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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:)	Chapter 11
ATARI, INC., <i>et al.</i> ,)	Case No. 13-10176 (___)
Debtors. ¹)	Joint Administration Requested

**MOTION OF THE DEBTORS AND DEBTORS-IN-POSSESSION
FOR ENTRY OF INTERIM AND FINAL ORDERS AUTHORIZING,
BUT NOT DIRECTING, THE DEBTORS TO MAINTAIN A
PREPETITION INSURANCE PREMIUM FINANCE AGREEMENT**

The debtors and debtors-in-possession in the above-captioned cases (collectively, the “Debtors”), by and through their proposed undersigned counsel, hereby move the Court (the “Motion”) for the entry of interim and final orders, the proposed forms of which are attached hereto as **Exhibit A** and **Exhibit B** respectively, pursuant to sections 105(a), 363, 364, 1107 and 1108 of Title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (as amended, the “Bankruptcy Code”), authorizing, but not directing, the Debtors to maintain their existing Premium Finance Agreement (defined below), and scheduling a final hearing (the “Final Hearing”) to consider entry of a final order, substantially in the form attached hereto as Exhibit B (the “Final Order”). In support of the Motion, the Debtors respectfully represent as follows:

¹ The other Debtors are Atari Interactive, Inc., Humongous, Inc., and California U.S. Holdings, Inc.

I. Introduction

1. On January 21, 2013 (the “Petition Date”), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York (the “Court”). The Debtors are operating their businesses and managing their properties as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No request for the appointment of a trustee or an examiner has been made in the chapter 11 cases, and no statutory committees have been appointed or designated.

2. Concurrently with the filing of this Motion, the Debtors have sought procedural consolidation and joint administration of these chapter 11 cases under the case of Atari, Inc. A description of the Debtors’ businesses, the reasons for filing these chapter 11 cases, and the factual basis for the relief sought from this Court to facilitate a smooth transition into chapter 11 is set forth in the *Declaration of Robert A. Mattes (I) In Support of Chapter 11 Petitions and First Day Motions And (II) Pursuant To Local Bankruptcy Rule 1007-2* (the “First Day Declaration”).

II. Jurisdiction, Venue and Predicates for Relief Requested

3. The Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference M-431*, dated January 31, 2012 (Preska, C.J.). Venue in this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

4. The statutory predicates for the relief requested herein are sections 105(a), 363, 364, 1107 and 1108 of the Bankruptcy Code.

III. The Premium Finance Agreement

5. In connection with the operation of the Debtors' businesses, Debtor California U.S. Holdings, Inc. ("CUSH") entered into a premium finance agreement (the "Premium Finance Agreement" or "PFA") as of December 31, 2012 with Premium Assignment Corporation ("PAC"). A copy of the Premium Finance Agreement is annexed hereto as **Exhibit C**. Under the Premium Finance Agreement, the Debtors pay an initial down payment and monthly installments thereafter to PAC, in exchange for PAC's agreement to pay the full annual insurance premium, in advance, to the insurer. The Premium Finance Agreement covers the premiums for the Debtors' Employment Practices Liability Insurance with National Union Fire Insurance Company (the "Financed Policy"). The Financed Policy² has a total premium amount of \$37,500.00. Pursuant to the Premium Finance Agreement, after accounting for an initial down payment of \$13,125.00 that has already been made by the Debtors, the Debtors are obligated to pay PAC each month a total of \$3,072.07. The monthly payment covers all financing charges and other fees under the Premium Finance Agreement.

6. As of the Petition Date, the outstanding balance owed under the Premium Finance Agreement is approximately \$24,375.00, which the Debtors intend to continue paying in monthly installments through August 31, 2013. The Debtors are current on all obligations under the Premium Finance Agreement. The next monthly installment payment is due January 31, 2013.

7. The Debtors' obligations under the Premium Finance Agreement are secured by all unearned premiums or other sums which may become payable to the Debtors under the

² Aside from the Financed Policy, the Debtors maintain other insurance coverage through various policies obtained by their French Parent Company, Atari S.A. Any obligations payable post-petition are intended to be paid in the ordinary course of business. Additionally, there are two premium finance agreements held in the name of Atari S.A. under which these Debtors have no payment obligations.

Financed Policy. If the Debtors fail to make monthly payments under the Premium Finance Agreement, PAC is appointed as attorney in fact for all named insured under the Financed Policy and is granted the authority to, among other things, cancel the Financed Policy.

8. Additionally, if all installment payments under the Premium Finance Agreement are not paid as they come due, PAC could seek relief from the automatic stay to terminate the Financed Policy. Pursuant to the Premium Finance Agreement, the Debtors assigned to PAC all unearned premiums and loss payments under the Financed Policy as security for payment of all obligations of the Debtors under the Premium Finance Agreement. The Premium Finance Agreement also grants PAC the right to cancel the Financed Policy in the event of a payment default by the Debtors. If PAC succeeds in obtaining such relief from this Court, the Debtors would be forced to seek replacement insurance coverage and it is doubtful that they would be able to do so on terms and conditions as favorable as those presently in place under the Financed Policy. In addition, given the current circumstances, there is no assurance that the Debtors would be able to obtain insurance coverage quickly enough to prevent a lapse in coverage.

9. The Financed Policy is essential to the preservation of the value of the Debtors' businesses and operations. Maintenance of insurance coverage under the Financed Policy is required under the laws (e.g., workers' compensation) of the states in which the Debtors' businesses operate. Furthermore, the Guidelines of the Office of the United States Trustee for the Southern District of New York (the "UST Guidelines") require debtors to maintain insurance coverage throughout their chapter 11 cases.

IV. Relief Requested

10. By this Motion, the Debtors request entry of interim and final orders, authorizing, but not directing, the Debtors to maintain their existing Premium Finance Agreement, and scheduling a final hearing (the "Final Hearing"). In light of the importance of maintaining the

Employment Practices Liability Insurance coverage, the Debtors believe that it is in the best interests of their estates and creditors for the Court to authorize the Debtors to honor their obligations under the Financed Policy and the Premium Finance Agreement. Any other alternative would likely require considerable cash expenditures, could result in the Debtors obtaining insurance coverage on less desirable terms than its existing coverage, and could be detrimental to the Debtors' restructuring efforts.

V. Basis for Relief Requested

A. Payment Of The Obligations Under The Premium Finance Agreement Should Be Authorized Under Bankruptcy Code Section 105 and The Doctrine Of Necessity

11. The proposed payments under the Premium Finance Agreement should be authorized under Bankruptcy Code section 105 and under the "doctrine of necessity." The Court's power to utilize the doctrine of necessity in chapter 11 cases derives from the Court's inherent equity powers and its statutory authority to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a).

12. The doctrine of necessity rule is consistent with the paramount goal of chapter 11 to facilitate the continued operation and rehabilitation of the debtor and "recognizes the existence of the judicial power to authorize a debtor in a reorganization case to pay pre-petition claims where such payment is essential to the continued operation of the debtor." *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 176 (Bankr. S.D.N.Y. 1989); *see also In re Just for Feet, Inc.*, 242 B.R. 821, 826 (D. Del. 1999)(stating that where the debtor "cannot survive" absent payment of certain prepetition claims, the doctrine of necessity should be invoked to permit payment). Accordingly, pursuant to section 105(a) of the Bankruptcy Code, this Court is empowered to grant the relief requested herein.

13. Moreover, numerous courts in this jurisdiction and others have granted the relief requested herein in other chapter 11 cases. *See, e.g., In re Fortunoff Fine Jewelry and Silverware, LLC*, Case No. 08-10353 (JMP) (Bankr. S.D.N.Y. Feb. 29, 2008) [Docket No. 312], (Bankr. S.D.N.Y. Feb. 5, 2008) [Docket No. 42]; *In re Atkins Nutritionals, Inc., et al.*, Case No. 05-15913 (ALG) (Bankr. S.D.N.Y. Aug. 1, 2005) [Docket No. 32]; *In re Tribune Company*, Case No. 08-13141 (KJC) (Bankr. D. Del. Dec. 10, 2008); *In re Buffets Holdings, Inc.*, Case No. 08-10141 (MFW) (Bankr. D. Del. Feb. 11, 2008 (final order)); and *In re Quaker Fabrics Corp.*, Case No. 07-11146 (KG) (Bankr. D. Del. Sept. 5, 2007).

B. The Debtors Should Be Authorized To Pay The Premium Finance Obligations Under Bankruptcy Code Sections 1107(a) and 1108

14. Courts have generally acknowledged that it is appropriate to authorize the payment (or other special treatment) of prepetition obligations in appropriate circumstances. *See, e.g., In re Ionosphere Clubs, Inc.*, 98 B.R. at 177; *see also Armstrong World Indus., Inc. v. James A. Phillips, Inc. (In re James A. Phillips, Inc.)*, 29 B.R. 391, 398 (S.D.N.Y. 1983)(granting authority to pay prepetition claims of suppliers who were potential lien claimants). In authorizing payments of certain prepetition obligations, courts have relied on several legal theories, rooted in sections 1107(a) and 1108 of the Bankruptcy Code.

15. Pursuant to sections 1107(a) and 1108 of the Bankruptcy Code, debtors in possession are fiduciaries “holding the bankruptcy estate[s] and operating business[es] for the benefit of [their] creditors and (if the value justifies) equity owners.” *In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002)(internal citations omitted). Implicit in the fiduciary duties of any debtor in possession is the obligation to “protect and preserve the estate, including an operating business’s going-concern value.” *Id.* Some courts have noted that there are instances in which a debtor can fulfill this fiduciary duty “only ... by the preplan satisfaction of a

prepetition claim.” *Id.* The *CoServ* court specifically noted that the satisfaction of prepetition claims prior to the consummation of a plan would be a valid exercise of the debtor’s fiduciary duty when the payment “is the only means to effect a substantial enhancement of the estate.” *Id.*

C. Payment Of The Premium Finance Agreement Obligations Is Necessary In Order To Comply With The UST Guidelines

16. The Debtors believe that the payment of the obligations under the Premium Finance Agreement without further order of the Court, is necessary and essential to the Debtors’ operation of their businesses during their reorganization. Additionally, as directed by the Office of the United States Trustee for Region 2, debtors in chapter 11 cases have a fiduciary obligation and a legal duty to account for their operations of a business, which in part is met by “maintain[ing] certain insurance coverage following the Petition Date.

D. Payment Of The Premium Finance Agreement Obligations Is Warranted Under Bankruptcy Code Sections 361, 362 and 363

17. Security interests created by premium finance arrangements generally are recognized as secured claims in bankruptcy to the extent of the amount of unearned premiums financed under such agreements. *See TIFCO, Inc. v. U.S. Repeating Arms Co. (In re U.S. Repeating Arms Co.)*, 67 B.R. 990, 994-95 (Bankr. D. Conn. 1986); *Drabkin v. A.I. Credit Corp. (In re Auto-Train Corp.)*, 9 B.R. 159, 164-66 (Bankr. D.D.C. 1981). Section 361 of the Bankruptcy Code specifically contemplates providing adequate protection to the extent of the diminution in value of a secured creditor’s collateral, and such security interest under the Premium Finance Agreement warrants adequate protection in the form of periodic payments. *See, e.g., In Waverly Textile Processing Inc.*, 214 B.R. 476 (Bankr. E.D. Va 1997); *In re Megamarket of Lexington, Inc.*, 207 B.R. 527 (Bankr. E.D. Ky. 1997); *In re Krimbrell Trucking Co., Inc.*, 3 B.R. 4 (Bankr. W.D. Wash. 1979). As a secured creditor, PAC would be entitled to seek relief from the automatic stay, either to cancel the Financed Policy in accordance with the

terms of the PFA, or to seek adequate protection of its investment. *See In Re Universal Motor Exp., Inc.*, 72 B.R. 208, 211 (Bankr. W.D.N.C. 1987) (recognizing that a default under the financing arrangement and the resulting decline in value of the unearned premiums justified relief from the automatic stay).

18. Moreover, under the PFA, PAC maintains a security interest in the unearned premiums, and therefore PAC may be entitled to adequate protection of its interests in the unearned premium under Bankruptcy Code section 363(e). The Debtors failure to provide such adequate protection – for example by failing to pay the ongoing installments due under the PFA – may constitute cause under Bankruptcy Code section 362(d) for PAC to obtain relief from the automatic stay and terminate the underlying policies.

19. Even if the Debtors were successful in preventing PAC from lifting the automatic stay to pursue its remedies, such litigation likely would be contested and thus very costly to the estates. More importantly, if unsuccessful in the automatic stay litigation, the Debtors may be unable to find a carrier willing to provide them similar insurance coverage or a company willing to finance the premiums without charging significantly higher premiums and fees.

20. In addition, the use of estate assets to pay monthly installments under the PFA constitutes a use of estate property that should be authorized under section 363(b) of the Bankruptcy Code so long as a sound business purpose exists for doing so. *See, e.g., Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1070 (2d Cir. 1983); *Fulton State Bank v. Schipper (In re Schipper)*, 933 F.2d 513, 515 (7th Cir. 1991); *In re Global Crossing Ltd.*, 295 B.R. 726, 742 (Bankr. S.D.N.Y. 2003); *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989); *In re Gulf States Steel, Inc.*, 285 B.R. 497, 514 (Bankr. N.D. Ala. 2002). The Debtors have determined, in the exercise of their business judgment, that

financing the premiums related to the Financed Policy under the PFA enables the Debtors to maintain critical insurance coverage. Doing so is in the best interest of the Debtors' estates and that of their creditors and these actions should be approved.

E. Sufficient Cause Exists for the Court To Authorize the Debtors To Maintain The Premium Finance Agreement

21. Section 364 of the Bankruptcy Code provides, in relevant part, “[i]f the [debtor] is unable to obtain unsecured credit . . . , the court, after notice and a hearing, may authorize the obtaining of [secured] credit or the incurring of [secured] debt” 11 U.S.C. § 364(c). In short, section 364 authorizes a debtor, in the exercise of its business judgment, to incur secured debt if the debtor has been unable to obtain unsecured credit and the borrowing is in the best interests of the estates. *See, e.g., In re Ames Dept. Stores*, 115 B.R. 34, 38 (Bankr. S.D.N.Y. 1990) (with respect to postpetition credit, courts “permit debtors-in-possession to exercise their basic business judgment consistent with their fiduciary duties”); *In re Mastercraft Interiors, Ltd.*, Case Nos. 06-12769, 06-12770, 2006 WL 4595946, at *4 (Bankr. D. Md. Aug. 10, 2006) (authorizing the debtor’s incurrence of secured financing because the debtor’s financing needs were “immediate and critical” to the success of the proceedings and the debtor was unable to obtain unsecured credit); *In re Budget Group, Inc.*, Case No. 02-12152, 2002 Bankr. LEXIS 1050 (Bankr. D. Del. Aug. 1, 2002) (court authorized funding of acquisition of property on a secured basis where acquired property was necessary to maintain operations and debtors could not obtain such funding on an unsecured basis); *see also* 3 Collier on Bankruptcy ¶ 364.04 (15th ed. Rev. 1999). Further, section 364(c) does not impose a duty on the debtor to request unsecured credit from every potential lender before seeking secured credit. *See In re Snowshoe Co., Inc.*, 789 F.2d 1085, 1088 (4th Cir. 1986).

22. The Debtors entered into their existing PFA prior to the filing of their chapter 11 petitions. A debtor entering into a premium financing agreement incurs an obligation to the policy lender at the time the debtor signs the agreement rather than when each installment payment becomes due. *See, e.g., In re Paris Indus. Corp.*, 130 B.R. 1, 2-3 (Bankr. D. Me. 1991) (finding that the debtor “incurred the debt in question . . . when the premium finance agreement was signed, and not . . . when each installment payment became due”); *In re Pan Trading Corp., S.A.*, 125 B.R. 869, 875 (Bankr. S.D.N.Y. 1991) (“Unless an installment contract is made in the ordinary course of business, a debtor generally becomes legally obligated on it on the date when the debtor originally undertook the obligation, not when each payment comes due.”) (citing *In re CHG Int’l. Inc.*, 897 F.2d 1479, 1486 (9th Cir. 1990)). Thus, the payment obligation under the Premium Finance Agreement is a prepetition debt that may be paid if the requirements of sections 105(a) and 363(b)(1) of the Bankruptcy Code are satisfied.

23. The Debtors sought and negotiated for the PFA with the best possible terms. Generally, lenders are unwilling to finance insurance premiums on an unsecured basis. Here, the Debtors provided PAC with liens on the amounts payable under the PFA in exchange for premium funding at considerable lower interest rates than what the Debtors could otherwise obtain. In the Debtors’ business judgment, the terms of the PFA represent the best possible terms for financing the premiums related to the Financed Policy.

F. Immediate Relief Is Necessary To Avoid Immediate And Irreparable Harm

24. Bankruptcy Rule 6003 provides that the relief requested in this Motion may be granted if the “relief is necessary to avoid immediate and irreparable harm.” Fed. R. Bankr. P. 6003; *see also In re First NLC Fin. Servs., LLC*, 382 B.R. 547, 549 (Bankr. S.D. Fla. 2008) (holding that Rule 6003 permits entry of retention orders on an interim basis to avoid

irreparable harm). The Second Circuit has interpreted the language “immediate and irreparable harm” in the context of preliminary injunctions. In that context, the court instructed that irreparable harm “is a continuing harm which cannot be adequately redressed by final relief on the merits’ and for which ‘money damages cannot provide adequate compensation.’” *Kamerling v. Massanari*, 295 F.3d 206, 214 (2d Cir. 2002) (citation omitted). Further, the “harm must be shown to be actual and imminent, not remote or speculative.” *Id.* at 214; *see also Rodriguez v. DeBuono*, 175 F.3d 227, 234 (2d Cir. 1998). The relief the Debtors are requesting by this Motion on an interim basis is limited to the extent it avoids clear and irreparable harm to the Debtors. Accordingly, entry of an order on an interim basis is appropriate under the circumstances.

25. The Debtors also request that the Court waive the stay imposed by Bankruptcy Rule 6004(h), which provides that “[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.” Fed. R. Bankr. P. 6004(h). As described above, the relief that the Debtors seek in this Motion is necessary for the Debtors to operate their businesses without interruption and to preserve value for their estates. The Debtors respectfully request that the Court waive the fourteen-day stay imposed by Bankruptcy Rule 6004(h), as the exigent nature of the relief sought herein justifies immediate relief.

VI. Notice

26. Notice of this Motion has been provided to: (a) the office of the United States Trustee for the Southern District of New York; (b) counsel to the proposed DIP lender, (c) Premium Assignment Corporation, (d) the creditors holding the thirty (30) largest unsecured claims against the Debtors’ estates on a consolidated basis, as identified in the Debtors’ chapter 11 petitions; and (e) all parties that have filed a notice of appearance or have requested service in

these chapter 11 cases. In light of the nature of the relief requested herein and the potential harm to the Debtors' estates if the relief requested herein is not granted, the Debtors respectfully submit that no other or further notice need be provided.

VII. No Prior Request

27. No prior motion for the relief requested herein has been made to this or any other court.

WHEREFORE, the Debtors respectfully request that the Court grant the relief requested herein and such other and further relief as it deems just and proper.

Dated: New York, New York
January 21, 2013

Respectfully submitted,

/s/ Peter S. Partee, Sr.

Peter S. Partee, Sr.
Michael P. Richman
Andrew Kamensky
Richard P. Norton
Robert A. Rich
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New York, New York 10166-0136
(212) 309-1000

*Proposed Attorneys for Debtors and
Debtors-in-Possession*

EXHIBIT A

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:

ATARI, INC., *et al.*,

Debtors.¹

) Chapter 11

) Case No. 13-10176 (____)

) Joint Administration Requested

**INTERIM ORDER AUTHORIZING, BUT NOT DIRECTING,
THE DEBTORS TO MAINTAIN A PREPETITION
INSURANCE PREMIUM FINANCE AGREEMENT**

Upon consideration of the motion (the “Motion”)² of the debtors and debtors-in-possession in the above-captioned chapter 11 cases (collectively, the “Debtors”) for entry of an interim order (this “Order”), pursuant to sections 105(a), 363(b), 364, 1107(a) and 1108 of Title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (as amended, the “Bankruptcy Code”) and Rule 6003 of the Bankruptcy Rules authorizing, but not directing, the Debtors to maintain a prepetition insurance premium finance agreement, and the Court having held a hearing on approval of the relief requested in the Motion and having considered the arguments of counsel made, and the evidence submitted, proffered or adduced at the Hearing; and the Court finding that: (a) it has jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 157 and 1334; (b) venue of the chapter 11 cases and the Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409; (c) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A); (d) proper and adequate notice of the Motion and the Hearing has been given and that no other or further notice is necessary; and (e) the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors and other parties in interest; and the Court having

¹ The other Debtors are Atari Interactive, Inc., Humongous, Inc., and California U.S. Holdings, Inc.

² Unless otherwise defined herein, capitalized terms shall have the meanings ascribed to them in the Motion.

determined that the factual and legal bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein,

IT IS HEREBY ORDERED THAT:

1. The Motion is **GRANTED** on an interim basis as set forth in this Order.
2. The Debtors are authorized to continue and honor, in the ordinary course of business, the terms of the Financed Policy and the Premium Finance Agreement.
3. The Debtors are authorized to maintain their Financed Policy in the ordinary course of business and to pay outstanding prepetition premiums, if any, and to pay their regular monthly installment payments under the Premium Finance Agreement.
4. The banks and financial institutions on which checks drawn or electronic payment requests made in payment of any pre-Petition Date obligations approved herein are authorized and directed to receive, process, honor and pay all such checks and electronic payment requests when presented for payment, and that all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Interim Order.
5. Nothing in the Motion or this Interim Order or the relief granted (including any actions taken or payments made by the Debtors) shall be construed as (i) an admission as to the validity of any claim against the Debtors, (ii) waiver of the Debtors' or any party in interest's rights to dispute, contest, setoff, or recoup any claim, or assert any rights, claims, or defenses related thereto, or (iii) an approval or assumption of any agreement, contract, program, policy or lease under section 365 of the Bankruptcy Code.
6. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Interim Order in accordance with the Motion.

7. The requirements set forth in Bankruptcy Rule 6003 are satisfied by the contents of the Motion or otherwise waived.

8. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Local Bankruptcy Rules for the Southern District of New York are satisfied by such notice.

9. Notwithstanding Bankruptcy Rule 6004, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

10. This Court shall retain jurisdiction over any and all matters arising from or related to the implementation or interpretation of this Order.

11. Any responses or objections to granting the relief requested in the Motion on a final basis shall be filed with the Clerk of the Bankruptcy Court electronically in accordance with the General Order M-399 (General Order M-399 and the User's Manual for the Electronic Case Filing System can be found at www.nysb.uscourts.gov, the official website for the Bankruptcy Court), and served so that they are received no later than five (5) business days prior to the Final Hearing (the "Objection Deadline") (with a courtesy copy delivered directly to the Chambers of the Honorable [____], United States Bankruptcy Court, Alexander Hamilton Custom House, One Bowling Green, New York, New York 10004): by (i) proposed attorneys for the Debtors, Hunton & Williams LLP, 200 Park Avenue, 53rd Floor, New York, New York 10166, Attn: Peter S. Partee, Sr., Esq.; (ii) the Office of the United States Trustee for the Southern District of New York, 33 Whitehall Street, 21st Floor, New York, New York 10004, Attn: Richard C. Morrissey, Esq.; (iii) counsel for the proposed DIP lender, SNR Denton US LLP, 1221 6th Avenue, New York, New York 10019, Attn: Hugh M.

McDonald; and (iv) counsel for the statutory committee of unsecured creditors, once appointed,
so as to be actually received by the Objection Deadline.

Dated: New York, New York
January __, 2013

THE HONORABLE
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT B

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:

ATARI, INC., *et al.*,

Debtors.¹

) Chapter 11

) Case No. 13-10176 (____)

) Joint Administration Requested

**FINAL ORDER AUTHORIZING, BUT NOT DIRECTING,
THE DEBTORS TO MAINTAIN A PREPETITION
INSURANCE PREMIUM FINANCE AGREEMENT**

Upon consideration of the motion (the “Motion”) of the debtors and debtors-in-possession in the above-captioned chapter 11 cases (collectively, the “Debtors”) for entry of a final order (this “Final Order”), pursuant to sections 105(a), 363(b), 364, 1107(a) and 1108 of Title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (as amended, the “Bankruptcy Code”) and Rule 6003 of the Bankruptcy Rules authorizing, but not directing, the Debtors to maintain a prepetition insurance premium finance agreement, and the Court having entered the Interim Order on [____], 2013; and this Court having held the final hearing (the “Final Hearing”) and having considered the arguments of counsel, and the evidence submitted, proffered or adduced at the Final Hearing; and the Court finding that: (a) it has jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 157 and 1334; (b) venue of the chapter 11 cases and the Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409; (c) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A); (d) proper and adequate notice of the Motion and the Hearing has been given and that no other or further notice is necessary; and (e) the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors and other parties in

¹ The other Debtors are Atari Interactive, Inc., Humongous, Inc., and California U.S. Holdings, Inc.

interest; and the Court having determined that the factual and legal bases set forth in the Motion and at the Final Hearing establish just cause for the relief granted herein,

IT IS HEREBY ORDERED THAT:

1. The Motion is **GRANTED** on a final basis as set forth in this Final Order.
2. The Debtors are authorized to continue and honor, in the ordinary course of business, the terms of the Financed Policy and the Premium Finance Agreement.
3. The Debtors are authorized to maintain their Financed Policy in the ordinary course of business and to pay outstanding prepetition premiums, if any, and to pay their regular monthly installment payments under the Premium Finance Agreement.
4. The banks and financial institutions on which checks drawn or electronic payment requests made in payment of any pre-Petition Date obligations approved herein are authorized and directed to receive, process, honor and pay all such checks and electronic payment requests when presented for payment, and that all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Final Order.
5. Nothing in the Motion or this Final Order or the relief granted (including any actions taken or payments made by the Debtors) shall be construed as (i) an admission as to the validity of any claim against the Debtors, (ii) waiver of the Debtors' or any party in interest's rights to dispute, contest, setoff, or recoup any claim, or assert any rights, claims, or defenses related thereto, or (iii) an approval or assumption of any agreement, contract, program, policy or lease under section 365 of the Bankruptcy Code.
6. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Final Order in accordance with the Motion.

7. The requirements set forth in Bankruptcy Rule 6003 are satisfied by the contents of the Motion or otherwise waived.

8. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Local Bankruptcy Rules for the Southern District of New York are satisfied by such notice.

9. Notwithstanding Bankruptcy Rule 6004, the terms and conditions of this Final Order shall be immediately effective and enforceable upon its entry.

10. This Court shall retain jurisdiction over any and all matters arising from or related to the implementation or interpretation of this Order.

Dated: New York, New York
January __, 2013

THE HONORABLE _____
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT C



PREMIUM FINANCE AGREEMENT

New York

P.O. Box 8800 - 3522 Thomasville Rd.

Tallahassee, FL 32314

Phone 850-907-5610

C740932

<input type="checkbox"/> PERSONAL	<input checked="" type="checkbox"/> COMMERCIAL	<input checked="" type="checkbox"/> NEW	<input type="checkbox"/> AGENCY RENEWAL	<input type="checkbox"/> ADD'L PREMIUM
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THIS AGREEMENT, made effective the 31 day of December 2012, between
CALIFORNIA US HOLDING INC
 (Name of Borrower/Insured exactly as it appears in financed policies)

ADDRESS 475 PARK AVE S 12TH FLR
 CITY NEW YORK STATE NY ZIP 10016 PHONE # _____

hereinafter called the Borrower, and Premium Assignment Corporation, a Florida Corporation hereinafter called Lender, for the purpose of financing the purchase of insurance policies described in the Scheduled Policies of Insurance listed in page 3 to this Agreement.

TOTAL PRICE OF PREMIUMS	- CASH DOWN PAYMENT	= PRINCIPAL BALANCE OWED ON PREMIUMS	+ DOC STAMPS & SERVICE FEE (if applicable)	= TOTAL AMOUNT FINANCED	+ FINANCE CHARGE (Amount credit costs over term of loan)	= TOTAL OF PAYMENTS (Amount paid if all payments made as scheduled)	ANNUAL INTEREST RATE
37,500.00	13,125.00	24,375.00	0.00	24,375.00	201.56	24,576.56	2.20

SELECT BILLING OPTION: ☐ Payment Book ☒ Monthly Invoice
☐ Direct Debit

Amount of Monthly Payment: 3,072.07 Number of Payments: 8 Date First Payment is Due: 1/31/2013

YOUR PAYMENT SCHEDULE WILL BE:
 Each monthly payment due on same day of each succeeding month until paid in full.

FOR VALUE RECEIVED, BORROWER PROMISES TO PAY to the order of Lender at the address given at the top of this page, the Total Amount Financed and all sums shown above, including interest at the Annual Interest Rate and other charges as described hereinafter, pursuant to the terms stated below and in page 2 of this Agreement.

1. **SECURITY FOR PAYMENT:** To secure payment of all sums due under this Agreement, Borrower grants Lender a security interest in any unearned premiums or other sums which may become payable under the Scheduled Policies of Insurance shown on page 3.
2. **LIMITED POWER OF ATTORNEY:** BORROWER IRREVOCABLY APPOINTS LENDER AS ATTORNEY-IN-FACT TO CANCEL THE SCHEDULED POLICIES OF INSURANCE AFTER BORROWER DEFAULTS IN MAKING PAYMENTS UNDER THIS AGREEMENT.

3. **NOTICE TO BORROWER:** (1) Do not sign this Agreement before you read it, or if it contains any blank space (other than as provided on the next page), (2) You are entitled to have and should retain a completely filled in copy of this Agreement to protect your legal rights, (3) Under the law, you have the right to pay off in advance the full amount due and under certain conditions to obtain a partial refund of the service charge, and (4) BY SIGNING BELOW BORROWER AGREES TO THE PROVISIONS ABOVE AND ALL OF THE TERMS WHICH APPEAR ON THE SECOND PAGE OF THIS AGREEMENT AND ACKNOWLEDGES RECEIPT OF COPIES OF PAGES 1, 2 AND 3 OF THIS AGREEMENT.

SIGNATURE OF ALL INSURED[S] NAMED IN POLICIES OR AUTHORIZED AGENT OF INSURED[S], AS PERMITTED BY LAW:

1/4/13 X Ad CFO
 Date Name and Title: Date Name and Title:

PRODUCER'S REPRESENTATIONS & WARRANTIES:

The undersigned Producer represents and warrants that: (A) The Cash Down Payment shown above has been paid by or on behalf of the Borrower. (B) The Total Price of Premiums shown above has been or will be used to purchase insurance policies shown in the Scheduled Policies of Insurance on page 3 of this Agreement. Any portion of the Total Price of Premiums received by Producer that is not used to purchase such insurance policies, as well as any refunds or credits on such policies, shall be promptly paid to Lender. (C) To the best of the undersigned's knowledge and belief, Borrower is not subject to any bankruptcy or insolvency proceedings and Producer has no reason to believe that Borrower is insolvent. (D) The Borrower's signature(s) is (are) genuine and authorized, or to the extent permitted by applicable law, the Producer has been authorized by Borrower to sign this Agreement on Borrower's behalf. (E) Producer has delivered or will deliver a copy of this Agreement to Borrower. **Producer agrees that the Representations & Warranties above, as well as those on page 3 of this Agreement, are a binding contract between Producer and Lender.**

PRODUCER / AGENCY

Name WILLIAM GALLAGHER ASSOC/BOSTON
 Address 470 ATLANTIC AVE
BOSTON, MA 02210

12/27/2012
 Date

PRODUCER'S SIGNATURE

REV. 09/02 - NY



IN CONSIDERATION of the payment by Lender of the Principal Balance Owed on Premiums shown on page 1 to the insurance companies named in the Scheduled Policies of Insurance shown on page 3 (or the agents of such companies), the Borrower agrees:

- 4. ACCEPTANCE DATE** This Agreement is binding upon its acceptance by Lender. Acceptance shall occur upon payment of the Principal Balance Owed on Premiums to the insurance companies named in the Scheduled Policies of Insurance, or the agents of such companies.
- 5. PAYMENTS** Borrower shall make payments directly to Lender in the amounts and at the same time specified on page 1 of this Agreement. Payments shall be made at Lender's address given at the top of page 1 or such other address as Lender may direct in writing. Payments made to any other address, person, firm, corporation or insurance agency (including but not limited to the Producer) shall not constitute payment to Lender. Payments received after cancellation of the Scheduled Policies of Insurance shall be credited to the unpaid balance due under this Agreement and shall not constitute reinstatement of the cancelled policies, nor shall it constitute a waiver by Lender of any rights.
- 6. LATE CHARGES** If a payment is more than 5 days late, Borrower agrees to pay a late charge of 5% of each delinquent or unpaid installment, unless prohibited by applicable law.
- 7. DEFAULT/CANCELLATION** A default shall occur if Borrower fails to pay any sums required by this Agreement in a timely manner, including interest and Late Charges, or if Borrower fails to carry out any other obligations under this Agreement. After default, any unpaid balance of the Total Amount Financed may become immediately due and payable in full at the option of Lender, and Lender may enforce its security interest and its rights under the Limited Power of Attorney. Interest will continue to accrue on the unpaid balance at the Annual Percentage Rate or maximum rate allowed by applicable law, at the option of Lender, until all balances owed under this Agreement are paid. Lender may request cancellation of all or any of the Scheduled Policies of Insurance at the earliest time after default permitted by applicable law.
- 8. EXCESS INTEREST OR FEES** It is the intent of the Lender that no interest, fee or charge in excess of that permitted by applicable law will be charged, taken or become payable under this Agreement. In the event it is determined that Lender has taken, charged or accrued interest, fees or charges in excess of that permitted under law, such excess shall be returned to Borrower or credited against the sum due Lender hereunder.
- 9. REFUNDS** The Borrower will receive a refund of the finance charge if the account is prepaid in full prior to the last installment due date. The refund shall be computed according to applicable law subject to a nonrefundable service charge of \$10.
- 10. SHORTAGE OR OVERAGE OF RETURNED PREMIUM** If Lender does not receive unearned premiums or other funds after cancellation or expiration of the Scheduled Policies of Insurance in an amount sufficient to pay the unpaid balance due under this Agreement, Borrower agrees to pay the deficiency to Lender on demand. Interest shall accrue on the deficiency at the Annual Percentage Rate, or the maximum rate allowed by applicable law, at the option of Lender. If the unearned premiums received by Lender are more than the amount due under this Agreement, the excess shall be returned to Borrower within the time allowed by applicable law. Borrower has no right to any excess of less than the minimum amount required to be paid by applicable law.
- 11. ATTORNEYS FEES/COURT COSTS** Borrower agrees to pay all attorneys fees, expenses and costs incurred by Lender in collecting amounts due from Borrower under this Agreement, including attorneys fees incurred on appeal and in bankruptcy, unless prohibited or limited by applicable law.
- 12. LENDER RELATIONSHIP** Borrower acknowledges that: (a) Lender is not an insurance agent nor an insurance company, (b) This Agreement is a financing agreement and not an insurance policy or guarantee of insurance coverage, (c) Lender has played no part in the selection or structuring of the financed insurance policies, (d) Lender has no obligation to request reinstatement of any insurance policies properly cancelled after a default under this Agreement, and (e) The decision of whether to reinstate insurance coverage is made solely by the insurance companies providing coverage, not Lender.
- 13. ADDITIONAL PREMIUMS** Lender may advance to Producer, as Borrower's agent, or to an insurance company any additional premiums that may become due, less normal down payment, adding the advanced amount, plus any finance charge, to Borrower's balance under this Agreement. However, any additional premium which is owed to the insurance company(ies) named in the Scheduled Policies of Insurance as a result of any misclassification of risk which is not paid in full or financed in this Agreement may result in cancellation of the coverage by the insurance company for nonpayment of premium. Lender's payment shall not be applied by the insurer to pay for any additional premium owed by Borrower as a result of any misclassification of risk.
- 14. LENDER LIABILITY** Lender is not responsible for any damages resulting from cancellation of the Scheduled Policies of Insurance by Lender, as long as the cancellation was done in accordance with applicable law. Borrower shall be responsible for Lender's reasonable attorneys fees and expenses for any unsuccessful action filed by Borrower seeking damages for improper cancellation. Lender's liability for breach of this Agreement shall be limited to the Principal Balance Financed under this Agreement, if permitted by applicable law.
- 15. RETURNED CHECKS** Borrower agrees to pay a returned check fee, as allowed by applicable law, for each of Borrower's checks returned to Lender for Insufficient funds or because the insured has no account in the payor bank.
- 16. WARRANTIES OF BORROWER** Borrower warrants that: (a) Each of the Scheduled Policies of Insurance have been issued or a binder has been issued; (b) Borrower has not and will not assign or encumber any unearned premium of the Scheduled Policies of Insurance or grant a power of attorney to cancel the Scheduled Policies of Insurance to anyone other than Lender until all sums due under this Agreement are paid in full; (c) Lender may assign all its rights under this Agreement as allowed by applicable law; (d) No proceeding in bankruptcy or insolvency has been instituted by or against Borrower or is contemplated by Borrower, and (e) No insurance financed by this Agreement was purchased for personal, family or household purposes, unless so indicated on page 1.
- 17. INTEREST CALCULATION** Interest is computed on an annual basis of 12 months of 30 days on the balance of the Total Amount Financed, from the effective date of the earliest insurance policy for which premiums are being advanced to the date when all sums due under this Agreement are paid.
- 18. BLANK SPACES** Borrower agrees that if any policy financed by this Agreement has not been issued at the time the Agreement is signed, the names of the insurance companies issuing the financed policies, the policy numbers and the due date of the first installment may be inserted in the Agreement after it is signed.
- 19. GOVERNING LAW** The Parties agree that the law of the state in which this Agreement is executed shall control the interpretation of the Agreement and the rights of the parties, unless the Agreement is executed in a state without premium finance laws, in which case the law of the State of Florida shall govern.
- 20. SAVINGS AND MERGER CLAUSE** The Parties agree that if one or more portions of this Agreement are found to be invalid or unenforceable for any reason, the remaining portions shall remain fully enforceable. The parties also agree that this Agreement contains the entire agreement between the parties regarding the subject matter herein and supersedes any prior discussions.
- 21. FINANCING OPTION** Entry into this financing arrangement is not a condition of obtaining insurance. You may opt to pay the premium for such insurance without financing such premium, or to obtain financing from some other source if you choose.



of 4
State: NY

SCHEDULED POLICIES OF INSURANCE

CALIFORNIA US HOLDING INC
475 PARK AVE S 12TH FLR
NEW YORK, NY 10016

WILLIAM GALLAGHER ASSOC/BOSTON 11696
470 ATLANTIC AVE
BOSTON, MA 02210
(617) 646-0298

C740932

V8(0)NI1.79P-2.32

Premium	Down Payment	Unpaid Balance	Doc Stamps/Fees	Amt. Financed	Finance Charges	Total / Payments
37,500.00	13,125.00 (35.00 %)	24,375.00	0.00	24,375.00	201.56	24,576.56

Payment	Payments	Rate	First Due	Type	Status	Contract Type
3,072.07	8	2.20 %	1/31/2013	INVOICE	NEW	COMMERCIAL

EFF DATE	COMPANY / BROKER	CITY	ST	CO. #	TYPE MEP	POLICY NO.	TOTAL PREMIUM
12/31/2012	CO: NATL UNION FIRE INS	PITTSBURGH	PA	86140	EPLI	015680037	37,500.00
12/31/2013	MGA:				0.00 %		

Created By: UFJB146

Auth Code:

ADDITIONAL REPRESENTATIONS & WARRANTIES OF PRODUCER

(F) All information provided above is complete and correct in all respects and the policies listed above are or will be in force on the stated Effective Date and delivered by Producer to the Borrower, except for assigned risk or residual market policies.

(G) If any information listed above is or becomes incomplete or inaccurate, Producer shall promptly provide correct information to Lender.

(H) The Producer is an authorized policy issuing agent of the companies issuing the policies listed above or is the authorized agent of the MGA or broker placing the coverage directly with the insuring company, **except those policies indicated with an "X"**.

(I) None of the policies listed above are subject to reporting or retrospective rating provisions. All policies subject to audit, minimum or fully earned premium provisions are indicated below:

Policy No and Prefix No: _____

(J) Except as indicated above, all Scheduled Policies of Insurance can be cancelled by Borrower or Lender on 10 days notice and the unearned premiums will be computed pro rata or on the standard short rate table.

(K) If any Scheduled Policies of Insurance are subject to audit, Producer and Borrower have made good faith determination that the deposit, provisional or initial premiums are not less than the anticipated premiums to be earned for the full term of the policy(ies).

(L) Upon cancellation of any of the Scheduled Policies of Insurance, Producer shall remit to Lender the full amount of the unearned premium, including unearned commission, as well as any other payments or credits received by Producer, up to the unpaid balance due under this Agreement, within 15 days of receipt from the insuring company.

DOCUMENTARY STAMPS REQUIRED BY LAW IF ANY ARE AFFIXED TO MONTHLY JOURNAL AND CANCELLED.