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Hearing Date: January 20, 2011  
10:00 a.m.

Counsel to an Ad Hoc Committee of  
Equity Security Holders

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

In re

BLOCKBUSTER INC., *et al.*,

Debtors.

Chapter 11

Case No. 10-14997 (BRL)

(Jointly Administered)

**AD HOC COMMITTEE’S REPLY TO DEBTORS’ OBJECTION TO  
MOTION FOR RULE 2004 EXAMINATION**

An Ad Hoc Committee of Equity Security Holders (the “**Ad Hoc Committee**”), by and through its undersigned counsel, hereby replies to the Debtor’s Objection (the “**Objection**”, Docket No. 833) to the Ad Hoc Committee’s motion the (the “**Motion**”, Docket No. 712) an order authorizing the Ad Hoc Committee to conduct an examination of the Debtors pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”) and respectfully states as follows:

1. The Motion, filed on December 22, 2010, seeks to compel the Debtors to produce documents in response to a narrowly tailored demand. The Documents sought related to
  - a. the financial relationship between the Debtors and the certain specified companies;
  - b. the Debtors’ capital expenditures and G&A expenses by division;
  - c. the operating expenses of the Debtors’ Blockbuster Digital Entertainment division; and



d. certain market studies.

2. The Ad Hoc Committee has requested this information because it believes, based on the Debtors' representations to its shareholders that the Debtors' enterprise value of the Debtors is not accurately reflected in its publically available financial data.

3. The Ad Hoc Committee further believes that the requested information will allow it to present a higher valuation of the Debtors to both this Court and prospective investors.

4. Not remarkably, the Objection states that the Debtors do not believe there is sufficient value in the in the estate to warrant the forming of an official committee of equity holders (Objection ¶5). Paradoxically, the Objection also states the Ad Hoc Committee should not even be given an opportunity to review the very documents that the Ad Hoc Committee believes would demonstrate whether or not such value exists. (*Id.*)

**A. The Ad Hoc Committee Should be Afforded Reasonable Discovery.**

5. The Debtors assertion that the discovery should be denied because such discovery is the exclusive purview of the Official Committee of Unsecured Creditors (the "**Creditors Committee**") is wrong.

6. Bankruptcy Rule 2004 explicitly states that its purpose is to parties in interest discovery regarding a debtors' financial condition "and any matter relevant to the formulation of a plan." (Fed. R. Bankr. P. 2004(b)).

7. The Ad Hoc Committee is a party in interest to these proceedings. Each member of the Ad Hoc Committee is a prepetition holder of the Debtors' equity. Accordingly, it may properly seek discovery under Bankruptcy Rule 2004.

8. Further, whether or not a separate party, such as the Creditors Committee is seeking similar data should be irrelevant. The interests of the Creditors Committee and the Ad Hoc Committee are not necessarily aligned.

9. In fact, to the extent the Debtor has produced (or will produce) similar information to the Creditors Committee means their burden of producing such information to the Ad Hoc Committee will be decreased.

10. Certainly, to the extent any of the documents sought are confidential or sensitive in nature, appropriate mechanisms can be implemented to protect the Debtors.

**B. The Ad Hoc Committee's Discovery Request is Reasonable.**

11. The requested documents seek information to allow the Ad Hoc Committee and potential third party investors the ability to measure the Debtors' future business prospects. Specifically, they would allow these parties to measure how successfully Debtors be able to implement several of their touted initiatives.

12. In the September 22, 2010 Affidavit of Jeffery J. Stegenga Pursuant to Local Bankruptcy Rule 1007-2 in Support of First Day Motions (the "**Stegena Aff.**", Docket No. 3), the Debtors Chief Restructuring Officer laid out several programs that will be keys to the Debtors' future. These include:

- a. branded vending kiosks through an arrangement with NCR Corporation (Stegenga Aff. ¶ 11);
- b. "DVDs By Mail" and "www.DVDsbymail.com" through an arrangement with Comcast Cable Corporation (Stegenga Aff. ¶ 13); and
- c. Video on Demand strategic partnerships with electronics device manufacturers, including Samsung, Philips, TiVo, Toshiba, Motorola and HTC (Stegenga Aff. ¶ 16).

13. Blockbuster describes its digital initiative as a necessary element of its future success. "Blockbuster believes that its digital initiatives are integral to the transformation of its

business, and that the digital channel will play a principal role in the success.” (Stegenga Aff. ¶ 18).

14. Accordingly, how well the Debtors will be able to implement these programs are critical factors in how a reorganized Blockbuster will be valued.

15. Though the Debtors emphasize the importance of these programs, publicly available information is opaque with respect to them.

16. The Ad Hoc Committee has requested documents relating to arrangements with several of Blockbuster’s counterparties to learn the extent and the progress of these programs. The document request also seeks capital expenditures and general and administrative expenses by division to assess, among other things, what resources the company has actually committed to these programs.

17. The extent any party – whether it be the Debtors, the Ad Hoc Committee or anyone else – proposes a plan of reorganization for the Debtors, these touted programs, and especially their digital initiative will be constitute a material portion of the valuation of the company. Accordingly, the Ad Hoc Committee’s requests are directed are directly relevant to the formulation – and valuation – of any plan of reorganization in these cases.

**C. This is not a Witch Hunt.**

18. The Debtors have attempted to characterize the Ad Hoc Committee’s narrowly tailored discover demand as some sort of witch hunt. (See Objection ¶5 associating the discovery demand with a scorch and burn litigation methodology.)

19. Absolutely nothing could be further from the truth.

20. There are many pleadings in this case asserting improper conduct by various parties, both pre- and post-petition. Additionally, several parties in interest are pursuing claims

sounding in fraud. The Ad Hoc Committee as a body, however, has not participated in any of these actions.<sup>1</sup>

21. Rather, the one substantive filing by the Ad Hoc Committee in this case has been the Motion, which does not accuse any party of any wrongdoing. Instead, it merely points out that the publically available data regarding the Debtors does not afford anyone the ability to ascertain the estate's true value.

**D. The Debtors' Circular Logic**

22. The Debtors have constructed two clever Catch-22s. In the first, they state their estate is insufficient to provide a recovery to the equity holders, so no equity committee should be formed. Then they state that because no equity committee can be formed, the equity holders should not be given access to data that may show there is sufficient equity to form a committee.

23. In the second Catch-22, the Debtors seek to deny the Ad Hoc Committee's request for data that they are seeking in their efforts to locate investors. Instead, the Debtors propose that the Ad Hoc Committee let the Debtors deal with such investors directly (Objection ¶6). Of course, this argument ignores that fact that the Ad Hoc Committee is seeking the data to help their efforts to locate the investors in the first place.

**E. Conclusion**

24. The Ad Hoc Committee sincerely hopes this Court will see through the Debtors' arguments in the Opposition. Contrary to the accusations made, the Ad Hoc Committee, as a party in interest, is entitled to reasonable discovery pursuant to Bankruptcy Rule 2004, the documents sought constitute reasonable discovery requests and the purpose for the requests is straightforward and reasonable; the valuation of any plan of reorganization.

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<sup>1</sup> To the extent members of the Ad Hoc Committee may or may not pursue other avenues is irrelevant to the Ad Hoc Committee's document request.

WHEREFORE, The Ad Hoc Committee respectfully requests that the Court issue an Order, pursuant to Rule 2004(a) Fed. R. Bankr. P., directing the production of documents as sought in the Document Request from the Debtors and for such other and further relief as to the Court may deem just and proper.

Dated: New York, New York  
January 18, 2011

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