

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**

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

**EX PARTE MOTION FOR ENTRY OF AN ORDER AUTHORIZING THE DEBTORS
TO FILE UNDER SEAL CERTAIN CONFIDENTIAL INFORMATION**

The above-captioned debtors and debtors-in-possession (collectively, the “*Debtors*” or the “*Company*”) seek entry of an order, substantially in the form attached hereto as **Exhibit A** (the “*Proposed Order*”), pursuant to section 107(b) of title 11 of the United States Code (the “*Bankruptcy Code*”), and Rule 9018 of the Federal Rules of Bankruptcy Procedure (the “*Bankruptcy Rules*”) authorizing the Debtors to: (a) file under seal the exhibits (collectively, the “*Sealed Exhibits*”) to the *Motion for Entry of an Order Authorizing the Debtors to Adopt and*

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

*Implement (I) a Sale Incentive Plan and (II) a Loyalty Plan (the “**Incentive Motion**”)*² filed contemporaneously herewith, containing confidential information regarding the identity of the Participating Employees, the benchmarks used for calculating the payments under the Incentive Plans and specific amounts allocated to each Participating Employee under the Incentive Plans (the “**Confidential Information**”); and (b) provide the Confidential Information contained in the Sealed Exhibits to the parties specifically designated by the Debtors (the “**Sealing Motion**”). In support of the Sealing Motion, the Debtors respectfully state as follows:

JURISDICTION

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue in this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory bases for the relief requested herein are Bankruptcy Code section 107(b) and Bankruptcy Rule 9018.

BACKGROUND

A. The Bankruptcy Cases

2. On the Petition Date each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors continue to operate their business and manage their properties as debtors-in-possession pursuant to Bankruptcy Code sections 1107(a) and 1108. No request for the appointment of a trustee or an examiner has been made in these cases.

3. By an order entered on January 24, 2013, the Debtors’ chapter 11 cases have been consolidated for procedural purposes only and are being jointly administered pursuant to Bankruptcy Rule 1015(b) [Docket No. 27]. On February 6, 2013, the U.S. Trustee appointed the Committee in these chapter 11 cases [Docket No. 64].

² Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Incentive Motion.

B. The Sale Process

4. The Debtors currently are seeking to maximize the value of their estates through a comprehensive Sale Process of their Assets, including the Debtors' iconic brands and intellectual property portfolio. The Sale Process has generated significant interest, with more than 80 potential buyers having executed or negotiated non-disclosure agreements for access to the Debtors' Data Room created to assist the buyers with their due diligence. Given the level of interest in the Assets and the Debtors' business, the Debtors' ability to preserve value for their estates is dependent upon the continued employment and dedication of the Participating Employees who possess the knowledge, experience and skills necessary to assist with the Sale Process, the Debtors' ongoing business operations and these bankruptcy proceedings. Recognizing the need to retain the Participating Employees, the Debtors, in consultation with their advisors, have formulated (i) the Sale Incentive Plan, pursuant to which the Debtors propose to make results-driven incentive payments to the three officers of the Company and six senior-level management employees and (ii) the Loyalty Plan, pursuant to which the Debtors propose to make payments to "rank and file" employees.

C. The Incentive Plans

5. As explained more fully in the Incentive Motion, 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 Plan Participants' in-depth knowledge of the Debtors' business operations, and, in particular, the Debtors' unique assets, the Sale Plan Participants are vital to the Sale Process. 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. Under the Loyalty Plan, each

Loyalty Plan Participant will receive a pre-determined award, based on such employee's position, tenure and specific responsibilities.

RELIEF REQUESTED

6. By the Sealing Motion, the Debtors seek entry of an order pursuant to Bankruptcy Code section 107(b) and Bankruptcy Rule 9018 authorizing the Debtors to: (a) file the Confidential Information contained in the exhibits to the Incentive Motion under seal with the Court and (b) provide copies of the Sealed Exhibits, on a confidential basis, to the professionals for the Committee, the DIP Lender and Atari, S.A.

BASIS FOR RELIEF REQUESTED

7. Bankruptcy Code section 107(b) provides, in relevant part:

On request of a party in interest, the bankruptcy court shall, and on the bankruptcy court's own motion, the bankruptcy court may—

(1) protect an entity with respect to a trade secret or confidential research, development, or commercial information . . .

11 U.S.C. § 107(b). Bankruptcy Rule 9018, in turn, implements section 107 and states:

On motion or on its own initiative, with or without notice, the court may make any order which justice requires (1) to protect the estate or any entity in respect of a trade secret or other confidential research, development, or commercial information . . .

Fed. R. Bankr. P. 9018.

8. The Second Circuit has noted that while “the right of public access to court records is firmly entrenched and well supported by policy and practical considerations, the right is not absolute.” *Video Software Dealers Assoc. v. Orion Pictures Corp. (In re Orion Pictures Corp.)*, 21 F.3d 24, 27 (2d. Cir. 1994). When open inspection of court records may be used as a vehicle for improper purposes, “courts must deny access to judicial documents.” *Id.* (citing *Nixon v. Warner Commc'ns Inc.*, 435 U.S. 589, 597 (1978)).

9. While court documents are generally open for public inspection, Congress provided an exception for bankruptcy cases in Bankruptcy Code section 107(b). *Id.* Under Bankruptcy Code section 107(b), a party seeking to seal information must show only that the information was “confidential” and “commercial” in nature. *Id.* at 27. The Second Circuit has held that Bankruptcy Code section 107(b) and Bankruptcy Rule 9018 do “not require that commercial information be the equivalent of a trade secret before protecting such information.” *Id.* at 28. In addition, unlike Federal Rule of Civil Procedure 26(c), there is no requirement for “good cause” to be shown before a court grants such a request. *Id.*

10. The Debtors seek to limit public access to a very narrow set of information—confidential commercial information relating to compensation to employees participating in the Incentive Plans. Historically, the Debtors have kept their employee compensation programs confidential. Publishing such information at this juncture could disrupt and jeopardize the Sale Process and the Debtors’ operations. Specifically, as the amount of the incentive awards is not uniform among the Participating Employee, disclosure of the individual award amounts could cause friction among the Participating Employees and undermine the very purpose of the Incentive Plans—to boost employee morale and minimize the desire for the Participating Employees to seek alternative employment, and to focus instead on the necessary tasks they need to perform for the Debtors. Additionally, revealing the sale price benchmarks that were specifically developed for calculating the payments under the Incentive Plan could improperly influence the Potential Buyers’ bids and adversely impact the results of the Sale Process.

11. The Debtors have shared the Sealed Exhibits, on a confidential basis, with the professionals for the Committee, the DIP Lender and Atari, S.A. Accordingly, all key stakeholders in these cases have the relevant information to formulate their positions with respect

to the Incentive Plans. The Debtors believe that further disclosure of the Confidential Information is not necessary to protect the interests of the Debtors' creditors. In addition, any party or member of the public with a compelling interest in the information contained in the Sealed Exhibits may obtain such information by seeking a further order from this Court to have that information disclosed. In sum, the relief sought herein is necessary to protect the Debtors' confidential commercial information and will not impair the ability of this Court to protect the public interest or otherwise prejudice the Debtors' creditors and other stakeholders.

12. The relief requested herein is similar to the relief granted by courts, including this Court, in other cases. *See, e.g., In re Arcapita Bank B.S.C.(c)*, Case No. 12-11076 (SHL) (Bankr. S.D.N.Y. July 9, 2012) [Docket No. 304] (authorizing debtors to file confidential employee information relating to an employee incentive plan under seal); *In re Allied Holdings, Inc.*, 337 B.R. 716, n. 1 (Bankr. N.D. Ga. 2005) (court ordered exhibit listing key employees to be filed under seal); *In re Georgetown Steel Co., LLC*, 306 B.R. 542, 547-48 (Bankr. D.S.C. 2004) (holding that key employee names and specific amounts paid to these employees constituted confidential commercial information).

NOTICE

13. Notice of this Motion has been provided to: (a) the U.S. Trustee; (b) counsel to the Committee; (c) counsel to the DIP Lender; (d) counsel to Atari, S.A.; (e) the Internal Revenue Service; (f) the New York State Attorney General; and (g) all parties who have filed a notice of appearance or have requested services in these chapter 11 cases. A copy of this Motion is also available on the website of the Debtors' claims and noticing agent, BMC Group, Inc., at <http://www.bmcgroup.com/atari>. The Debtors respectfully submit that no other or further notice need be provided.

NO PRIOR REQUEST

14. 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 (a) enter an order substantially in the form annexed hereto as **Exhibit A**, granting the relief requested herein and (b) grant the Debtors such other and further relief as the Court may deem just, proper and equitable.

New York, New York
Dated: March 19, 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

EXHIBIT A

Proposed Order

**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. ¹)	(Jointly Administered)
)	

**ORDER AUTHORIZING THE DEBTORS TO FILE UNDER
SEAL CERTAIN CONFIDENTIAL INFORMATION**

Upon the motion (the “*Motion*”)² of the Debtors seeking entry of an order pursuant to Bankruptcy Code section 107(b) and Bankruptcy Rule 9018 authorizing the Debtors to file the Confidential Information under seal; and it appearing that the relief requested in the Motion is in the best interests of the Debtors’ estates, their creditors and other parties in interest; and the Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and it appearing that the relief requested herein being a core proceeding pursuant to 28 U.S.C. § 157(b); and it appearing that venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and notice of the Motion appearing to be adequate and appropriate under the circumstances; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Motion is granted to the extent set forth herein.
2. Pursuant to Bankruptcy Code section 107(b) and Bankruptcy Rule 9018, the Debtors are authorized to file the Confidential Information contained in the Sealed Exhibits under seal with the Court.

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

² Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Motion.

3. The Clerk of the Bankruptcy Court shall accept the Sealed Exhibits for filing under seal pursuant to this Order.

4. The Sealed Exhibits shall be available to the Court and other parties specifically designated by the Debtors but shall otherwise remain under seal, and may not be unsealed unless authorized by order of the Court.

5. The Debtors shall dispose of the Sealed Exhibits at the closing of these cases.

6. The relief granted in this Order is without prejudice to the rights of any party in interest, or the U.S. Trustee, to seek to unseal the Sealed Exhibits.

7. The Debtors are authorized to take all actions necessary and appropriate to effectuate the relief granted pursuant to this Order in accordance with the Motion.

8. This Court shall retain jurisdiction with respect to all matters arising from or relating to the implementation of this Order.

Dated: March ___, 2013
New York, New York

THE HONORABLE JAMES M. PECK
UNITED STATES BANKRUPTCY JUDGE