ELIZABETH WARREN
MASSACHUSETTS

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October 16, 2018

Steven Roth
Chairman of the Board and Chief Executive Officer
Vornado Realty Trust
888 Seventh Avenue
New York, NY 10019

Dear Mr. Roth:

I write to express deep concern about your company's role in the liquidation of Toys "R" Us, which resulted in more than 30,000 American workers losing their jobs without severance. While other companies that played a role in this liquidation – KKR and Bain Capital – have shown leadership in attempting to resolve this issue by contributing some financial relief to the employees who lost their jobs,[1] your company has refused to do so.[2] I urge you to reconsider.

Toys "R" Us filed for Chapter 11 bankruptcy in September 2017, citing approximately $7.9 billion in debt against $6.6 billion in assets.[3] The majority of this debt was a result of the leveraged buyout ("LBO") of the company in 2005 by two private equity firms – KKR and Bain Capital – and Vornado Realty Trust.[4] Subsequently, five hedge funds – Solus Alternative Asset Management, Highland Capital Management, Franklin Mutual Advisors, Angelo, Gordon & Co., and Oaktree Capital Management – bought up a portion of this debt at a discount, with reports of at least one distressed-debt holder paying less than 50 cents on the dollar.[5]

Before the company went private as a result of the 2005 LBO, Toys "R" Us had a debt load of $1.86 billion.[6] Sales slumped prior to the 2005 deal, but Toys "R" Us consistently maintained sales after the buyout, even during the Great Recession.[7] The company generated $11.2 billion in sales in the 12 months before it went private and annual sales reached a high of $13.9 billion in

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[1] Wall Street Journal, "Toys 'R' Us Owners to Create Severance Fund for Former Employees," Lillian Rizzo, September 28, 2018, https://www.wsj.com/articles/toys-r-us-owners-to-create-severance-fund-for-former-employees-1538170602.
[2] Id.
[3] *In re: TOYS "R" US, INC., et al.*, Case No. 17-34665 (KLP), Chapter 11 Voluntary Petition, September 19, 2017, https://cases.primeclerk.com/toysrus/Home-DownloadPDF?id1=NzI3MDI3&id2=0
[4] The Atlantic, "The Demise of Toys 'R' Us Is a Warning," Bryce Covert, July/August 2018 Issue, https://www.theatlantic.com/magazine/archive/2018/07/toys-r-us-bankruptcy-private-equity/561758/
[5] The Wall Street Journal, "Who Killed Toys 'R' Us? Hint: It Wasn't Only Amazon," Gretchen Morgenson and Lillian Rizzo, August 23, 2018, https://www.wsj.com/articles/who-killed-toys-r-us-hint-it-wasnt-only-amazon-1535034401
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[7] Id.

January 2012. In the 12 months through October 2017, just after filing for bankruptcy, the company generated $11.1 billion in sales.[8]

But despite steady sales, Toys "R" Us hasn't made a full-year profit in six years,[9] largely because of its unsustainable long-term debt. The $6.6 billion LBO pushed $5 billion of debt onto Toys "R" Us itself,[10] the majority of which has not been paid down since.[11] Instead, Toys "R" Us has been paying on average $467 million in interest payments each year for the last 12 years[12] – a massive amount that reportedly consumed anywhere from half to 99% of the company's operating profit, excluding 2014 where there was an operating loss.[13] In 2017, the year it filed for bankruptcy, Toys "R" Us had an operating profit of $460 million – but debt payments of $457 million.[14]

According to a June article in *Bloomberg*, Toys "R" Us could have continued as a viable American business. The company had a buyer that would have kept nearly half of the retailer's 800 stores open, saving thousands of jobs. But many of Toys "R" Us' senior creditors decided they could profit more and, "see a better return if the company were liquidated and its assets sold off. By February, some of the lenders were insisting on that approach."[15]

Toys "R" Us had historically paid out severance when it shut down stores,[16] which is estimated to be more than $75 million for the affected workers in this situation.[17] The *Wall Street Journal* reported that KKR and Bain Capital have thus far contributed a total of $20 million to a hardship

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[8] Bloomberg, "Lessons Learned From the Downfall of Toys 'R' Us," Tara Lachapelle, March 9, 2018, https://www.bloomberg.com/news/articles/2018-03-09/toys-r-us-downfall-is-ominous-reminder-about-debt-laden-deals

[9] CNN Money, "Toys 'R' Us will close or sell all US stores," Chris Isidore, Jackie Wattles, and Parija Kavilanz, March 15, 2018, http://money.cnn.com/2018/03/14/news/companies/toys-r-us-closing-stores/index.html

[10] New York Times, "Toys 'R' Us Case is Test of Private Equity in Age of Amazon," Michael Corkery, March 15, 2018, https://www.nytimes.com/2018/03/15/business/toys-r-us-bankruptcy.html

[11] Id.

[12] The Atlantic, "Who Bankrupted Toys 'R' US? Blame Private Equity and Millennial Parents," Derek Thompson January 24, 2018, https://www.theatlantic.com/business/archive/2018/01/toys-r-us-closing-stores/551390/

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[16] *In re: TOYS "R" US, INC., et al.*, Case No. 17-34665 (KLP), Motion for Entry of Interim and Final Orders, https://cases.primeclerk.com/toysrus/Home-DownloadPDF?id1=NzI3MDY3&id2=0

[17] Bloomberg, "Fired Workers Find No Friends in Toys 'R' Us Bankruptcy Lenders," Eliza Ronalds-Hannon and Lauren Coleman-Lochner, August 22, 2018, https://www.bloomberg.com/news/articles/2018-08-22/toys-r-us-secured-lenders-reject-paying-for-worker-severance.

fund, [18] but without similar contributions from your company, this amount falls well short of what Toys "R" Us workers are entitled to in unpaid severance.

Your company had a financial stake in Toys "R" Us and played a role in its liquidation and closure. More than 30,000 Americans lost their jobs because of your decisions, and your contribution to a hardship fund is vital to begin to make them whole. I ask that you respond to the following questions:

1. Does your company have any plans to contribute some financial relief to the over 30,000 Toys "R" Us workers who lost their jobs? If not, please explain why. If so, how will you determine the amount of your contribution to a hardship fund?

2. Given that there was significant interest in keeping U.S. stores open and saving thousands of jobs, and that key debtholders believed that this was a viable option, how did you come to the decision of liquidation? Were there other buyer offers that were considered? If there were offers, why were they declined?

3. A *Bloomberg* report suggests that Toys "R" Us creditors turned down viable buyers in favor of liquidation for more profit. Can you verify this? What role did your company and individuals within your company play in the liquidation decision?

The liquidation of Toys "R" Us – reportedly at the urging of your firm – caused more than 30,000 American workers to lose their jobs without the severance they would otherwise receive. I strongly urge you to participate in discussions about financing a viable hardship fund for the affected families.

I look forward to your prompt attention to this inquiry, and would appreciate a response no later than October 30, 2018.

Sincerely,

Elizabeth Warren
United States Senator

cc:

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9 West 57th Street
Suite 4200
New York, NY 10019

Co-Chairs & Co-Managing Partners
Bain Capital, LP
200 Clarendon Street
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[18] Id.

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October 16, 2018

Christopher Pucillo
Chief Executive Officer & Chief Investment Officer
Solus Alternative Asset Management LP
410 Park Avenue
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Mark Okada
Chief Investment Officer
Highland Capital Management, LP
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Peter Langerman
President, Chief Executive Officer
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Michael Gordon
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Bruce Karsh
Co-Chairman, Chief Investment Officer
Oaktree Opps X Holdco Ltd
Oaktree Capital
333 South Grand Avenue, 28th Floor
Los Angeles, CA 09971

Dear Messrs. Pucillo, Okada, Langerman, Gordon, and Karsh:

I write to express deep concern about your companies' roles in the liquidation of Toys "R" Us, which resulted in more than 30,000 American workers losing their jobs without severance. While other companies that played a role in this liquidation – KKR and Bain Capital – have shown leadership in attempting to resolve this issue by contributing some financial relief to the employees who lost their jobs,[1] your companies have refused to do so.[2] I urge you to reconsider.

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But despite steady sales, Toys "R" Us hasn't made a full-year profit in six years,[9] largely because of its unsustainable long-term debt. The $6.6 billion LBO pushed $5 billion of debt onto Toys "R" Us itself,[10] the majority of which has not been paid down since.[11] Instead, Toys "R" Us has been paying on average $467 million in interest payments each year for the last 12 years[12] – a massive amount that reportedly consumed anywhere from half to 99% of the company's operating profit, excluding 2014 where there was an operating loss.[13] In 2017, the year it filed for bankruptcy, Toys "R" Us had an operating profit of $460 million – but debt payments of $457 million.[14]

According to a June article in *Bloomberg*, Toys "R" Us could have continued as a viable American business. The company had a buyer that would have kept nearly half of the retailer's 800 stores open, saving thousands of jobs. But many of you, as Toys "R" Us senior creditors,

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[5] The Wall Street Journal, "Who Killed Toys 'R' Us? Hint: It Wasn't Only Amazon," Gretchen Morgenson and Lillian Rizzo, August 23, 2018, https://www.wsj.com/articles/who-killed-toys-r-us-hint-it-wasnt-only-amazon-1535034401

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decided you could profit more and, "see a better return if the company were liquidated and its assets sold off. By February, some of the lenders were insisting on that approach."[15]

A disturbing report from the *Wall Street Journal* further details how your hedge funds played a key role in the company's wind-down and eventual decision to liquidate. Your funds were distressed-debt investors, holding the portion of the company's debt known as "B4." Solus was the largest B4 distressed-debtholder, owning $221 million in face value of the $1 billion issued.[16] The B4 debtholders became pivotal to the company's reorganization through supplying collateral for bankruptcy financing. Solus alone contributed $31 million for debtor-in-possession financing when the company filed for bankruptcy, keeping Toys 'R' Us open through the 2017 Christmas season.[17]

While it initially appeared the B4 debtholders were supportive of Toys 'R' Us' reorganization, the *Wall Street Journal* reported that in March 2018 the B4 debtholders conditioned waiving certain reorganization requirements – that the business's forecast maintain a particular cash flow – upon Toys 'R' Us' agreement to stop paying its landlords and some venders. Solus reportedly led the charge and "pressed four other Toys 'R' Us debtholders to conclude that the company was worth more dead than alive," while at the same time "bet[ting] against Toys 'R' Us debt by placing a $25 million short position in another debt security, possibly in an effort to hedge its debt holdings."[18] Your companies' actions ultimately, according to the *Journal*, acted as the catalyst to liquidation.

Toys "R" Us had historically paid out severance when it shut down stores,[19] which is estimated to be more than $75 million for the affected workers in this situation.[20] The *Wall Street Journal* reported that KKR and Bain Capital have thus far contributed a total of $20 million to a hardship fund,[21] but without similar contributions from your organizations, this amount falls well short of what Toys "R" Us workers are entitled to in unpaid severance.

Your companies had a financial stake in Toys "R" Us and played a role in its liquidation and closure. More than 30,000 Americans lost their jobs because of your decisions, and your contributions to a hardship fund are vital to begin to make them whole. I ask that you respond to the following questions:

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[21] Id.

1. Do your companies have any plans to contribute some financial relief to the over 30,000 Toys "R" Us workers who lost their jobs? If not, please explain why. If so, how will you determine the amount of your contribution to a hardship fund?

2. Given that there was significant interest in keeping U.S. stores open and saving thousands of jobs, and that key debtholders believed that this was a viable option, how did you come to the decision of forcing liquidation? Were there other buyer offers that were considered? If there were offers, why were they declined?

3. A *Bloomberg* report suggests that Toys "R" Us creditors turned down viable buyers in favor of liquidation for more profit. Can you verify this? What role did your companies and individuals within your companies play in the liquidation decision?

The liquidation of Toys "R" Us – reportedly at the urging of your firms – caused more than 30,000 American workers to lose their jobs without the severance they would otherwise receive. I strongly urge you to participate in discussions about financing a viable hardship fund for the affected families.

I look forward to your prompt attention to this inquiry, and would appreciate a response no later than October 30, 2018.

Sincerely,

Elizabeth Warren
United States Senator

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