

AKIN GUMP STRAUSS HAUER & FELD LLP  
One Bryant Park  
New York, New York 10036  
Telephone: (212) 872-1000  
Facsimile: (212) 872-1002  
Ira S. Dizengoff  
Kristine G. Manoukian

Robert S. Strauss Building  
1333 New Hampshire Avenue, N.W.  
Washington, DC 20036-1564  
Telephone: (202) 887-4000  
Facsimile: (202) 887-4288  
Scott L. Alberino (*Admitted Pro Hac Vice*)

*Counsel to the Debtors and Debtors in Possession*

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

In re:	)	Chapter 11
ATARI, INC., <i>et al.</i> ,	)	Case No. 13-10176 (JMP)
Debtors. <sup>1</sup>	)	(Jointly Administered)

**STATEMENT AND RESERVATION OF RIGHTS OF THE DEBTORS REGARDING  
THE APPLICATION TO RETAIN AND EMPLOY DUFF & PHELPS SECURITIES,  
LLC AS FINANCIAL ADVISOR TO THE OFFICIAL COMMITTEE OF UNSECURED  
CREDITORS OF ATARI, INC., ET AL., NUNC PRO TUNC TO FEBRUARY 11, 2013**

The above-captioned debtors and debtors-in-possession (collectively, the “*Debtors*”), submit this statement and reservation of rights (collectively, the “*Reservation*”) with regard to the *Application to Retain and Employ Duff & Phelps Securities, LLC (“DPS”) as Financial Advisor to the Official Committee of Unsecured Creditors of Atari, Inc. et al. (the “Committee”)*,

<sup>1</sup> The Debtors are: Atari, Inc.; Atari Interactive, Inc.; Humongous, Inc.; and California U.S. Holdings, Inc.

*Nunc Pro Tunc to February 11, 2013* [Docket No. 105] (the “*DPS Application*”).<sup>2</sup> In support of this Reservation, the Debtors respectfully state as follows:

### **RELEVANT BACKGROUND**

1. By the DPS Application, the Committee seeks to retain DPS as its financial advisor to aid the Committee, *inter alia*, in analyzing financial information, providing strategic advisory services, and assisting in negotiations with parties in interest in connection with the sale process and the Debtors’ chapter 11 cases. Pursuant to the DPS Application, the Committee proposes to pay DPS (i) a flat Monthly Fee of \$50,000 and (ii) a Restructuring Fee of up to \$700,000 based on the recoveries obtained by general unsecured creditors (the “*Fee Structure*”). The Committee further proposes to credit 50% of all Monthly Fees paid with respect to the months following the second month of DPS’s engagement against any Restructuring Fee payable to DPS.

2. The Debtors understand that discussions have occurred between representatives of DPS and Alden Global Value Recovery Master Fund, L.P. (the “*DIP Lender*”) regarding the Fee Structure but no agreement has been reached. The Debtors are hopeful that an agreement can be reached between DPS and the DIP Lender which avoids the incurrence of additional administrative expenses, and that balances the interests of all stakeholder groups in a fair and reasonable manner.

### **STATEMENT AND RESERVATION OF RIGHTS**

3. Although the Debtors do not oppose the retention of DPS as the Committee’s financial advisor, the Debtors note that the Committee has the burden of proof to establish that that the Fee Structure is reasonable under the facts and circumstances of these cases. The

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<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the DPS Application.

Debtors expressly reserve all of their rights to appear and be heard at the hearing on the DPS  
Application with respect to whether this burden has been satisfied.

New York, New York  
Dated: March 13, 2013

AKIN GUMP STRAUSS HAUER & FELD LLP

By: /s/ Ira S. Dizengoff  
Ira S. Dizengoff  
Kristine G. Manoukian  
One Bryant Park  
New York, New York 10036  
Telephone: (212) 872-1000  
Facsimile: (212) 872-1002  
idizengoff@akingump.com  
kmanoukian@akingump.com

Scott L. Alberino  
Robert S. Strauss Building  
1333 New Hampshire Avenue, N.W.  
Washington, DC 20036-1564  
Telephone: (202) 887-4000  
Facsimile: (202) 887-4288  
salberino@akingump.com

*Counsel to the Debtors and Debtors in Possession*