetition advances he has made for the benefit of the Debtors.
- c. Mars 2000, Inc.: Mars is a corporation with operations in Rhode Island. Mars is a supplier of parts to OYO Sports and manufactured and uses certain molds for the production of parts ordered by OYO Sports (the "**Molds**"). A bona fide dispute exists between Mars and the Debtors regarding the claims and liens asserted by Mars. Mars claims it is owed \$131,236.11, and that this claim is secured on the Molds in Mars' possession by a Rhode Island statutory lien pursuant to RI Gen Law §34-30.1-1, which provides "molders" with a lien "on all dies, molds, forms or patterns in their possession belonging to a customer, for the balance due them from such customer for any manufacturing or fabrication work and the value of all material

related to such work.” OYO Sports contends that Mars’ claim is not greater than \$53,000 (and may be less). OYO Sports contends that any claim of Mars is at most a general unsecured claim, since any amounts owed to Mars arise from a contractual agreement, and not for the balance due “for any manufacturing or fabrication work” or for the value of materials related to such work. Mars reported in open Court that it withdraws its objection to the Amended Sale Motion. Additionally, the Debtors and Mars reported that subject to allowance of a contemplated motion to compromise controversies (the “**Mars Settlement Motion**”), (i) the Buyers shall pay to Mars, upon entry of an order allowing the Mars Settlement Motion, the sum of \$30,000 in full and complete settlement and satisfaction of all claims and Liens of Mars on the Molds, (ii) Mars shall ship at the Buyers’ sole cost and expense (including costs and expenses for tariffs and other applicable expenses, all such expenses the “**Mars Expenses**”) all Molds in the actual and constructive possession, custody or control of Mars in the United States of America or in China pursuant to delivery instructions provided by the Buyers, (iii) Mars may request prepayment of all reasonable Mars Expenses prior to shipping any such Molds, and (iv) Mars and the Debtors will be deemed to have exchanged mutual releases as set forth in the proposed order allowing the Mars Settlement Motion the parties intend to submit to the Court for consideration. In the event the Court does not approve the Mars Settlement Motion, the Debtors and Mars reserve their respective rights to the amount, allowance and disallowance of any claim held by Mars and the extent, priority and validity of Mars’ alleged statutory lien on the Molds.

E. Approval of Hanssmann Postpetition Credit

15. By order dated September 21, 2017 [Dkt. 74] (“**Postpetition Financing Order**”) (at section AA, at 10), this Court, inter alia, authorized OYO Sports to incur postpetition credit in the form of reimbursement obligations to Hanssmann on account of (i) postpetition cash advances from Hanssmann and (ii) for purchases made by Hanssmann on his personal credit card for the benefit of OYO Sports pursuant to the prepetition loan agreement between Hanssmann and OYO Sports (collectively, the “**Postpetition Credit**”). The Court awarded Hanssmann an administrative expense under 11 U.S.C. §503(b)(1) and priority status under

11 U.S.C. §507(a)(2) for such Postpetition Credit, and authorized OYO Sports to make payments to Hanssmann on account of the Postpetition Credit in such amounts and at such times as the Debtors determine in the exercise of their reasonable business judgment and consistently with the Debtors' fiduciary obligations to their bankruptcy estates.

16. Pursuant to the Postpetition Financing Order, OYO Sports asserts that Hanssmann provided critical financing to OYO Sports, and OYO Sports made payments to Hanssmann in accordance with the order. OYO Sports asserts that the amounts advanced by Hanssmann and the amounts OYO Sports paid to Hanssmann pursuant to the Postpetition Financing Order as of November 9, 2018, are as set forth in that certain exhibit [Dkt. 197] filed in open Court on November 9, 2018.

17. As noted above, the balance of the Postpetition Credit owed to Hanssmann incurred under the Postpetition Financing Order is alleged to be \$644,194.55. Hanssmann asserts he holds a prepetition secured claim of approximately \$125,000.00 (excluding interest). Thus, Hanssmann presently claims he is owed the aggregate amount of \$769,694.55 for his administrative expense and for his secured and priority claims.

18. The Debtors aver that in order to support the Debtors' ongoing, postpetition operations, the Buyers have loaned \$565,446.95 to Hanssmann who, in turn, advanced the money to OYO Sports (as part of the \$1,206,094.55 of advances described above) pursuant to the Postpetition Financing Order.

F. The Approved Asset Sale

19. By order dated April 12, 2018 [Dkt. 147] (the “***Sale Order***”), this Court authorized the Debtors to sell certain assets, described as the “Purchased Assets” to the Buyers. The Purchased Assets expressly excluded certain inventory of the Debtors that incorporates any intellectual property that is owned or controlled by MLBP as more particularly described in the MLBP Objections (hereinafter, the “***MLBP Licensed Inventory***”) or any intellectual property that is owned or controlled by NFLP as more particularly described in the NFLP Objection (hereinafter, the “***NFLP Licensed Inventory***”). The terms of the approved sale required the Buyers to pay to the Debtors the sum of \$600,000, and pay cure costs on all assumed executory contracts, including sports licenses, designated by the Buyers. The Buyers represented to the Debtors that they would have approximately \$2 million in equity financing available to close on the sale, and that they intended to close on the sale by April 20, 2018. The Buyers paid an earnest money deposit of \$60,000 with respect to the sale.

20. As the Debtors described in a disclosure supplement filed at the Court’s direction [Dkt. 100-1], the Debtors anticipated the sale transactions would produce sufficient funds (i) to satisfy all allowed secured claims, (ii) satisfy and pay all postpetition accounts payable, (iii) satisfy and pay all postpetition financing provided by Hanssmann pursuant to the Financing Order, and (iv) satisfy certain “cure” claims held by counter-parties to the Designated Contracts (defined below). The Debtors projected that \$140,000 would be available to fund a creditors trust for unsecured creditors under a contemplated chapter 11 plan.

21. For various reasons, the Buyers were unable to close and consummate the sale transaction. The Debtors have continued to operate their businesses as debtors in possession and engaged in continuing discussions with the Buyers regarding possible alternative means by which to consummate the sale, during which time the Debtors contend the Buyers continued to lend additional funds to Hanssmann to support the Debtors' ongoing operations. Ultimately, the Buyers deposited an additional \$40,000 as earnest money, for a total deposit of \$100,000 (the "Deposit"), which counsel for OYO Toys is holding in his IOLTA client's funds account.

22. The Debtors believe the Buyers have defaulted and are liable to them for damages. The Debtors believe they have suffered significant damages as a result of this default, including the need to increase their reliance on postpetition advances from Hanssmann, and the concomitant increase in the amount of Hanssmann's postpetition administrative expense.

G. The Amended Sale

23. Ultimately, the Debtors aver that after much discussion, certain parties reached agreement on the terms of a restructured sale that achieves the foregoing objectives. On October 19, 2018, the Debtors filed their "*Motion to Compromise Controversies and Restructure Asset Sale with Winning Bidder*" [Dkt. 181] ("***Amended Sale Motion***") The terms of the proposed restructuring are described in the Term Sheet attached as Exhibit A [Dkt. 181-1] to the Amended Sale Motion (as modified by this Order (the "***Amended Sale Order***") and without section VII, which, as described below, has been deleted from the Term Sheet by agreement of the Debtors and the Buyers, the "***Term Sheet***"). Pursuant to the Term Sheet, as modified

by this Amended Sale Order, the Debtors seek authority to compromise all matters relating to the Buyers' failure to consummate the original sale by entering into the transactions described therein. In summary, the Term Sheet, as modified by this Amended Sale Order, alters the original sale in the following manner (the "**Amended Sale**") and seeks authority to compromise the Controversies (as defined below), assume and assign certain intellectual property licenses with MLBP and NFLP that were excluded from the original Sale Order, and to sell certain licensed inventory that was excluded from the definition of "Purchased Assets" under the original Sale Order, in the following manner:

- a. The Purchased Assets will now include substantially all non-litigation assets, including rights to any cash payable to the Debtors by LC after Debtors' obligations to LC are satisfied in full.
- b. MLBP and Oyotoyo are parties to that certain License Agreement No. ML-4708B entered into by and between MLBP and the Debtors (the "MLBP Domestic License") (the "**MLBP Domestic License**") that is an executory contract within the meaning of section 365 of the Bankruptcy Code. Pursuant to agreement between MLBP, the Debtors and Buyers, the Purchased Assets shall now include the MLBP Licensed Inventory (defined below), which shall be subject to the MLBP Domestic License, as amended pursuant to that 1st Amendment to License Agreement No. ML-4708B executed by the Buyers on November 8, 2018 (the "**MLBP Domestic License Amendment**"), that certain Change in Control and Assignment Agreement of even date executed by Buyers (the "**COC Agreement**"), and such other documents as may be required by MLBP to be executed by Buyers including any personal guaranties, letters of credit, escrow instructions, or such other documents as may be requested by MLBP ("**Additional MLBP License Documents**") (the MLBP Domestic License, the MLBP Domestic License Amendment, the COC Agreement and the Additional MLBP License Documents, shall collectively be referred to herein as the "**MLBP Amended License Agreement**"); provided, however, that Buyers shall not be entitled to sell, transfer, convey or otherwise dispose of the MLBP Licensed Inventory in any manner that is inconsistent with the MLBP Amended License Agreement. MLBP

agrees to the assumption and assignment of the MLBP Domestic License, as modified by the MLPB Amended License Agreement, the COC Agreement, and the Additional MLBP License Documents, to the Buyers pursuant to section 365 of the Bankruptcy Code, and acknowledge and agree that (X) the Buyers (i) have cured, or provided adequate assurance of prompt cure, of all defaults under the MLBP Amended License Agreement, as more particularly set forth in 11 U.S.C. §365(b)(1)(A), (ii) compensated, or provides adequate assurance that MLBP will promptly be compensated, for any actual pecuniary loss of MLBP resulting from all such defaults, pursuant to 11 U.S.C. §365(b)(1)(B), and (iii) provided adequate assurance of future performance under the MLBP Amended License Agreement by the Buyers pursuant to 11 U.S.C. §§365(b)(1)(C) and 365(f)(2)(B); and (Y) upon entry of this Amended Sale Order and the Contracts Order, which shall become final orders, and the Buyers' payment of the MLBP Cure Amount (defined below) in accordance with the terms of the MLBP Amended License Agreement, MLBP's right or claim to any administrative expense of any kind or character in either of the Debtors' bankruptcy cases shall be released.

- c. NFLP and Oyotoyo are parties to certain license agreements (the "***NFLP Executory Licenses***") that are executory contracts within the meaning of section 365 of the Bankruptcy Code. Pursuant to agreement between NFLP, upon payment by the Buyer of \$214,326.15 no later than November 30, 2018 (and subject to the entry of this Amended Sale Order and the Contracts Order (defined below) on or before November 30, 2018) (collectively, the "***NFLP Conditions***"), the Purchased Assets shall now include the NFLP Licensed Inventory, which is subject to that certain "***Amended and Restated License Agreement Program: Primary***" dated November 9, 2018 for Program 43099, and the "***Amended and Restated License Agreement Program: FGA***" dated November 9, 2018 for Program Number 51433, both between Oyo Toys and NFLP, and such other documents as may be required by MLBP to be executed by Buyers including any personal guaranties, letters of credit, escrow instructions, or such other documents as may be requested by NFLP ("***Additional NFLP License Documents***") (collectively, the "***NFLP Amended License Agreement***"); provided, however, that Buyer shall not be entitled to sell, transfer, convey or otherwise dispose of the NFLP Licensed Inventory in any manner that is inconsistent with the NFLP Amended License Agreement. NFLP agrees to the assumption and assignment of the NFLP Executory Licenses, as modified by the NFLP Amended License Agreement, to the Buyers pursuant to section 365 of the Bankruptcy Code, subject

to and upon the occurrence of the NFLP Conditions. NFLP agrees that upon the occurrence of the NFLP Conditions, (X) the Buyers (i) have cured, or provided adequate assurance of prompt cure, of all defaults under the NFLP Executory Licenses, as more particularly set forth in 11 U.S.C. §365(b)(1)(A), (ii) compensated, or provides adequate assurance that NFLP will promptly be compensated, for any actual pecuniary loss of NFLP resulting from all such defaults, pursuant to 11 U.S.C. §365(b)(1)(B), and (iii) provided adequate assurance of future performance under the NFLP Executory Licenses by the Buyers pursuant to 11 U.S.C. §§365(b)(1)(C) and 365(f)(2)(B); and (Y) NFLP has no right or claim to any administrative expense of any kind or character in either of the Debtors' bankruptcy cases.

- d. The Buyers will assume, and indemnify the Debtors for, all claims other than general unsecured claims and administrative expenses for payment of professional fees, which includes the Buyers' assumption of (i) all secured claims, (ii) all administrative expenses (other than for professional fees), and (iii) all priority claims (if any). All rights of creditors and parties in interest to assert an administrative claim and to recover any amounts allowed as an administrative claim from the Buyers are expressly preserved including, without limitation, the right to file requests for allowance and payment of administrative expenses, to adjudicate such expenses and to payment of such expenses from the Buyer allowed by the Court.
- e. The Buyers will assume and indemnify the Debtors for all postpetition administrative and priority claims of Hanssmann, and, in addition, Hanssmann's prepetition secured claim. Hanssmann's postpetition claim for Postpetition Credit originally was estimated to be approximately \$230,000 at the time of Closing. Hanssmann's Postpetition Credit, which has been critical to the continued operations of the Debtors, now exceeds \$620,000. Moreover, Hanssmann's prepetition secured claim is approximately \$125,000. Thus, under the Amended Sale, the Buyers are relieving the Debtors and their estates of approximately \$750,000 of secured, administrative and priority claims held by Hanssmann.
- f. The Buyers will assume and indemnify all other secured claims and alleged secured claims, including, without limitation, the alleged, disputed secured claim asserted by Mars. As noted above, Mars asserts a statutory lien under Rhode Island law. The Debtors dispute the validity of the alleged statutory lien. Nevertheless,

under the Amended Sale, the Buyers will assume responsibility for satisfaction of the Mars lien and claim.

- g. The provisions of Section VII of the Term Sheet that are redacted in Docket Number 181-1 that relate to potential litigation among the Debtors and The Bridge Direct, Inc. and its affiliate The Bridge Direct (HK) Ltd., a Hong Kong company (collectively, "**Bridge**") are hereby deleted, null, void and of no effect, and shall not constitute any portion of the Term Sheet. The Debtors represented in open Court that it is the intention of the parties that the Buyers shall share in neither the costs of prosecuting litigation with the Bridge, any recovery from the Bridge or any potential liability of the Debtors to the Bridge determined in such litigation.
- h. Upon the Effective Date of the settlement, the Debtors will release all claims against the Buyers, except for the Buyers' obligations under this Term Sheet.

24. The following objections were asserted to the Amended Sale Motion:

- a. LC raised an informal objection, which was resolved through revisions to this Amended Sale Order;
- b. Mars 2000, Inc.'s Limited Objection [to the Amended Sale Motion] [Dkt. 190] ("**Mars Objection**");
- c. Major League Baseball Properties, Inc.'s Limited Objection and Reservation of Rights to [Amended Sale Motion] [Dkt. 191] (*the "MLBP Supplemental Objection"*), which incorporates by reference the same objections as set forth in the MLBP Sale Objection;
- d. The MLBP Supplemental Objection [Dkt No. 191]
- e. *United States Trustee's Limited Objection to [the Amended Sale Motion] [Dkt. 193] (the "UST Objection"); and*

f. The informal objection by NFLP (the “*NFLP Supplemental Objection*”), which incorporates by reference the same objections as set forth in the NFLP Objection.

H. Findings Regarding Proposed Compromise of Controversies

25. The Debtors seek authority to compromise all actual and potential controversies with the Buyers arising from or related to the Binding LOI and the Buyers’ advances to Hanssmann as described above (the “*Controversies*”), by providing the Buyers with a general release in exchange for the Buyers’ performance of the transactions described in the Term Sheet.

26. Based on the exhibit and the arguments of counsel proffered at a hearing held on November 9, 2018 (the “*Hearing*”) and the entire record of this case, the Debtors aver that it is uncertain whether the Debtors are likely to succeed on the merits of any litigation regarding the Controversies. Although it appears that the Buyers likely have defaulted on their obligations under the Binding LOI, the Debtors believe that the terms of the Amended Sale will confer a net economic benefit to the estates, and the Buyers have preserved the Debtors’ going concern value, which has benefitted all of their creditors, by ensuring Hanssmann had sufficient funds at his disposal to provide the critical financing contemplated in the Postpetition Financing Order. As such, the Court acknowledges that any such litigation may be uncertain, and the Debtors may have difficulty establishing damages for which the Buyers may be liable.

27. The Court finds that the Debtors may encounter difficulties in the matter of collection from the Buyers. The Buyers' failure to close the original sale transaction provides the Debtors with reasonable grounds to question whether the Buyers would be able to satisfy any judgment entered against them.

28. The Court finds that litigation against the Buyers is of medium complexity, but any such litigation may cause the Debtors, their creditors and estates, to suffer from extensive delays while the litigation proceeds -- especially when the Buyers appear to be ready and able to consummate the Amended Sale. The Debtors lack sufficient funds to continue operations during such litigation, likely resulting in the conversion of this case to a case under chapter 7. Moreover, the Debtors appear to lack sufficient funds to pay the costs and expenses of such litigation.

29. The Court finds that the paramount interests of creditors support approval of the proposed compromise. The Debtors assert that creditors are likely to receive a dividend under a chapter 11 plan if the Court approves the proposed compromise and, in turn, the Amended Sale. In contrast, creditors are unlikely to receive any dividend upon the likely conversion of these cases to cases under chapter 7 of the Bankruptcy Code that will occur if the Court does not approve the proposed compromise. This factor – the paramount interests of creditors – strongly weighs in favor of approving the compromise. Jeffrey v. Desmond, 70 F.3d 183, 185 (1st Cir. 1995), Matter of Texas Extrusion Corp., 844 F.2d 1142, 1159 (5th Cir. 1988) (“It must be remembered that in the bankruptcy context, the interests of creditors [and] not the [Debtors are] paramount”). This finding of fact and conclusion of law is

reinforced by the prospect that the Amended Sale will provide a net economic benefit to the estates, and their creditors appear likely to receive at least the substantially the same distribution they would have received if the Sale had been consummated on its original terms. In addition, the Buyers have agreed to assume, and indemnify the Debtors for, all claims other than general unsecured claims and administrative expenses for payment of professional fees, which includes the Buyers' assumption of (i) all secured claims, (ii) all administrative expenses (other than for professional fees), and (iii) all priority claims (if any). All rights of creditors and parties in interest to assert an administrative claim are expressly preserved including, without limitation, the right to file requests for allowance and payment of administrative expenses, to adjudicate such expenses, to enforce the Buyers' indemnity of the Debtors and assumption all liability for administrative expenses asserted or allowed against the Debtors and to payment of such expenses allowed by the Court.

30. The Court finds the proposed compromise of Controversies is fair and equitable and does not fall below the lowest point in the range of reasonableness.

I. Findings Regarding Amended Sale

31. The Amended Sale is a proposed sale of the Purchased Assets to the Buyers not in the ordinary course of business of the Debtors.

32. The Amended Sale represents the use of reasonable business judgment on the part of the Debtors.

33. The Sale of the Purchased Assets and other transactions contemplated in the Binding LOI and Term Sheet are being approved and consummated promptly in order to preserve the value of the Purchased Assets.

34. The Court does not make a finding as to whether the Amended Sale was made in good faith within the meaning of section 363(m) of the Bankruptcy Code. The Debtors may request that the Court make a good faith finding under section 363(m) of the Bankruptcy Code upon request to this Court, and the Court, after notice and a hearing, will hear and determine any such request and may make such good faith findings, if any, as the Court determines are appropriate.

35. Neither Buyer would have entered into nor consummated the transactions contemplated in the Term Sheet if: (a) the sale of the Purchased Assets was not free and clear of all claims, liens, encumbrances and interests, other than as set forth in the Term Sheet, and (b) the Buyers would be liable for any of the liens claims, encumbrances or interests other than as set forth in the Term Sheet.

36. The consummation of the Amended Sale does not subject the Buyers to any debts, liabilities, commitments, responsibilities, or claims of any kind against the Debtors' estate, whether known or unknown, contingent, or otherwise, whether existing as of the date of this Amended Sale Order or arising thereafter, except as set forth in the Term Sheet and this Amended Sale Order.

37. The Debtors may sell the Purchased Assets free and clear of all liens, claims, encumbrances, and interests, except as set forth in the Term Sheet and this Amended Sale Order, because, in each instance, one or more of the standards set forth in subsections (1) through (5) of section 363(f) of the Bankruptcy Code has been satisfied. Those holders of "Liens" (as defined below) (the "***Secured Parties***"), who did not object, or who withdrew their objections, to the sale or the Amended Sale

Motion are deemed to have consented pursuant to section 363(f)(2) of the Bankruptcy Code. From and after the Closing, the Liens of all Secured Parties are provided with adequate protection within the meaning of section 363(e) of the Bankruptcy Code by virtue of the provisions of this Amended Sale Order.

38. All other relevant findings made by the Court at any time are incorporated herein by reference.

J. Jurisdiction and Venue

39. The Court has jurisdiction to grant the relief requested in the Motions pursuant to 28 U.S.C. §§ 157 and 1334, and the Motions constitute a core proceeding within the meaning of 28 U.S.C. § 157(b).

40. Venue of this case in this District is proper, pursuant to 28 U.S.C. §§ 1408 and 1409.

41. The statutory predicates for the relief requested in the Amended Sale Motion includes sections 105(a), 363 and 365 of the Bankruptcy Code, Rules 2002, 6004, 6006, 9014 and 9019 of the Federal Rules of Bankruptcy Procedure (“***Bankruptcy Rules***”), and MLBR 6004-1 and 6006-1.

42. The findings and conclusions set forth in this Amended Sale Order constitute the Court’s findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014.

43. To the extent any of the findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the conclusions of law constitute findings of fact, they are adopted as such.

II. ORDER: NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

44. The Amended Sale Motion is **ALLOWED** on the terms and conditions set forth in this Amended Sale Order. Upon entry of this Amended Sale Order and Contracts Order, all objections to allowance of the Amended Sale Motion and the Contracts Motion other than the UST Objection (including, without limitation, the MLBP Objections, the MLBP Supplemental Objection, the NFLP Objection, the NFLP Supplemental Objection, the Mars Objection and all informal objections of Oracle America, Inc. a/k/a NetSuite, Inc. ("**Oracle**") and LC) are all withdrawn and settled. All objections to the Amended Sale Motion not withdrawn or settled, including the UST Objection, are overruled in their entirety.

45. The proposed compromise of Controversies is **APPROVED**. The Debtors shall be and hereby are authorized and empowered to compromise the controversies with the Buyers described in this Amended Sale Motion on the terms and conditions described in this Amended Sale Motion.

46. The Term Sheet shall be deemed amended to provide that the Holdback shall be equal to \$185,000, calculated as the sum of \$160,000 plus \$25,000, the amount necessary to pay any Break-Up Fee to Imports Dragon. As amended, and except for section VII of the Term Sheet relating to the potential Bridge litigation that has been deleted from the Term Sheet by agreement of the Debtors and the Buyers, the Term Sheet is hereby approved as modified by this Amended Sale Order. Pursuant to section 363(b) of the Bankruptcy Code, subject to ¶48 below, the Debtors are hereby authorized to: (a) sell the Purchased Assets (as defined in the Term Sheet and in this Amended Sale Order) to the Buyers, on the terms and subject to the

conditions set forth in the Term Sheet and this Amended Sale Order, (b) execute any and all additional conveyances, assignments, agreements, instruments, amendments, schedules and other documents, and (c) do all other things and take all further actions as may be necessary or appropriate for the purpose of consummating the Amended Sale.

47. The transfer of the Purchased Assets (a) shall constitute legal, valid, and effective transfers of property of the Debtors' estate to the Buyer, and (b) except for the Molds, shall vest in Oyo Toys, Inc. the Debtors' right, title, and interest in the Purchased Assets free and clear of all liens, claims, encumbrances and interests other than as set forth in the Term Sheet. The Amended Sale shall vest title to the Molds in Oyo Toys, Inc. but shall not vest title free and clear of the alleged statutory lien of Mars on the Molds, which shall remain on the Molds, pending further order of this Court.

48. Notwithstanding anything to the contrary in the Sale Motion, the Binding LOI, and the Term Sheet, the Debtors shall not sell at the Amended Sale any personally identifiable information that the privacy policy at www.oyosports.com does not permit the Debtors to sell. The Debtors shall remove any such information from any equipment or computers on which such information is stored prior to transferring such equipment and computers to the Buyers.

49. That certain *NetSuite Subscription Services Agreement*, effective as of September 9, 2011, and *Renewal Order Form Nos. 289529 and 465076* (the "**Oracle Contract**") between Oyo Sportstoys and Oracle shall be and hereby is rejected

pursuant to section 365 of the Bankruptcy Code. The rights of Oracle related to administrative expenses, including, without limitation, the right to file requests for allowance and payment of administrative expenses, to adjudicate such expenses, to payment of such expenses allowed by the Court and the Debtors' right to enforce the Buyers' assumption of and indemnity for such administrative expenses, are hereby preserved.

50. The Debtors shall be authorized and empowered to assume and assign the MLBP Domestic License Agreement, as amended by the MLBP Domestic License Amendment, COC Agreement, and the Additional MLBP License Documents, subject to entry of a separate order allowing the Contracts Motion (the "**Contracts Order**"), which Contracts Order shall be entered forthwith, and shall be and hereby is incorporated herein by this reference as though fully set forth in this Amended Sale Order). The MLBP Amended License Agreement shall be included as a "Designated Contract." Consistent with this Amended Sale Order, the Contracts Order shall provide that pursuant to Section 365(b)(1)(A) of the Bankruptcy Code, the Buyers shall pay MLBP a "cure" amount of \$157,817.06 (the "**MLBP Cure Amount**") on or before December 1, 2018 (the "**MLBP Cure Deadline**"). The Buyers' obligation to pay the MLBP Cure Amount shall be in addition to any other amounts due or that will become due pursuant to the terms of the MLBP Amended License Agreement as more particularly described in the payment schedule set forth in Paragraph H of the MLBP Domestic License Amendment. In the event that Buyers do not pay the MLBP Cure Amount by the MLBP Cure Deadline or execute the Additional MLBP License

Documents contemplated under the MLBP Amended License Agreement, the Buyers shall be in material breach of the MLBP Amended License Agreement, and all amounts due thereunder shall be automatically accelerated, due and payable without further notice to the Buyers. MLBP shall be entitled to enforce the terms of the MLBP Amended License Agreement against the Buyers, and to exercise all of its rights, remedies and claims against Buyers and any third parties without further order of the Court. Exhibit A to the Sale Order shall be and hereby is amended to include the MLBP Amended License Agreement as a “Designated Contract” and the MLBP Cure Amount shall be and hereby is specified therein.

51. The Debtors shall be authorized and empowered to assume and assign the NFLP Executory Licenses, as amended by the NFLP Amended License Agreement, upon the occurrence and satisfaction of the NFLP Conditions, subject to entry of the Contracts Order, which Contracts Order shall enter forthwith). The NFLP Amended License Agreement shall be included as a “Designated Contract.” Consistently with this Amended Sale Order, the Contracts Order shall provide that pursuant to Section 365(b)(1)(A) of the Bankruptcy Code, the Buyers shall pay NFLP a “cure” amount of \$214,326.15 (the “**NFLP Cure Amount**”) on or before November 30, 2018 (the “**NFLP Cure Deadline**”). The Buyers’ obligation to pay the NFLP Cure Amount shall be in addition to any other amounts due or that will become due pursuant to the terms of the NFLP Amended License Agreement. In the event that Buyers do not pay the NFLP Cure Amount by the NFLP Cure Deadline and otherwise satisfy the NFLP Conditions, (i) the NFLP Executory Licenses shall not be deemed

to be assumed and assigned to the Buyers, and (ii) the NFLP Amended License Agreement shall be deemed null and void *ab initio* NFLP shall be entitled to enforce the terms of the NFLP Amended License Agreement against the Buyers, and to exercise all of its rights, remedies and claims against Buyers and any third parties without further order of the Court. Exhibit A to the Sale Order shall be and hereby is amended to include the NFLP Amended License Agreement as a “Designated Contract” and the NFLP Cure Amount shall be and hereby is specified therein.

52. Pursuant to the Contracts Order, the Debtors shall be authorized and empowered to assume and assign the remaining Designated Contracts (other than the licenses between and among Oyotoyo and NFLP (hereinafter, the “***NFLP License***”) pursuant to section 365 of the Bankruptcy Code.

53. The Purchased Assets other than the Molds shall be sold pursuant to section 363 of the Bankruptcy Code free and clear of all liens, claims, encumbrances and interests (“***Liens***”) except as set forth in the Term Sheet and this Amended Sale Order. Without limiting the generality of the immediately preceding sentence, no Liens shall attach (i) to any funds held or to be held in the Lockbox pursuant to the Term Sheet and this Amended Sale Order that constitute the Holdback and the UST Fee Amounts (as defined in the Term Sheet), and (ii) to the Deposit (as defined in the Term Sheet), *and provided further, however*, (x) Hanssmann shall be deemed to have released, waived and forever discharged the Debtors and their estates of and from any and all liability for or on account of any claims, Liens, secured claims, priority claims, Interests and administrative expenses of any kind upon the Closing, and shall

look solely to the Buyers for satisfaction of any and all such Liens, Interests, claims and administrative expenses, (y)the Lien of LC shall also attach to the Deposit and the Holdback up to the amount of \$100,000, and (z) the alleged Lien of Mars shall remain on the Molds with the same extent, priority and validity as such Liens enjoyed, if any, prior to the entry of this Amended Sale Order. This Amended Sale Order is and shall be effective as a determination that, except as set forth in the Term Sheet and in this Amended Sale Order, from and after the Closing, all Liens existing on the Purchased Assets prior to the Closing other than the alleged Mars Lien on the Molds have been unconditionally released from the Purchased Assets and that all such Liens have been provided with adequate protection under section 363(e) of the Bankruptcy Code. Following the Closing, except as set forth in the Term Sheet and this Amended Sale Order, no holder of a Lien or claim against the Debtors, the Debtors' estate or in the Purchased Assets shall interfere with Oyo Toys's title to or the Buyers' use and enjoyment of the Purchased Assets based on or related to such Lien claim.

54. Nothing in this Amended Sale Order shall modify or limit the rights of LC under the Agreement (as defined by the Final Order Approving Post-Petition Factoring Agreement [Dkt. No. 74]) including, but not limited to, LC's lien attaching to the proceeds of the Purchased Assets (subject to the limitations set forth in ¶ 53, above), with the same priority and validity as LC's existing lien and security interest in the Purchased Assets.

55. In addition to the Buyers' obligation to pay the MLBP Cure Amount by the MLBP Cure Deadline and the NFLP Cure Amount by the NFLP Cure Deadline, all of the rights, remedies and claims of NFLP and MLBP against the Buyers or any third parties other than the Debtors under the MLBP Amended License Agreement and NFLP Amended License Agreement, including any rights, remedies and claims arising from the Buyers' or any third parties' default under the MLBP Amended License Agreement and the NFLP License Agreement, are expressly preserved.

56. The sale of the Purchased Assets to the Buyers pursuant to this Amended Sale Order shall constitute transfers for reasonably equivalent value and fair consideration under the Bankruptcy Code and the laws of the United States. The consideration provided by the Buyers for the Purchased Assets is fair and reasonable. The Term Sheet (as modified by this Amended Sale Order) and any related agreements, documents or instruments may be modified, amended or supplemented by the parties thereto without further order of the Court, provided that any such modifications, amendments or supplements are neither material nor adverse to the Debtors or their estates or any other affected party.

57. Except as set forth in the Term Sheet, this Amended Sale Order, or the Contracts Order, after the Closing, the Debtors and the Debtors' estates shall have no further liabilities or obligations with respect to any liabilities assumed or required by the Term Sheet to be assumed by the Buyers or arising under the Designated Contracts assigned to the Buyers as authorized by the Court, and any and all claims and Liens (other than rejection claims, if any, and the alleged Lien of Mars as set

forth above) arising therefrom are forever barred except as provided by this Amended Sale Order. All persons and entities are prohibited and estopped from asserting such claims against the Debtors or their estates, their successors or assigns, their property, or their assets.

58. This Amended Sale Order shall be binding upon and govern the acts of all entities including without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, registrars of patents, trademarks or other intellectual property, administrative agencies, governmental departments, secretaries of state, federal state and local officials, and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any of the Purchased Assets. At or prior to the Closing, each person holding a Lien is authorized and directed to execute such documents and take all other actions as may be necessary or appropriate to release or limit its Lien against the Purchased Assets, as such Liens or claims may have been recorded or may otherwise exist, to effectuate the provisions of this Amended Sale Order. The recordation of this Amended Sale Order shall operate for all purposes with the same force and effect as a termination statement under the Uniform Commercial Code to discharge and terminate all liens and security interests in and to the Purchased Assets to the extent provided for in this Amended Sale Order and the Term Sheet. Each and every federal, state and local governmental agency or

department is hereby directed to accept any and all documents and instruments necessary and appropriate to consummate the transactions contemplated by the Amended Sale Motion, the Term Sheet and this Amended Sale Order.

59. All entities that are presently, or on the Closing may be, in possession of some or all of the Purchased Assets (including, without limitation, The Bridge Direct, and its affiliates, but excluding Mars) are hereby directed to surrender possession of said Purchased Assets to the Buyer at the Closing, or as otherwise directed by Buyer, without further notice, demand or Court Order. The Court shall hear and determine afterwards any disputes between and among the parties regarding the responsibility for the costs of complying with this paragraph, with all parties reserving their rights with respect thereto.

60. This Amended Sale Order shall be effective and enforceable immediately upon entry, shall not be subject to any stay of enforcement, including any stay provided by Bankruptcy Rules 6004 and 6006. The provisions of this Amended Sale Order shall be self-executing.

61. The Debtors shall be and hereby are authorized to pay the Break-Up Fee in the amount of \$25,000 from the Lockbox upon collection of the entire Holdback. All other cash and remaining proceeds of the Amended Sale shall be held by the Debtors subject to further order of this Court.

62. This Amended Sale Order approves the compromise of claims and the modification of the sale of the Purchase Assets approved by this Court pursuant to the Sale Order on April 12, 2018. Neither this Amended Sale Order nor the Term

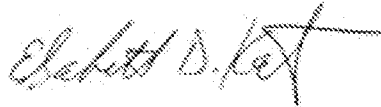
Sheet shall be construed as a Chapter 11 Plan or Disclosure Statement, and the Debtors shall not be relieved from any obligation to file a Plan or Disclosure Statement so long as the Debtors remain in Chapter 11.

63. This Court shall retain jurisdiction (a) to interpret and enforce the provisions of this Amended Sale Order and the related Contracts Order (which is incorporated herein by this reference) (b) to interpret and enforce the Binding LOI and the Term Sheet (as applicable), any amendments, waivers and consents to or under the Binding LOI and the Term Sheet, and each of the agreements executed in connection with the Binding LOI and the Term Sheet, (c) to compel delivery of the Purchased Assets to the Buyer, (d) to protect the Buyer against any Liens in the Purchased Assets other than those held by Hanssmann, (e) to compel performance by the Buyers of their obligations under the Term Sheet, (f) to interpret, implement and enforce the provisions of this Amended Sale Order and the related Contracts Order, and (g) to hear and determine any and all disputes between the Debtors, the Debtors' estate and/or Buyers arising out of or relating to this Amended Sale Order, the related Contracts Order, the Binding LOI or the Term Sheet; *provided, however*, that in the event the Court abstains from exercising or declines to exercise such jurisdiction or is without jurisdiction with respect to the Binding LOI, the Term Sheet, this Amended Sale Order, or the related Contracts Order, such abstention, refusal, or lack of jurisdiction shall have no effect upon, and shall not control, prohibit, or limit the

exercise of jurisdiction of any other court having competent jurisdiction with respect to any such matter.

64. This Amended Sale Order, along with the Contracts Order, shall be binding and enforceable on the Debtors, creditors of the Debtors' bankruptcy estates, and their respective successors or assigns including, without limitation, any trustees or examiners appointed in these Bankruptcy Cases notwithstanding confirmation of a Chapter 11 Plan, conversion of the Bankruptcy Cases, or an order appointing a trustee or examiner.

November 14, 2018



HON. ELIZABETH D. KATZ
UNITED STATES BANKRUPTCY JUDGE