

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

	x	Chapter 11
	:	
In re:	:	Case No. 01-0706 (MFW)
	:	
ETOYS, INC. <i>et. al.</i> ,	:	Jointly Administered
	:	
Debtors.	:	Hearing Date: March 11, 2014 at 2:00 p.m. ET
	:	Obj. Deadline: February 28, 2014
	x	

MOTION OF BARRY GOLD AS PLAN ADMINISTRATOR OF THE SUBSTANTIVELY CONSOLIDATED POST-CONFIRMATION ESTATE OF EBC I, INC. F/K/A ETOYS, INC., AND AFFILIATED DEBTORS, FOR (I) A FINAL DECREE AND ORDER CLOSING THE REMAINING CHAPTER 11 CASE, AND (II) AN ORDER (A) APPROVING PROCEDURES RELATING TO FINAL DISTRIBUTIONS, (B) AUTHORIZING PLAN ADMINISTRATOR TO ABANDON OR DESTROY CERTAIN BOOKS, RECORDS AND FILES, (C) TERMINATING THE SERVICES OF THE CLAIMS AND NOTICING AGENT APPOINTED IN THE CHAPTER 11 CASES, AND (D) GRANTING RELATED RELIEF

Barry Gold, as Plan Administrator for the substantively consolidated post-confirmation estate (the "Post-Confirmation Estate") of EBC I, Inc., f/k/a eToys, Inc., and its affiliated debtors, hereby moves (the "Motion"), pursuant to sections 350 and 554 of title 11 of the United States Code (the "Bankruptcy Code"), Rule 3022 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and Local Rule 3022-1 of the Local Rules of Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules"), for: (i) a final decree and order closing the bankruptcy cases of EBC I, Inc., f/k/a eToys, Inc., (Case No. 01-0706), eToys Distribution, LLC (Case No. 01-0707), eKids, Inc. (Case No. 01-0708), and PMJ Corporation (Case No. 01-0709) (collectively, the "Chapter 11 Cases"); and (ii) an order pursuant to sections 105(a), 554 and 1142(b) of the Bankruptcy Code (a) approving procedures relating to final Distributions of property from the Post-Confirmation Estate, (b) authorizing the Plan Administrator to abandon or destroy certain books, records and files, (c) terminating the services

of BMC Group, Inc., as the noticing and claims agent for the Chapter 11 Cases, and (d) granting related relief. In support of the Motion, the Plan Administrator respectfully states as follows:

JURISDICTION

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). In addition, Section 13.1 of the Plan (as defined below) provides, in relevant part, that:

Notwithstanding confirmation of the Plan or occurrence of the Effective Date, the Bankruptcy Court shall retain exclusive jurisdiction over all matters arising out of or related to the Chapter 11 Cases and the Plan to the fullest extent legally permissible, including, without limitation, for the following purposes: . . . (ix) To enter a Final Order closing the Chapter 11 Cases . . . [and] (xvi) To resolve any dispute or matter arising under or in connection with any order of the Bankruptcy Court entered in the Chapter 11 Cases.

Plan, § 13.1 at p. 51-2. *See also* Confirmation Order (as defined below), ¶ 32 (incorporating by reference Section 13.1 of the Plan).

2. Venue of the Chapter 11 Cases and this Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The statutory predicates for the relief requested herein are sections 105(a), 350, 554 and 1142(a) of the Bankruptcy Code, as supplemented by Bankruptcy Rule 3022 and Local Rule 3022-1.

BACKGROUND

A. General

4. On March 7, 2001 (the “Petition Date”), eToys, Inc., n/k/a EBC I, Inc. (“EBC I”), and its subsidiary debtors PMJ Corporation, eKids, Inc., and eToys Distribution, LLC, n/k/a EBC Distribution, LLC (collectively with EBC I, the “Debtors”), commenced their respective Chapter 11 Cases by filing voluntary petitions for relief under chapter 11 the Bankruptcy Code.

5. By Order, entered March 26, 2001 [D.I. 92], this Court appointed Bankruptcy Management Corporation, n/k/a BMC Group, Inc. (“BMC”), as the claims, noticing and balloting agent (the “Claims Agent”) for the Chapter 11 Cases pursuant to 28 U.S.C. § 156(c).

6. On March 20, 2001, the Office of the United States Trustee for the District of Delaware (the “U.S. Trustee”) appointed an official committee of unsecured creditors (the “Committee”).¹ See *Notice of Appointment* (D.I. 55).

B. The Post-Confirmation Estate And Its Operative Documents and Representatives

7. *Confirmation and Effective Date of Plan.* On November 1, 2002, the Court entered an Order (D.I. 1385) (the “Confirmation Order”) confirming the *Revised First Amended Consolidated Liquidating Plan of Reorganization of EBC I, Inc. f/k/a eToys, Inc. and its Affiliated Debtors and Debtors-in-Possession* (D.I. 1385-1) (as amended, revised or otherwise modified and together with all exhibits and supplements thereto, the “Plan”).² The Plan became effective on November 5, 2002 (the “Effective Date”).

8. *Substantive Consolidation of Chapter 11 Cases and Estates.* Pursuant to Paragraphs W and 16 of the Confirmation Order and Section 6.1 of the Plan, on the Effective Date, the Chapter 11 Cases and Debtors’ estates were substantively consolidated into the Post-Confirmation Estate administered under Case No. 01-0706. Consistent with the substantive consolidation of the Chapter 11 Cases and estates, Section 13.10 of the Plan provides: “[N]either the Debtors, their Estates, the Reorganized Debtor, the Plan Administrator, the Creditors’ Committee

¹ As originally constituted, the Committee consisted of: U.S. Bank Trust National Association, as Indenture Trustee; Fir Tree Value Fund, L.P. c/o Fir Tree Partners; JMG Triton- Pacific Asset Management; Mattel, Inc.; Lego Systems, Inc.; Staffmark, LLC; and R.R. Donnelly & Sons Co. In addition, following its formation, the Committee allowed Hasbro, Inc., to participate as an ex officio member.

² Capitalized terms not defined in this Motion have the meanings ascribed to them in the Plan.

nor the PEDC shall thereafter be liable for the payment of additional fees under 28 U.S.C. § 1930 other than with respect to eToys' Chapter 11 Case.”

9. *The Plan Administrator and PEDC.* Other consequences of Plan becoming effective included: (a) the appointment of Barry Gold as Plan Administrator of the Post-Confirmation Estate (Confirmation Order, ¶ G(vii) & Ex. 3; Plan Supplement, Ex. 3 (D.I. 1506)); (b) the dissolution of the Committee (Confirmation Order, ¶ 20; Plan, § 5.4(a)); and (c) the establishment of the PEDC (Confirmation Order, ¶ 21; Plan, § 5.4(b)).³

10. Under Section 5.3(c) of the Plan, the Plan Administrator is vested with the power to, among other things: (i) exercise all power and authority, commence all proceedings, and take all actions that could have been taken by any general or limited partner, officer, director, or shareholder of the Debtors; (ii) maintain accounts, make Distributions, and take other actions consistent with the Plan and the implementation thereof; (iii) subject to the applicable provisions of the Plan, collect and liquidate all assets of the Estates and administer the winding-up of the affairs of the Debtors; (iv) object to and/or compromise or settle prior to objection any Claim to which the PEDC (as hereinafter defined) has not objected after being requested to do so; (v) make decisions (with the consent of the PEDC) concerning the retention or engagement of professionals, employees and consultants; (vi) seek a determination of tax liability under the Bankruptcy Code and pay taxes; (vii) take all other actions not inconsistent with the provisions of the Plan which the Plan Administrator deems reasonably necessary or desirable; (viii) employ the Disbursing Agent and to make or cause the Disbursing Agent to make Distributions; (ix) invest Cash; (x) collect accounts receivable or other claims of the Debtors or the Estates; (xi) enter into any agreement or execute any

³ The initial members of the PEDC were each members of the Committee: (a) Fir Tree Value Fund, L.P., c/o Fir Tree Partners; (b) Mattel, Inc.; and (c) R.R. Donnelly & Sons Co.

document; (xii) abandon assets (with the consent of the PEDC); (xiii) prosecute or settle any Litigation Claims; (xiv) exercise the PEDC's rights to litigate or settle Claims or to resolve or prosecute any other matter, to the extent that the PEDC has a disabling conflict of interest; (xv) purchase or create and carry or maintain all insurance policies and insurance coverage; (xvi) implement and/or enforce all provisions of the Plan; and (xvii) collect and liquidate all assets of the Estates pursuant to the Plan and administer the winding-up of the affairs of the Debtors including, but not limited to causing the dissolution of each Debtor and closing the Chapter 11 Cases. *See also* Plan Administrator Agreement § 4.2.

11. Under Section 5.4(d) of the Plan, the PEDC is vested with power and authority to, among other things: (i) to make decisions, without further Court approval but with the consent of the Plan Administrator (such consent not be unreasonably withheld), regarding the retention or engagement of professionals, employees and consultants by the PEDC; (ii) to object to any Claims (Disputed or otherwise), other than a Committee Member Matter, including as described in Section 9.1 of the Plan, and to compromise or settle any Claims, other than a Claim that if objected to would be a Committee Member Matter, prior to objection without supervision or approval of the Bankruptcy Court, free of any restrictions of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules of the Bankruptcy Court, and the guidelines and requirements of the United States Trustee, other than those restrictions expressly imposed by the Plan or the Confirmation Order; (iii) to prosecute and/or settle any Litigation Claims, other than any Committee Member Matter, and exercise, participate in or initiate any proceeding before the Bankruptcy Court or any other court of appropriate jurisdiction and participate as a party or otherwise in any administrative, arbitative or other nonjudicial proceeding and litigate or settle such Litigation Claims on behalf of the Debtors or the Reorganized Debtor, as appropriate, and pursue to settlement or judgment such actions; (iv) in

accordance with 5.3(e) of the Plan, to appoint a successor Plan Administrator; (v) if the Plan Administrator determines, in the exercise of the Plan Administrator's discretion, that he has a disabling conflict of interest with respect to the settlement of Claims, the resolution or prosecution of Litigation Claims or any other matter, the PEDC shall exercise the Plan Administrator's rights and authorities with respect to such matter; and (vi) to review and comment upon any final accounting prepared by the Plan Administrator in respect of the Estates prior to the Filing of such final accounting with the Bankruptcy Court.

12. Section 5.3(d) of the Plan provides for indemnification of the Plan Administrator as follows:

The Plan Administrator shall be defended, held harmless and indemnified from time to time by the Debtors or the Reorganized Debtor, as the case may be, against any and all losses, Claims, costs, expenses and liabilities to which the Plan Administrator may be subject by reason of the Plan Administrator's execution in good faith of his, hers or its duties; provided however, that the indemnification obligations arising pursuant to this Section shall indemnify neither the Plan Administrator, nor any Person employed or retained by the Plan Administrator for any actions taken by such indemnified parties which constitute bad faith, willful misconduct, gross negligence, willful disregard of his, hers, or its duties or material breach of this Plan. Satisfaction of any obligation of the Estates arising pursuant to the terms of this Section shall be prior and superior to any other rights to receive a Distribution of the Assets of the Estates.

Plan § 5.3(d). *See also* Plan Administrator Agreement, § 5.6

13. Section 5.4(e) of the Plan provides for the indemnification of the PEDC and its members as follows:

If the PEDC is created, except as otherwise set forth in this Plan, the members of the PEDC (solely with respect to each member of the PEDC's conduct in furtherance of its, his or her duties as a member of the PEDC, and not with respect to the actions of such members as individual creditors) shall be defended, held harmless and indemnified from time to time by the Debtors or the Reorganized

Debtor, as the case may be. against any and all losses, Claims, costs, expenses and liabilities to which such indemnified parties may be subject by reason of such indemnified party's execution in good faith of their duties; provided, however, that the indemnification obligations arising pursuant to this Section shall indemnify neither the members of the PEDC, nor any Person employed or retained by the PEDC for any actions taken by such indemnified parties which constitute bad faith, willful misconduct, gross negligence, willful disregard of their duties or material breach of this Plan. Satisfaction of any obligation of the Estates arising pursuant to the terms of this Section shall be payable only from the assets of the Estates and such right to payment shall be prior and superior to any other rights to receive a Distribution of the Assets of the Estates.

14. *Certain Plan Provisions Governing Distributions.* Article XI of the Plan contains provisions governing Distributions under the Plan. Certain relevant provisions include the following:

- *Plan, § 11.2.* Section 11.2 limits recourse in the event that there is insufficient Cash to pay a Claim that becomes an Allowed Claim after Distributions have been made. It provides, in relevant part: “Notwithstanding that the allowed amount of any particular Disputed Claim is reconsidered under the applicable provisions of the Bankruptcy Code and Bankruptcy Rules or is allowed in an amount for which there is insufficient Cash in the relevant fund or reserve to provide a recovery equal to that received by other Holders of Allowed Claims in the relevant Class, no Claim Holder shall have recourse to the Debtors, the Reorganized Debtor, the Plan Administrator, the Disbursing Agent, the Creditors' Committee or any member thereof (as to such Creditors' Committee members, solely in their capacity as members of the Creditors' Committee), the PEDC or any member thereof (as to such PEDC members, solely in their capacity as members of the PEDC) or any of their respective professionals, or their successors or assigns, or the Holder of any other Claim, or any of their respective property.”
- *Plan, § 11.3(a).* Section 11.3(a) provides, in relevant part, that property or notices to claimants shall be addressed at the address indicated in any notice of appearance filed by such person or, if no notice of appearance has been filed, to the address indicated in a properly filed proof of Claim, or, absent such a proof of Claim, the address set forth in the relevant Schedule of Assets and Liabilities for such person. Property distributed in this manner “shall be deemed delivered to such Person regardless of whether such property is actually received by such Person.

- *Plan, § 11.4.* Section 11.4 provides as follows: “If any Distribution remains unclaimed for a period of ninety (90) days after it has been delivered (or attempted to be delivered) in accordance with the Plan to the Holder entitled thereto, such Unclaimed Property shall be forfeited by such Holder, whereupon all right, title and interest in and to the Unclaimed Property shall immediately and irrevocably revert in the Reorganized Debtor, the Holder of the Allowed Claim previously entitled to such Unclaimed Property shall cease to be entitled thereto, and such property shall be retained by the Plan Administrator or deposited in the General Distribution Fund, the Group A Distribution Fund or the Group 8 Distribution Fund, as appropriate. A Claim shall not escheat to any federal, state or local government or other entity by reason of the failure of its Holder to claim a Distribution in respect of such Claim.”
- *Plan, § 11.6.* Section 11.6 provides that the Indenture Trustee is deemed the sole holder of all Allowed Claims for payment of any principal, premium, if any, and interest owing and unpaid in respect of the Notes. All Distributions on account of the Notes shall be made to the Indenture Trustee, on behalf of the holders of the Notes.
- *Plan, § 11.11(d).* Section 11.11(d) protects the Post-Confirmation Estate from the obligation to make *de minimis* Distributions and provides: “Notwithstanding anything herein to the contrary, no Holder of any Allowed Class 4A, 4B or 4C Claim in an amount that would entitle such Holder to a pro-rata Distribution of less than \$10.00 shall receive any Distribution on account of such Allowed Claim.”

15. *Certain Plan Provisions Relating to Winding Up of the Post-Confirmation*

Estate. The Confirmation Order, Plan and Plan Administrator Agreement contemplate the eventual winding up of the Post-Confirmation Estate and address such matters in various provisions, including the following:

- *Plan, § 5.1(b).* Section 5.1(b), provides for the eventual dissolution and winding up of the Post-Confirmation Estate. It states in relevant part: “Upon the Distribution of all of the Debtors’ assets pursuant to this Plan and the filing by the Plan Administrator of a certification to that effect with the Bankruptcy Court, the Reorganized Debtor shall be dissolved for all purposes without the necessity for any other or further actions to be taken on behalf of such entities or payments to be made in connection therewith. From and after such date of dissolution, the Reorganized Debtor (i) for all purposes shall be deemed to have dissolved and withdrawn its business operations from any state or country in which it was previously conducting, or is registered or licensed to conduct, its business operations, and shall not

be required to file any document, pay any sum or take any other action, in order to effectuate such withdrawal and (ii) shall not be liable in any manner to any taxing authority for franchise, business, capital, license or similar taxes accruing after such date.”

- *Plan, § 5.25.* Under section 5.25, the Plan Administrator is authorized to “seek authority from the Bankruptcy Court to close the Chapter 11 Cases in accordance with the Bankruptcy Code and Bankruptcy Rules,” and may do so “at such [] time as the Plan Administrator, with the consent of the PEDC (such consent not to be unreasonably withheld), deems appropriate.”
- *Plan Administrator Agreement, § 6.1.* Section 6.1 addresses the Plan Administrator’s duties following exhaustion of the Post-Confirmation Estate’s assets and states as follows: “As soon as practicable after the Plan Administrator exhausts the assets of the Debtors’ Estates by causing the final Distribution of Cash under the Plan and this Agreement to be made by the Disbursing Agent, the Plan Administrator shall, at the expense of the Debtors’ Estates, (a) provide for the retention and storage of the books, records and files that shall have been delivered to or created by the Plan Administrator until such time as all such books, records and files are no longer required to be retained under applicable law, and file a certificate informing the Bankruptcy Court of the location at which such books, records and files are being stored; (b) file a certification stating that the assets of the Debtors’ Estates have been exhausted and final distributions of Cash have been made under the Plan; (c) file any necessary paperwork with the Office of the Secretary of State for the State of Delaware to effectuate the dissolution of Reorganized Debtor in accordance with the laws of the State of Delaware; and (d) resign as the sole officer and sole director of Reorganized Debtor. Upon the Plan Administrator’s exhaustion of the assets of the Debtors’ Estates and completion of the actions specified in the preceding sentence, this Agreement shall terminate. Except as otherwise specifically provided herein, after the termination of this Agreement pursuant to this Section 6.1, the Plan Administrator shall have no further duties or obligations hereunder.”

C. Administration of the Post-Confirmation Estate To Date

16. *Claims Administration.* Over 1,800 proofs of Claim were filed against the Debtors. As described below, these Claims have been fully administered.

17. The Committee and, later, the PEDC, filed and prosecuted nine omnibus objections to Claims, leading to the resolution of over 1,400 Claims. Additionally, the Plan Administrator and the PEDC were able to resolve many Disputed Claims, including certain litigation

claims, reclamation claims and Claims related to employee benefits, through Court-approved settlements, thereby avoiding the cost of Claims litigation.

18. Since the Effective Date, the Plan Administrator and the PEDC have worked diligently to complete the review and resolution of all Claims filed against the Debtors' Estates. The Plan Administrator believes that, as a result of these efforts, the Claims reconciliation and administration process is complete. Accordingly, the Claims against the Debtors' Estates have been fully administered.

19. *Monetization of Estate Assets.* Since the Petition Date, the Debtors and the Committee and, following the Effective Date, the Plan Administrator and the PEDC worked tirelessly to monetize Estate assets for the benefit of creditors. These efforts included: (a) multiple sales of intellectual property, inventory, FF&E and other assets that generated aggregate proceeds in excess of \$14.8 million; (b) the recovery of overpayments, refunds, accounts receivable and other amounts owing to the Debtors of approximately \$7.1 million; (c) overseeing the winding up of the Debtors' foreign non-debtor subsidiaries and the repatriation of more than \$9 million; and (d) the prosecution of more than 230 preference and fraudulent transfer actions, which produced proceeds of approximately \$12.5 million to the Debtors' estates. The litigation recoveries include approximately \$4.0 million (after payment of expenses and professional fees) recovered through the settlement of the Committee's litigation against Goldman Sachs.

20. *Prior Distributions.* Since the confirmation of the Plan, the Plan Administrator and PEDC have acted in accordance with, and in pursuit of, the stated purposes of the Plan, which include effecting Distributions to creditors. Beginning in early 2003 and continuing to date, the Plan Administrator has completed four interim Distributions of approximately \$37.2 million to holders of Allowed Claims.

21. To date, holders of Allowed Class 4C Other Unsecured Claims have received Distributions of approximately 17.75% of the Allowed face amount of their Claims, a recovery that far exceeds the projected 10.4% estimated recovery at the time of confirmation of the Plan. Similarly, the return on Class 4B Allowed Note Claims has far exceeded the 5.2% recovery that the Holders of Class 4B Allowed Note Claims were originally projected to receive under the Plan. *See Disclosure Statement To Accompany Consolidated First Amended Liquidating Plan Of Reorganization Of EBC I, Inc., f/k/a eToys, Inc., And Its Affiliated Debtors And Debtors-In-Possession*, dated August 5, 2002, at p. 10 [D.I. 1161-1]. Further, all Allowed Administrative, Priority, Priority Tax, Secured, and Class 4A Senior Debt Claims have been paid in full under the Plan.

D. Steps To Complete The Wind Up And Dissolution Of The Post-Confirmation Estate

22. *Final Distribution to Holders of Allowed Claims.* What remains is a Claims pool of Allowed Unsecured Claims eligible to receive further Distributions under the Plan in the approximate amount of \$190 million of Allowed Unsecured Claims.⁴ The remaining Claims pool consists of the Class 4B Note Claim and the Class 4C Other Unsecured Claims.⁵

⁴ This amount excludes claims that pursuant to the Plan have been become ineligible to receive distributions from the Post-Confirmation Estate by reason of, among other things, (a) prior distribution checks mailed to a Distribution Address having been returned as undeliverable without a proper forwarding address, (b) the failure of the claimant to supply a valid Distribution Address, (c) prior distribution checks having remained uncashed beyond the 90 day time limit in the Plan, (d) the failure of the claimant to provide required tax information, and/or (e) the operation of section 502(d) of the Bankruptcy Code with respect to claims of entities as to which the Post-Confirmation Estate holds unsatisfied judgments for the recovery of property under chapter 5 of the Bankruptcy Code. *See Plan*, §§ 1.95, 5.10, 11.4 & 11.5.

⁵ All Interests in the Debtors were deemed canceled under the Plan. *See Plan*, §§ 4.10.2 & 7.1(b). To date, holders of Interests have received no Distribution under the Plan and, because holders of Allowed Unsecured Claims will not be paid in full, shall not receive or retain any property under the Plan. *See Plan*, §§ 1.86& 4.10.2.

23. The Plan Administrator currently holds Cash of approximately \$4.75 million, before funding of distribution costs and Wind-Down Reserves (as defined below). In the coming months, the Plan Administrator anticipates making a fifth and final Distribution of most of these funds to the holders of Allowed Unsecured Claims entitled to receive further Distributions under the Plan (the “Final Distribution”).⁶ As of the filing of this Motion, the Plan Administrator, with the assistance of BMC as Distribution Agent, is making preparations for the Final Distribution, which the Plan Administrator intends to initiate promptly after this relief is granted.

24. *Procedures for Retention and Disposal of Books and Records.* In the ordinary course of business, the Debtors maintained certain books and records. These documents consist of certain documents related to the Debtors and their activities, including, but not limited to: (i) sales and operations records; (ii) payroll, personnel, and other human resource files; (iii) administrative files; (iv) information technology files; (v) credit card information and other customer data; (vi) legal files; and (vii) accounting, tax, and other financial documents and records (collectively, the “Books and Records”). After the Debtors discontinued their operations in the early stages of these Chapter 11 Cases, the Debtors filed a motion [D.I. 300] (the “Records Motion”) requesting authority to abandon, dispose of and/or destroy certain of the Books and Records that the Debtors no longer needed in light of the discontinuation of their business operations. Although several objections to the Records Motion were filed, the Debtors were ultimately granted more limited relief pursuant to this Court’s Order, dated May 24, 2001 [D.I. 375] (the “Records Order”). The Records Order authorized the Debtors to destroy all Books and Records for the period prior to

⁶ As discussed herein, it is possible, but unlikely that the Plan Administrator may make a Supplemental Distribution (as defined herein) if an adequate amount of unrestricted funds are remaining after the Final Distribution is complete.

December 1, 2000, but mandated that Books and Records from and after that date be preserved pending further Order of this Court.

25. In accordance with the Records Order, the Plan Administrator has continued to preserve all Books and Records relating to the period from and after December 1, 2000, at a cost to the Post-Confirmation Estate of approximately \$7,000 per year. In light of the full administration of the Post-Confirmation Estate, the impending Final Distribution and (if this Motion is granted) the closing of the Chapter 11 Cases and winding up of the Post-Confirmation Estate, most of these Books and Records no longer serve any purpose and, therefore, are the subject of a request in this Motion for authorization to abandon and destroy such Books and Records. A subset of the Books and Records (the "Retained Records"), including the following categories, will be retained on behalf of the Post-Confirmation Estate for a period of time after the Chapter 11 Cases are closed: (a) EBC I, Inc. tax returns for the tax year 2001 to the present, together with related work papers, source documents and correspondence pertaining to their preparation;⁷ (b) certain electronic working files relating to the administration of the Post-Confirmation Estate; (c) certain electronic working files relating to Distributions to former employees of the Debtors; (d) electronic images of proofs of Claim filed in these Chapter 11 Cases, which are in the possession of the Claims Agent; and (e) electronic data relating to the administration of Claims during the Chapter 11 Cases.

26. Except as stated in footnote 7 of this Motion with respect to certain tax returns and related Books and Records, the Plan Administrator proposes that the Retained Records be preserved for three (3) years following the entry of the final decree closing the Chapter 11 Cases. After that date, except as otherwise provided in footnote 7, all Retained Records will be destroyed.

⁷ These tax records will be retained on behalf of the Post-Confirmation Estate by Ernst & Young, which has provided tax preparation services to the Post-Confirmation Estate. Under Ernst & Young's records retention policy for its clients, such tax Records will automatically be destroyed after a seven year retention period.

27. *Establishment of Certain Reserves Relating to Final Distribution and Winding-Up of the Post-Confirmation Estate.* The Plan provides for the creation and funding of certain reserves, including a Wind-down Reserve, for the purpose of winding up the affairs of the Debtors and administering the Plan. In accordance with the Plan, the Plan Administrator has established or is establishing reserves for, among other things, the costs of effectuating the Final Distribution, the storage and disposal of documents, the preparation of final tax returns for the Post-Confirmation Estate and the payment of any outstanding tax obligations, U.S. Trustee fees payable under 28 U.S.C. § 1930(a)(6), the payment of the fees and expenses of the Plan Administrator and his professionals and the fees and expenses of the PEDC's professionals (collectively, the "Wind-Down Reserves").

28. In addition to the foregoing reserves, the Plan Administrator proposes to establish an additional Wind-Down Reserve (such reserve, the "Indemnification Reserve") on account of the indemnification and advancement obligations provided for in the Plan, Plan Administrator Agreement and the corporate governance documents of EBC I, Inc. that may be incurred to the Plan Administrator and his retained professionals and the PEDC, the PEDC members and their respective retained professionals (collectively, "Indemnification Obligations").⁸ The Indemnification Reserve would be funded with up to \$100,000 of the Cash remaining after all other Wind-Down Reserves have been funded and the Final Distribution has been initiated.⁹ The Indemnification Reserve funds shall be retained in a trust account (which may be a third party

⁸ The Plan, the Plan Administrator Agreement and the Amended and Restated By-Laws of EBC I, Inc. (the "By-Laws") provide for indemnification of the Plan Administrator. See Plan, § 5.3(d); Plan Administrator Agreement, § 5.6; Plan Supplement, Ex. 4 [D.I. 1306]. Similarly, the Plan also provides for indemnification of the PEDC and its members (in their respective capacities as members of the PEDC). See Plan, § 5.4(e).

⁹ For the avoidance of doubt, if it is later determined that additional amounts are needed for other Wind-Down Reserves, the Plan Administrator shall retain the discretion to reallocate funds from the Indemnification Reserve for such purpose(s).

escrow account or trust account of counsel to the Plan Administrator or PEDC) for up to one year after the closing of the Chapter 11 Case of EBC I, Inc. The disposition of any funds remaining in the Indemnification Reserve upon its termination shall be as described in Paragraph 30 below.¹⁰

29. As the Court knows, these Chapter 11 Cases unfortunately have been plagued by ancillary litigation, much of it frivolous, directed against the Plan Administrator, the PEDC, and their respective current and former professionals, as well as representatives of the U.S. Trustee's office and other persons with no obvious connection to these Chapter 11 Cases. It cannot be entirely discounted that the Plan Administrator, the PEDC and its members, and their respective professionals will be subjected to further frivolous litigation that may cause them to incur attorneys' fees and other indemnifiable expenses and losses.¹¹ Accordingly, the Plan Administrator has determined in the exercise of his business judgment that it is appropriate to establish the Indemnification Reserve to satisfy Indemnification Obligations, if necessary. The Plan Administrator has consulted with the PEDC regarding the decision to establish the Indemnification Reserve and is informed that the PEDC has no objection to the creation and funding of that reserve as set forth in this Motion.

30. *Disposition of Undistributed Funds Following Final Distribution.* The Plan Administrator anticipates a portion of the Final Distribution may eventually be determined to be

¹⁰ For the avoidance of doubt, nothing herein is intended to restrict the discretion of the Plan Administrator from terminating the Indemnification Reserve sooner than one year from the closing of Case No. 01-0706 and either donating such funds, together with any Residual Funds, to a Qualified Charity or make a supplemental distribution, as set forth herein.

¹¹ Although this Court entered an Order on December 12, 2012 [D.I. 2490] prohibiting Steven "Laser" Haas from making further filings in these Chapter 11 Cases, Mr. Haas has attempted to evade this Court's ruling by making frivolous court filings elsewhere. *See Steven Laser Haas v. Willard Mitt Romney, Paul Traub, Bain Capital, John and Jane Does 1 thru 10, Morris, Nichols, Arsht & Tunnell LLP, Greg Werkheiser, Barry Gold, Michael Glazer, Colm F Connolly, Goldman Sachs and Johann Hamerski*, Case No. 13-cv-07738-SVW-AGR (C.D. Cal.).

Unclaimed Property under the Plan because of, among other reasons, the failure of certain holders of Claims to timely negotiate Distribution checks or the inability to deliver Distributions to certain Claim holders. With respect to the Unclaimed Property and other residual property remaining after the Final Distribution has been completed and after all Wind-Up Reserves have been funded (the “Residual Funds”) and any funds in the Indemnification Reserve after its termination, the Plan Administrator requests confirmation of his authority to donate up to \$100,000 of such funds to a qualified as a non-profit organization under section 501(c)(3) of the Internal Revenue Code of 1986, as amended, identified by the Plan Administrator after consultation with the PEDC (a “Qualified Charity”).¹² To the extent that the Residual Funds, together with any funds remaining in the Indemnification Reserve upon its termination exceed \$100,000, the Plan Administrator will conduct a supplemental distribution of those funds to the holders of Allowed Unsecured Claims that would receive a pro-rata Distribution of at least \$10.00 as part of such supplemental distribution (such Distribution, the “Supplemental Distribution”).

31. *Final Accounting and Report.* The Plan, Plan Administrator Agreement and Local Rules of this Court contemplate that certain reports will be prepared and certain filings will be made on behalf of the Post-Confirmation Estate in connection with closing the Chapter 11 Cases and thereafter the winding up and dissolution of the Post-Confirmation Estate. *See* Plan, § 5.4(d); Plan Administrator Agreement, § 6.1; Del. Bankr. L.R. 3022-1(c). The Plan Administrator intends to comply with these requirements in accordance with the Order granting this Motion. The Plan Administrator will file a Final Report per Local Rule 3022-1 prior to the hearing on this Motion.

¹² The Plan and Plan Administrator Agreement already provides for the ability of the Plan Administrator, with the consent of the PEDC, to abandon assets to a charitable organization. *See* Plan, § 5.3(c)(xii); Plan Administrator Agreement, §4.2(l).

32. *Dissolution of the Post-Confirmation Estate and Termination of Responsibilities of Plan Administrator and PEDC.* As set forth in Section 5.1 of the Plan, the Post-Confirmation Estate will be deemed dissolved for all purposes following Distribution of all its assets. It follows from the contemplated dissolution of the Post-Confirmation Estate, that the Plan Administrator, the PEDC, the PEDC's members, and their respective professionals and attorneys should also be relieved from further responsibilities in connection with the Post-Confirmation Estate from and after that date. Furthermore, as set forth in Section 6.1 of the Plan Administrator Agreement, upon the completion of certain specified actions and the exhaustion of the assets of the Post-Confirmation Estate, the Plan Administrator Agreement shall terminate and thereafter "the Plan Administrator shall have no further duties or obligations [under the Plan Administrator Agreement]." Plan Administrator Agreement, § 6.1.

33. In accordance with these provisions of the Plan and Plan Administrator Agreement, the Plan Administrator submits that it would be appropriate for this Court to grant relief confirming the point at which the duties and responsibilities of the Plan Administrator and PEDC shall come to an end.

RELIEF REQUESTED

34. By this Motion, the Plan Administrator respectfully requests the Court:

(a) pursuant to sections 105(a), 350 and 554 of title 11 of the Bankruptcy Code, Bankruptcy Rule 3022 and Local Rule 3022-1, to enter a final decree and order closing the the bankruptcy cases of EBC I, Inc., f/k/a eToys, Inc., (Case No. 01-0706), eToys Distribution, LLC (Case No. 01-0707), eKids, Inc. (Case No. 01-0708), and PMJ Corporation (Case No. 01-0709);

(b) pursuant to sections 105(a), 554 and 1142(b) of the Bankruptcy Code, enter an Order:

(i) approving procedures relating to final Distributions from the Post-Confirmation Estate;

(ii) authorizing the establishment and funding of the Wind-Down Reserves, including the Indemnification Reserve;

(iii) clarifying the authority of the Plan Administrator to abandon and donate certain funds to a Qualified Charity;

(iv) authorizing the Plan Administrator to abandon or destroy certain books, records and files as described in this Motion;

(v) releasing BMC as the Claims Agent, effective upon completion of the Final Distribution and compliance with Local Rule 2002-1(f);

(vi) determining that, except as expressly provided in the Confirmation Order, Plan and Plan Administrator Agreement, the Plan Administrator and PEDC and its members shall have no further duties or responsibilities in such capacities after the assets of the Post-Confirmation Estate have been distributed or disposed of; and

(vii) granting related relief.

BASIS FOR RELIEF REQUESTED

A. The Final Decree Should Be Entered

35. Section 350(a) of the Bankruptcy Code provides in pertinent part that “[a]fter an estate is fully administered and the court has discharged the trustee, the court shall close the case.” 11 U.S.C. § 350(a). Bankruptcy Rule 3022 supplements section 350(a) of the Bankruptcy Code, and provides that “[a]fter an estate is fully administered in a chapter 11 reorganization case, the court, on

its own motion or on motion of a party in interest, shall enter a final decree closing the case.” FED. R. BANKR. P. 3022. Similarly, Local Rule 3022-1(a) provides that “[u]pon written motion, a party in interest may seek the entry of a final decree at any time after the confirmed plan has been substantially consummated provided that all required fees due under 28 U.S.C. § 1930 have been paid.”

36. Neither the Bankruptcy Code nor the Bankruptcy Rules define “fully administered.” However, the Advisory Committee Note (1991) to Bankruptcy Rule 3022 contains the following non-exclusive list of factors to consider:

- (1) whether the order confirming the plan has become final; (2) whether deposits required by the plan have been distributed; (3) whether the property proposed by the plan to be transferred has been transferred; (4) whether the debtor or the successor of the debtor under the plan has assumed the business or management of the property under the plan; (5) whether payments under the plan have commenced; and (6) whether all motions, contested matters, and adversary proceedings have been finally resolved.

FED. R. BANKR. P. 3022, Advisory Committee Note (1991). The Advisory Committee Note also states that “[e]ntry of a final decree closing a chapter 11 case should not be delayed solely because the payments required by the plan have not been completed.” *Id.*

37. Courts use the six factors set forth in the Advisory Committee Note in determining whether a case has been fully administered. *See, e.g., In re Kliegl Bros. Universal Elec. Stage Lighting Co., Inc.*, 238 B.R. 531 (Bankr. E.D.N.Y. 1999); *In re Jay Bee Enters., Inc.*, 207 B.R. 536, 538 (Bankr. E.D. Ky. 1997); *see also In re Mold Makers, Inc.*, 124 B.R. 766 (Bankr. N.D. Ill. 1990). Not all of the factors need to be present before a court will enter a final decree. *See Mold Makers*, 124 B.R. at 768. Indeed, as recommended by the Advisory Committee Note, courts have determined that cases are fully administered where outstanding Distributions have yet to be made. *Id.* at 768; *see also In re Jordan Mfg. Co.*, 138 B.R. 30, 35-36 (C.D. Ill. Bankr. 1992); Lawrence P.

King, 3 Colliers, ¶ 350.02[2] (explaining that outstanding distributions in a chapter 11 case does not preclude the case from being closed).

38. In these Chapter 11 Cases, all six factors set forth in the Advisory Committee Note (to the extent applicable) are satisfied: (i) the Confirmation Order is a final, non-appealable order; (ii) the Plan has been implemented and is substantially consummated; (iii) no property transfers remain unexecuted under the Plan; (iv) prior to and under the Plan, the Debtors have successfully liquidated; (v) the Plan Administrator has made four interim Distributions under the Plan and is preparing to make the Final Distribution as of the filing of this Motion; and (vi) the Plan Administrator believes that there are no motions (aside from this one), contested matters, adversary proceedings, or appeals pending.

39. Additionally, in accordance with Local Rule 3022-1, the Plan Administrator has paid or soon will pay all United States Trustee's fees owing pursuant to 28 U.S.C. § 1930(a)(6) and Section 13.11 of the Plan and will be filing the final report and account in accordance with Local Rule 3022-1(c).

40. The Plan Administrator submits that the Chapter 11 Cases have been fully administered and the entry of a final decree closing the Chapter 11 Cases is appropriate because all of the applicable factors set forth by courts and the Advisory Committee Note have occurred.

B. The Court Should Authorize Destruction of the Books and Records

41. In accordance with the Records Order, the Plan Administrator has continued to preserve all Books and Records for the period from and after December 1, 2000, at a cost to the Post-Confirmation Estate of approximately \$7,000 per year. In light of the Debtors' complete liquidation and the full administration of the Post-Confirmation Estate, most of these Books and Records no longer serve. As discussed above, the Retained Records, a subset of the Books and

Records, will be retained on behalf of the Post-Confirmation Estate for a period of time after these Chapter 11 Cases are closed.

42. Section 554(a) of the Bankruptcy Code provides, among other things, that, “[a]fter notice and a hearing, the trustee may abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate.” 11 U.S.C. § 554(a). *See also In re Slack*, 290 B.R. 282, 284 (Bankr. D.N.J. 2003) (“The trustee's power to abandon property is discretionary. . . . The court only needs to find the trustee made: (i) a business judgment; (ii) in good faith; (iii) upon some reasonable basis; and (iv) within the trustee's scope of authority.”) (internal citations omitted); *Reich v. Burke (In re Reich)*, 54 B.R. 995, 1003-04 (Bankr. E.D. Mich. 1985) (“[I]f a trustee feels an asset is of inconsequential value and benefit to the estate or that it is ‘burdensome to the estate,’ he may abandon it.”). Additionally, section 105(a) of the Bankruptcy Code provides, in pertinent part, that “[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” The purpose of section 105(a) of the Bankruptcy Code is “to assure the bankruptcy court’s power to take whatever action is appropriate or necessary in aid of the exercise of [its] jurisdiction.” 2 Collier on Bankruptcy, ¶ 105.01 at 105-06 (15th ed. rev. 1999).

43. The Plan Administrator and his professionals have spent a substantial amount of time reviewing the Debtors’ documents, books and records to ascertain, among other things, which of these items the Post-Confirmation Estate may appropriately abandon, dispose of and/or destroy. As a result of this review, the Plan Administrator has determined that the books and records are not necessary, except for the Retained Records, a subset of the Books and Records, that includes: (a) EBC I, Inc. tax returns for the tax year 2001 through the tax year ending March 31, 2014, together with related work papers, source documents and correspondence pertaining to their preparation; (b)

certain electronic working files relating to the administration of the Post-Confirmation Estate; (c) certain electronic working files relating to Distributions to former employees of the Debtors; (d) electronic images of proofs of Claim filed in these Chapter 11 Cases, which are in the possession of the Claims Agent; and (e) electronic data and other materials relating to the administration of Claims during the Chapter 11 Cases.

44. The Post-Confirmation Estate's ability to abandon, dispose of and/or destroy the Books and Records will enable the Post-Confirmation Estate to complete its final winding down process, avoid the incurrence of unnecessary storage costs and expenses, facilitate the consolidation and preservation of pertinent documents and books and records, if any, and protect the privacy of the Debtors' former employees and customers.

45. Based on the foregoing, the Plan Administrator has concluded in the exercise of his business judgment that the Books and Records are of inconsequential value and will only impose a burden on the Post-Confirmation Estate. Accordingly, granting the Plan Administrator the authority to abandon, dispose of and/or destroy the Books and Records is in the best interests of the Post-Confirmation Estate's creditors.

46. The Plan Administrator is exploring various means of abandoning, disposing of and/or destroying the Books and Records. If the Plan Administrator determines that certain of the Books and Records contain confidential information, such Books and Records may require special disposal. Accordingly, the Plan Administrator respectfully requests that this Court permit the abandonment, disposal and/or destruction of the Books and Records by such means as the Plan Administrator deems reasonable and appropriate.

47. Additionally, to the extent that the Post-Confirmation Estate or plan Administrator has any obligation under local, state or federal statutes, rules and ordinances (the

“Retention Laws”) to retain the Books and Records for a certain period of time or to dispose of the Books and Records in a particular manner (with the exception of confidential information, as stated in the immediately preceding paragraph), the Plan Administrator requests that the enforcement of such Retention Laws be waived.

48. For the reasons discussed above, the Plan Administrator requests that the Court waive compliance with any Retention Laws and approve of the Plan Administrator’s abandonment, disposal and/or destruction of any remaining Books and Records.

C. BMC Should Be Released As Claims Agent

49. As a consequence of the Chapter 11 Cases being “fully administered,” BMC has successfully completed the performance of all its obligations as the Claims Agent for these Chapter 11 Cases under the terms of the retention agreement entered into between BMC and the Debtors (as such agreement was approved and modified by this Court’s order approving BMC’s retention [D.I. 92], the “BMC Retention Agreement”). Accordingly, the Plan Administrator requests that the final decree provide the following:

(i) BMC will have no further obligations (arising under the BMC Retention Agreement or otherwise) to the Court, the Post-Confirmation Estate or any other party in interest with respect to the Chapter 11 Cases in its capacity as the Claims Agent;

(ii) Pursuant to Local Rule 2002-1(f)(ix), within thirty (30) days of entry of the final decree closing the Chapter 11 Cases, BMC shall:

a. Forward to the Clerk of Court an electronic versions of all imaged Claims; and

b. Upload the creditor mailing list into CM/ECF;

c. Docket the final Claims Register in Case No. 01-0706;

d. Box and transport all original claims in its possession, custody or control to the Philadelphia Federal Records Center, 14700 Townsend Road, Philadelphia, PA 19154; and

e. Docket a completed SF-135 form indicating the accession and location numbers of the archived claims.

(iii) Following entry of the final decree, except as provided in subparagraph (ii) above, BMC may destroy any and all physical copies of documents pertaining to the Chapter 11 Cases in its actual or constructive possession, including, but not limited to:

a. excess copies of notices, pleadings, Plan solicitation documents, customized envelopes or any other printed materials;

b. letters, e-mails, facsimiles or other correspondence;

c. all undeliverable and/or returned mail; and

d. all other materials related to the Chapter 11 Cases; provided however, that BMC shall retain an electronic copy of each proof of Claim.

(iv) Should BMC receive any mail after entry of the final decree, BMC will collect and forward such mail on a monthly basis to counsel to the Plan Administrator at the following address: Morris, Nichols, Arsht & Tunnell LLP, 1201 N. Market St., 16th Fl., Wilmington, DE 19801, Attn: Gregory W. Werkheiser.

D. The Court Should Authorize The Establishment And Funding Of The Indemnification Reserve

50. As described above, the unique circumstances of these Chapter 11 Cases create a need to establish and fund the Indemnification Reserve as an additional Wind-Down Reserve. Establishing the Indemnification Reserve will facilitate the prompt closing of the Chapter 11 Cases and winding up of the Post-Confirmation Estate. Further, it will help ensure that the Plan Administrator, the PEDC and their respective professionals are not distracted or unfairly prejudiced by any ancillary litigation that continues notwithstanding the closing of these Chapter 11 Cases. The Plan Administrator respectfully submits that establishing and funding the Indemnification Reserve is consistent with the terms and purposes of the Plan and should be authorized by this Court.

E. The Court Should Approve The Manner of Disposition Of The Residual Funds And Other Funds Remaining After The Final Distribution

51. As described above, the Plan Administrator seeks confirmation of his authority to abandon and donate up to the aggregate of \$100,000 of the Residual Funds and any funds remaining in the Indemnification Reserve upon its termination to a Qualified Charity. The Plan Administrator will seek the consent of the PEDC in identifying a Qualified Charity. The abandonment of assets and donation of assets to charity is already generally authorized by the Plan and Plan Administrator Agreement. *See* Plan, § 5.3(c)(xii); Plan Administrator Agreement, §4.2(1). Accordingly, the disposition of such funds through abandonment to a Qualified Charity is consistent with the Plan and Plan Administrator Agreement and should be authorized by this Court.

52. If the aggregate of the Residual Funds and any funds remaining in the Indemnification Reserve upon its termination exceed \$100,000, unless otherwise ordered by this Court, the Plan Administrator will conduct a Supplemental Distribution of those funds to the holders of Allowed Unsecured Claims that would receive a pro-rata Distribution of at least \$10.00 as part of such Supplemental Distribution. The Plan Administrator submits that these procedures for a possible Supplemental Distribution strike the appropriate balance between maximizing the returns to creditors and conducting distributions at such intervals and in such a manner as to be appropriately cost-effective.

WAIVER OF BANKRUPTCY RULE 6004(h) STAY PERIOD

53. Any delay in authorizing the Plan Administrator to take the actions addressed in this Motion would be detrimental to the creditors of the Post-Confirmation Estate. Due to the size and complexity of the Chapter 11 Cases, as well as other contributing factors, the Chapter 11 Cases have been pending for a significant period. Any delay in the effectiveness of an order approving this Motion would only extend the time before the winding up of the Post-Confirmation Estate can be

completed. Accordingly, the Plan Administrator seeks a waiver of the 14-day stay of any order authorizing the use, sale, or lease of property under Bankruptcy Rule 6004(h), to the extent applicable.

WHEREFORE, the Plan Administrator respectfully requests that the Court enter an Order, substantially in the form attached as **Exhibit A** hereto, granting the Motion and such other and further relief as is just and proper.

Dated: February 7, 2014
Wilmington, Delaware

MORRIS NICHOLS ARSHT & TUNNELL LLP

/s/ Gregory W. Werkheiser

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