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

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

**DECLARATION OF ADAM W. VEROST IN SUPPORT OF THE MOTION FOR  
ENTRY OF AN ORDER AUTHORIZING THE DEBTORS TO ADOPT AND  
IMPLEMENT (I) A SALE INCENTIVE PLAN AND (II) A LOYALTY PLAN**

I, Adam W. Verost, hereby declare, pursuant to 28 U.S.C. § 1746, under penalty of perjury:

**Background**

1. My name is Adam W. Verost. I am a Managing Director at Perella Weinberg Partners (“**PWP**”), an independent financial services firm serving as investment banker to Atari,

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

Inc. and the other above-captioned debtors and debtors in possession (collectively, the “*Debtors*” or the “*Company*”).

2. I submit this declaration in support of the *Motion for Entry of an Order Authorizing the Debtors to Adopt and Implement (I) a Sale Incentive Plan and (II) a Loyalty Plan* (the “*Motion*”).<sup>2</sup>

3. Except as otherwise indicated, all facts set forth in this declaration are based on my personal knowledge, my review of relevant documents, my opinion, my experience as a restructuring advisor or my conversations with the Debtors’ employees. If called upon to testify I could and would testify to the facts set forth herein. I am authorized to submit this declaration on behalf of the Debtors. I am not being compensated specifically for this testimony other than payments received by PWP as a professional retained in these chapter 11 cases.

#### **Qualifications**

4. PWP, together with its affiliates, is a leading financial services firm with offices in New York, New York; London, England; San Francisco, California; Austin, Texas; Denver, Colorado; and Abu Dhabi, UAE. Among other services, PWP provides owners, boards and senior management of public and private companies with strategic and financial advice that generally results in a financial transaction. PWP’s corporate advisory practice is focused on providing clients with advice related to financial restructurings and mergers and acquisitions. PWP’s financial restructuring practice works with companies, investors and other parties-in-interest in turnaround and distressed situations. Its mergers and acquisitions practice works with both public and private companies. In addition, PWP has an asset management business, which offers multiple investment vehicles focused on alternative investment products.

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<sup>2</sup> Capitalized terms not otherwise defined herein have the meaning given to them in the Motion.

5. As noted above, I am a Managing Director at PWP, in which role I have advised numerous clients in a variety of different types of distressed transactions. Prior to my employment with PWP, from March 2006 until December 2006, I held the position of Director at Kramer Capital Partners. From June 2001 until March 2006, I held a number of positions with increasing responsibility at Greenhill & Co., most recently as a Vice President. From August 1998 until June 2001, I held a number of positions with increasing responsibility at Houlihan Lokey Howard & Zukin, most recently as an Associate. I received a Bachelor of Science in Business, with concentrations in Finance and Accounting, from Indiana University in 1998. I hold Series 7, Series 63 and Series 79 securities licenses.

6. The nature of my work for PWP primarily has been focused on bankruptcy and other restructuring situations, representing debtors and investors in distressed companies. The scope of this work includes investment banking and restructuring, financing, sale and financial advisory services. Among other things, I advise companies with respect to corporate restructurings, sale transactions, obtaining credit facilities and refinancings, and negotiating with interested purchasers, credit providers and creditors, among other constituencies. A partial list of restructuring and M&A matters in which I have provided such services includes: 7-Eleven, Abraxas Petroleum, Adelphia Communications, American Airlines, American Commercial Lines, AT&T Latin America, Consorcio Ecuatoriano de Telecomunicaciones SA, Harnischfeger Industries, KCS Energy, GMAC/General Motors, Imperial Sugar, Masonite International, Muvico Theatres, Orius, Solutia, Tower Automotive, Tronox, United Airlines and Whirlpool.

#### **The Sale Process and the Incentive Plans**

7. Since the commencement of these cases, I, along with other Company professionals, have been aggressively seeking buyers for all or substantially all of the Debtors' assets (the "*Assets*") for sale (the "*Sale Process*") by soliciting bids and negotiating with

prospective buyers. To date, PWP has contacted more than 150 prospective buyers, more than 80 of whom (the “*Potential Buyers*”) have executed or are negotiating non-disclosure agreements for access to the Debtors’ virtual data room (the “*Data Room*”) created to assist the buyers with their due diligence. The Potential Buyers are comprised of financial and strategic buyers, the latter category including both gaming and non-gaming companies. A number of the Potential Buyers have also expressed an interest in purchasing the Company as a “going concern”, including the ability to retain some or all of the Company’s employees.

8. In order to effectively conduct this process, the Debtors and PWP must rely on the Participating Employees to gather diligence materials and prepare detailed business plans for each of the Company’s business units, and historical and forecasted financial information in a customized, bidder-friendly format to enable the Potential Buyers to properly evaluate the Assets. As the Potential Buyers navigate through the Data Room and formulate their bids, these employees need to be available to answer questions and respond to additional diligence requests from the Buyers. Even after the initial bids are submitted, and as the Debtors and PWP engage in negotiations with the Potential Buyers, some of the Participating Employees will be requested to participate in the management presentations while others will be required to work behind the scenes to continue to respond to diligence requests from the Buyers.

9. In addition to assisting the Debtors and PWP with the Sale Process, the Participating Employees will be required to work diligently to ensure that the Company is operating effectively on a day-to-day basis in order to protect its value as a “going concern”, and, concomitantly, its attractiveness to the Potential Buyers.

10. The Debtors ability to preserve value for their estates, then, is dependent upon the continued dedication and loyalty of the Participating Employees who possess the institutional

knowledge and understanding of the Debtors' business that is necessary to facilitating the Sale Process, preserving the value of the Company and the Assets, and minimizing the cost of administering the Debtors' estates. Recognizing the importance of the Participating Employees to the Sale Process, the Debtors' operations, and, ultimately, the value of the estates, the Debtors, with the assistance and support of their advisors, have developed and adopted the Incentive Plans. The Debtors have also obtained the DIP Lender's consent for the Incentive Plans. The Incentive Plans divide the Participating Employees into two categories—the first category, the Sale Incentive Plan Participants, includes those employees who have the knowledge and expertise necessary to *lead* the Sale Process and the ongoing operations of the Debtors' business to maximize value of the Debtors' estates, and the second category, the Loyalty Plan Participants, includes employees who will *support*, and have the institutional knowledge and experience to assist in, these efforts. The details surrounding each of the Incentive Plans are set forth below and incorporated in the Motion.

#### **The Sale Incentive Plan**

11. The Sale Incentive Plan proposes to make incentive payments, upon achieving certain sale results in these cases and the closing of the Sale transaction, to nine Sale Incentive Plan Participants whose roles are integral to maximizing value through the Sale Process. Given the Sale Incentive Plan Participants' in-depth knowledge of the Debtors' business operations, and, in particular, the Debtors' unique assets, I believe the Sale Incentive Plan Participants are vital to the Sale Process. In addition, once the Sale Process is complete, these employees will be instrumental in ensuring a smooth transition of the Assets to the ultimate buyer or buyers.

12. Specifically, the Sale Process is managed internally by three Participating Executives: James Wilson, Chief Executive Officer, Kristen Keller, General Counsel, and Robert

Mattes, Chief Financial Officer. Mr. Wilson is responsible for the oversight of the Company's day-to-day business operations and these bankruptcy proceedings, and is a member of the Company's board of directors. With respect to the Sale Process, Mr. Wilson is instrumental in attracting Potential Buyers to the Sale Process and managing the development of the strategy, business plans, forecasts and presentations for use in the Sale Process. Mr. Wilson also will present the business plans and lead the management presentations to the Potential Buyers.

13. Ms. Keller manages the day-to-day legal functions of the Company, which includes oversight over the drafting and negotiation of all agreements, protection and maintenance of the Company's intellectual property portfolio, compliance with regulatory matters and oversight of human resources and litigation matters. With respect to the Sales Process, Ms. Keller has responsibility for providing diligence materials and providing answers to questions and inquiries from the Potential Buyers regarding legal, regulatory and human resources matters. Ms. Keller also will participate in the management presentations to the Potential Buyers.

14. Finally, Mr. Mattes manages the Company's finance and technology functions. His responsibilities include maintaining and updating the Company's financial books and records and overseeing the Company's accounts payable and receivable, payroll and taxes. With respect to the Sales Process, Mr. Mattes has been instrumental in developing forecasts used in the business plans and will be required to respond to detailed financial questions from the Potential Buyers. Like Ms. Keller, Mr. Mattes will take part in the management presentations.

15. The Participating Executives are the "face of the company" to Potential Buyers and, I believe, will each play a unique and integral role in the Sales Process. Under the Sale Incentive Plan, each Participating Executive is eligible to receive a small base award upon the

full repayment of the DIP Facility. In addition, Mr. Wilson is eligible to receive a percentage of the sale proceeds, which percentage will increase as certain sale result milestones are achieved, provided that the Sale generates more than the minimum sale price set forth in **Exhibit B** to the Motion. Further, Ms. Keller and Mr. Mattes are each eligible to receive a percentage of their respective base salary, which percentage will increase as certain sale benchmarks are satisfied, once the minimum sale price set forth in **Exhibit B** is realized.

16. In addition to the Participating Executives, six senior management-level, non-insider employees (collectively, the “*Senior Employees*”) are eligible to participate in the Sale Incentive Plan who, I believe, are vital to the Sale Process, due to the unique and specialized role they each play within the Company. In particular, Emily Clock, Todd Shallbetter and Anthony Jacobson are the Company’s primary revenue producers. Ms. Clock is responsible for growing and maintaining the Company’s “licensing-out” business while Mr. Shallbetter manages the Company’s digital distribution business including interfacing with distribution partners to maintain and develop programs and initiatives to maximize revenue. Mr. Jacobson is the Company’s senior vice president for business development and has been instrumental in identifying and attracting several of the Potential Buyers because of his strategic relationships with these Buyers. Because of their skills, experience and institutional knowledge, Ms. Clock, Mr. Shallbetter and Mr. Jacobson will each assume a central role in the presentations to the Potential Buyers.

17. Additionally, Joel Fashingbauer, who oversees product development and production management for the Company’s games, has helped develop many of the business plans and the management presentations. Further, Robert Spellerberg, who is responsible for risk management and collections with respect to the Company’s retail business, is instrumental in

maximizing value from the sale of the Debtors' remaining inventory and minimizing any exposure associated with the close-out of the retail business. Finally, Giancarlo Mori leads the Company's creative team and has been actively involved in the drafting and preparation of all the materials for the management presentations.

18. In light of the important role that each Senior Employee has played and will continue to play in ensuring the success of the Sale Process, each Senior Employee is eligible to receive incentive payments upon reaching certain sale result milestones as detailed in **Exhibit B** to the Motion.

19. I believe that the Sale Incentive Plan is appropriately tailored to incent the Sale Incentive Plan Participants to continue to perform their functions at the levels necessary to maximize the value of the Assets throughout the Sale Process and sustain the Debtors' business operations during the chapter 11 process.

#### **The Loyalty Plan**

20. In addition to the Sale Incentive Plan, the Debtors seek to adopt and implement the Loyalty Plan, which is available to the Debtors' remaining employees not covered by the Sale Incentive Plan. In addition to the vital role that each of these employees continue to play in sustaining the Company's business operations during this critical time, the Loyalty Plan Participants will also continue to support the Sale Incentive Plan Participants' efforts in conducting a value-maximizing Sale Process.

21. Specifically, it is my understanding that the Loyalty Plan Participants perform the following important functions for the Company:

- **Marketing:** promoting the Atari brand and the Company's products and games, designing artwork and maintaining online community relationships and the Company's database of registered users.



- ***Production & Development:*** developing the Company's mobile games and monitoring external development of game design and features, game monetization and user acquisition.
- ***Finance:*** managing the Company's finance, reporting, payables, receivables and royalty collection functions, and budgeting, forecasting and providing oversight of assessments of tax liabilities and payments thereon.
- ***Legal:*** reviewing and drafting agreements, maintaining contract databases, providing advice related to contractual obligations, maintaining and protecting the Company's intellectual property, assisting in the management of litigation, ensuring compliance with regulatory requirements and drafting and maintaining privacy policies and terms of use.
- ***Database/Websites/Technology:*** managing the Company's databases and websites and providing general technical guidance to the Company, as well as responding to, and executing, regulatory and industry requests for changes to the Company's websites.
- ***Human Resources:*** managing the Company's human resources and benefits programs, addressing employment-related questions, providing support to managers in handling employee related issues, providing risk analyses related to Company policies and practices, and performing the Company's payroll functions.
- ***Quality Assurance/Customer Service:*** managing the quality assurance, archive and customer service functions of the Company and providing technical support to the digital distribution business.
- ***Business Development/Licensing:*** developing and maintaining the Company's licensing business, responding to request for permission to use the Company's products and providing oversight of licensees, including maintenance of the Company's style guide.
- ***Retail Sales & Distribution:*** managing the sale of existing retail inventory, overseeing risk management associated with major retailers and managing the Company's retail distribution relationships.

22. I believe the Debtors' ability to preserve the value of the Company as a "going concern" is dependent upon the continued employment, active participation and dedication of the Loyalty Plan Participants who perform the foregoing functions. The uncertainty surrounding the future of the Company and the additional burdens that have been imposed on the Loyalty Plan Participants as a result of the bankruptcy filing and employee resignations, has led to reduced employee morale. The implementation of the Loyalty Plan will boost morale by (i) sending a

strong signal to the Loyalty Plan Participants that their services are valued and (ii) providing the Loyalty Plan Participants with the appropriate incentive to remain focused on performing the foregoing tasks rather than seek alternative employment. Furthermore the Loyalty Plan will provide the Loyalty Plan Participants with some financial security in the event the Company determines that a reduction in workforce is appropriate or necessary based upon the initial indications of interest that the Company receives from the Potential Buyers.

23. Under the Loyalty Plan, each Loyalty Plan Participant will receive a pre-determined award, as set forth on **Exhibit C** to the Motion, based on such employee's position, tenure and specific responsibilities. Such award shall vest and be paid upon the involuntary termination of the Loyalty Plan Participant's employment by the Debtors at any point during the chapter 11 cases.

24. I believe that the Loyalty Plan is appropriately tailored to incentivize the Loyalty Plan Participants to continue to perform their functions at the levels necessary to maximize the value of the Assets throughout the Sale Process and sustain the Debtors' business operations during the chapter 11 process.

#### **Estimated Cost of the Incentive Plans**

25. I believe that the cost of the Incentive Plans, measured both on a dollar basis and a percentage basis, is reasonable and appropriate under the unique facts and circumstances of these chapter 11 cases. Specifically, under the Sale Incentive Plan, the aggregate amount of payments to the Participating Executives upon the repayment of the DIP Facility equals \$72,000. No additional payments would accrue under the Sale Incentive Plan until the minimum sale price is achieved as set forth in **Exhibit B** to the Motion. Thereafter, the payments would increase

upon the realization of additional sale milestones as set forth in **Exhibit B** to the Motion. Additionally, the maximum cost for Loyalty Plan is \$743,000.

**Limitations on Incentive Plan Payments**

26. The Debtors do not intend to reduce the value of their estates by providing the Participating Employees with a double recovery on account of both prepetition employee benefits and any benefits offered under the Incentive Plans. To the extent a Participating Employee elects to receive compensation under the Incentive Plans, such employee will be required to waive any employment-related claims that he/she may assert against the Debtors.

27. Additionally, any Participating Employee who voluntarily leaves the Debtors' employment before the specific eligibility milestones set forth in **Exhibits B** and **C** to the Motion have been satisfied will forfeit such employees' right to future payment under the Incentive Plans. In such a case, any amounts that otherwise would have been payable to a Participating Employee but are not paid due to such employee's voluntary resignation will be returned to the Debtors' estates and available for distribution to the Debtors' creditors.

28. I believe that the Incentive Plans reflect a proper exercise of the Debtors' business judgment. In addition to their ordinary course activities, the Participating Employees are now tasked with providing the highest level of services under extraordinary stress resulting from the employee turnover and increased responsibilities, all in the face of an uncertain future. Moreover, the Participating Employees must work expeditiously with the Debtors' advisors to assist them with the Sale Process, the Debtors' ongoing operations and these bankruptcy proceedings. The skills and knowledge that the Participating Employees possess, and their motivation to remain in the Debtors' employ, are essential to maximizing the value of the Debtors' estates by maintaining uninterrupted operation of the Debtors' business during this

critical time. I believe that the Incentive Plans will provide a proper incentive to the Participating Employees to remain dedicated to their jobs and to perform to the best of their abilities through the restructuring and sale processes, which will enable the Debtors to properly exercise their fiduciary duties to maximize value for the benefit of their estates and creditors.

29. Further, I believe that the aggregate cost, scope and conditions of the Incentive Plans are reasonable given the unique facts and circumstances of these chapter 11 cases.

I declare under penalty of perjury that the foregoing is true and correct.

New York, New York  
Dated: March 19, 2013

By: /s/Adam W. Verost  
Adam W. Verost