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

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

**DEBTORS' MOTION FOR ENTRY OF AN ORDER EXTENDING THE TIME PERIOD
DURING WHICH THE DEBTORS MAY ASSUME OR REJECT UNEXPIRED
LEASES OF NONRESIDENTIAL REAL PROPERTY**

Atari, Inc. ("*Atari*") and certain of its affiliates, as debtors and debtors in possession (collectively, the "*Debtors*" or the "*Company*"), file this motion (the "*Motion*") for entry of an order (the "*Proposed Order*"), substantially in the form attached hereto as **Exhibit A**, extending the time period within which the Debtors may assume or reject unexpired leases of nonresidential real property. In support of the Motion, the Debtors respectfully state as follows:

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

Jurisdiction

1. This 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).
2. Venue in this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409.
3. The basis for the relief requested herein is section 365(d)(4) of title 11 of the United States Code (the “*Bankruptcy Code*”).

Background

4. On January 21, 2013 (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.

5. 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 Rule 1015(b) of the Federal Rules of Bankruptcy Procedure [Docket No. 27]. On February 6, 2013, the United States Trustee for the Southern District of New York (the “*U.S. Trustee*”) appointed the Official Committee of Unsecured Creditors (the “*Committee*”) [Docket No. 64].

6. On March 7, 2013, the Court entered a final order (the “*DIP Order*”) [Docket No. 125] approving the senior secured superpriority financing in the amount of \$5,000,000 (the “*DIP Facility*”) provided by Alden Global Value Recovery Master Fund, L.P. (“*Alden*” or the “*DIP Lender*”). Pursuant to paragraph 16(q) of the DIP Order, the Debtors are required to file this Motion within 60 days after the Petition Date seeking to extend the time period for the Debtors to assume or reject unexpired leases of real property to a date that is not less than 120 days after the Petition Date.

7. As of the Petition Date, the Debtors were parties to approximately five unexpired leases of nonresidential real property (collectively, the “*Unexpired Leases*”). The Unexpired Leases, which include the lease for the Debtors’ headquarters, three general office space leases as well as a parking garage lease for one of the office locations, are critical to the Debtors’ business operations. The Debtors are continuing to work with their advisors to determine which of the Unexpired Leases to assume and reject. The review and assessment process for the Unexpired Leases, therefore, is in process. As discussed more fully below, forcing a premature decision about assumption or rejection of the Unexpired Leases could have a detrimental impact on the Debtors’ operations and their estates.

8. Additionally, as the Court is aware, the Debtors, together with their advisors, have initiated a comprehensive sale process, which includes actively marketing their assets in an effort to maximize value for all of their creditors. Indeed, to date, the Debtors’ advisors have contacted more than 150 prospective buyers, more than 80 of whom have executed or are negotiating non-disclosure agreements for access to certain confidential information so they may properly evaluate the Debtors assets. The prospective buyers include both financial and strategic buyers, a number of whom have expressed an interest in purchasing the Company as a “going concern”. The Debtors believe, however, that they will not be able to maximize the value of their assets in connection with the sales process if they are forced to make decisions on the assumption or rejection of the Unexpired Leases before the sale process is concluded and the ultimate purchaser or purchasers become known.

Relief Requested

9. By the Motion, the Debtors request that the time within which the Debtors may assume or reject the Unexpired Leases be extended by an additional 90 days from the expiration of the statutory 120-day period under Bankruptcy Code section 365(d)(4), through and including

August 19, 2013. Absent this relief, the Unexpired Leases may be deemed rejected as of May 21, 2013 (the 120th day following the Petition Date) by operation of Bankruptcy Code section 365(d)(4), or the Debtors may be compelled to assume the Unexpired Leases prematurely.²

Basis for the Relief Requested

10. Bankruptcy Code section 365(d)(4), provides, in pertinent part:

(A) Subject to subparagraph (B), an unexpired lease of nonresidential real property under which the debtor is the lessee shall be deemed rejected and the trustee shall immediately surrender that nonresidential real property to the lessor, if the trustee does not assume or reject the unexpired lease by the earlier of—

(i) the date that is 120 days after the date of the order for relief; or

(ii) the date of the entry of an order confirming a plan.

(B)(i) The court may extend the period determined under subparagraph (A), prior to the expiration of the 120-day period, for 90 days on the motion of the trustee or lessor for cause.

(ii) If the court grants an extension under clause (i), the court may grant a subsequent extension only upon prior written consent of the lessor in each instance.

11 .S.C. § 365(d)(4).

11. The term “cause” as used in Bankruptcy Code section 365(d)(4) is not defined in the Bankruptcy Code, nor does the Bankruptcy Code establish formal criteria for evaluating a

² Local Rule 6006-1(c) of the Local Bankruptcy Rules for the Southern District of New York the (“*Local Rules*”) provides, in pertinent part that “[u]nless the Court orders otherwise, in a case under any chapter, a debtor, debtor in possession, or trustee moving to assume an unexpired lease of nonresidential real property under which the debtor is the lessee shall seek to obtain a return date for the hearing on the motion that is within 120 days after the order for relief or, if the time to assume has been extended, before the expiration of such extended period. If the debtor, debtor in possession, or the trustee files a motion to assume or to extend the time to assume or reject an unexpired lease of nonresidential real property, and the motion is filed not later than 120 days after the order for relief (or, if the time to assume or reject the unexpired lease has been extended previously by order of the Court, before the expiration of the extended time) with a return date no later than 14 days from the date of such filing, the time to assume or reject the unexpired lease will be extended automatically and without court order until the entry of the order resolving the motion, except that the time for the debtor, debtor in possession, or trustee to assume or reject such unexpired lease shall not be extended beyond the date that is 210 days after the entry of the order for relief without the prior written consent of the landlord.” See Bankr. S.D.N.Y. R. 6006-1(c).

request for an extension of the initial 120-day period. Although the decision to extend a debtor's time to assume or reject unexpired leases of nonresidential real property is generally within the sound discretion of the court, in determining whether cause exists for an extension of the initial 120-day period, courts have relied on several factors, including the following: (a) whether the debtor was paying for the use of the property; (b) whether the debtor continues to perform under the terms of the lease; or (c) whether the case is complex and involves a large number of leases. *See S. St. Seaport L.P. v. Burger Boys, Inc. (In re Burger Boys, Inc.)*, 94 F.3d 755, 760–61 (2d Cir. 1996) (citing *Theatre Holding Corp. v. Mauro*, 681 F.2d 102, 105–06 (2d Cir. 1982)); *see also In re Wedtech Corp.*, 72 B.R. 464, 471–72 (Bankr. S.D.N.Y. 1987) (considering, among other factors, the complexity of the debtor's case and the number of leases to evaluate); *In re Channel Home Ctrs, Inc.*, 989 F.2d 682, 689 (3d Cir. 1993) (“[I]t is permissible for a bankruptcy court to consider a particular debtor's need for more time in order to analyze leases in light of the plan it is formulating.”) (citing *Wedtech*, 72 B.R. at 471–72). As set forth below, the foregoing factors weigh in favor of granting the requested extension.

12. *First*, the Debtors are making timely post-petition payments for the use of the properties that are the subjects of the Unexpired Leases at the rates set forth in the Unexpired Leases and, to the extent required under the Bankruptcy Code, are continuing to perform their other post-petition obligations under the Unexpired Leases in a timely fashion.

13. *Second*, pending the Debtors' election to assume or reject the Unexpired Leases, the Debtors will continue to perform their obligations arising under the Unexpired Leases to the extent required by the Bankruptcy Code.

14. *Third*, as set forth above, the Debtors are currently involved in a comprehensive sale process and, as such, have had insufficient time to fully appraise the value of each

Unexpired Lease in the context of the Debtors' ultimate restructuring. Moreover, given the uncertainty surrounding the ultimate purchaser or purchasers of the Debtors' assets and their business, the Debtors are not in a position at this juncture, or prior to the expiration of the 120-day statutory period, to make the determination of whether to assume or reject any or all of the Unexpired Leases. Indeed, an improvident or premature rejection of the Unexpired Leases may harm the Debtors' estates by resulting in the loss of one or more of the Unexpired Leases that may be essential to the Debtors' business operations or the sale process. Specifically, as set forth above, in addition to the Debtors' intellectual property assets, a number of the prospective buyers have expressed interest in purchasing the Company as a "going concern" and, as such, these buyers may be interested in assuming one or more of the Unexpired Leases. The Debtors therefore believe that the potential value that could be obtained by preserving the Unexpired Leases outweighs the costs associated with their premature rejection at this time. Conversely, until the Debtors have better visibility of who the ultimate purchaser or purchasers will be, the premature assumption of any of the Unexpired Leases may harm the Debtors' estates by requiring the Debtors to cure prepetition claims related to the Unexpired Leases or by incurring unnecessary administrative expenses if it is later determined that the prospective buyer or buyers are not interested in the Unexpired Leases.

15. Courts in this jurisdiction have regularly granted relief similar to the relief requested in this Motion pursuant to Bankruptcy Code section 365(d)(4). *See, e.g., In re Inner City Media Corp., No. 11-13967 (SCC) (Bankr. S.D.N.Y. Jan. 9, 2012); In re ArchBrook Laguna Holdings LLC, No. 11-13292 (SCC) (Bankr. S.D.N.Y. July 8, 2011); In re Borders Grp., Inc., No. 11-10614 (MG) (Bankr. S.D.N.Y. Mar. 15, 2011); In re Great Atl. & Pac. Tea Co., Inc., No. 10-24549 (RDD) (Bankr. S.D.N.Y. Feb. 8, 2011); In re Blockbuster Inc., No. 10-14997 (BRL)*

(Bankr. S.D.N.Y. Jan. 20, 2011); *In re Innkeepers USA Trust*, No. 10-13800 (SCC) (Bankr. S.D.N.Y. Nov. 9, 2010); *In re Citadel Broad. Corp.*, No. 09-17442 (BRL) (Bankr. S.D.N.Y. Apr. 12, 2010); *In re Reader's Digest Ass'n, Inc.*, No. 09-23529 (RDD) (Bankr. S.D.N.Y. Dec. 9, 2009); *In re Extended Stay Inc.*, No. 09-13764 (JMP) (Bankr. S.D.N.Y. Oct. 8, 2009); *In re Gen. Growth Props., Inc.*, No. 09-11977 (ALG) (Bankr. S.D.N.Y. July 22, 2009); *In re Tronox Inc.*, No. 09-10156 (ALG) (Bankr. S.D.N.Y. May 6, 2009).

16. Based on the foregoing, the Debtors believe that sufficient cause exists to extend the time period within which the Debtors may assume or reject the Unexpired Leases for an additional 90 days beyond the 120-day period set forth in Bankruptcy Code section 365(d)(4) through and including August 19, 2013 (the 210th day following the Petition Date).

Motion Practice

17. This Motion includes citations to the applicable rules and statutory authorities upon which the relief requested herein is predicated, and a discussion of their application to this Motion. Accordingly, the Debtors submit that this Motion satisfies Local Rule 9013-1(a).

Notice

18. The Debtors have provided notice of this Motion to: (a) the U.S. Trustee; (b) counsel to the DIP Lender; (c) counsel to the Committee; (d) counsel to Atari, S.A.; (e) the Internal Revenue Service; (f) the New York State Attorney General; (g) the United States Attorney for the Southern District of New York; and (h) parties in interest who have filed a notice of appearance in these cases pursuant to Bankruptcy Rule 2002. The Debtors respectfully submit that no further notice is necessary.

No Prior Request

19. No prior request for the relief sought in this Motion has been made to this or any other court.

WHEREFORE, for the reasons set forth herein, the Debtors respectfully request that the Court (a) enter an order, substantially in the form attached hereto as **Exhibit A**, extending the time period within which the Debtors may assume or reject the Unexpired Leases through and including August 19, 2013 (the 210th day following the Petition Date), and (b) grant such other and further relief as is just, proper and equitable.

New York, New York
Dated: March 22, 2013

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EXHIBIT A

Proposed Order

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

In re:

ATARI, INC., *et al.*,¹

Debtors.

)
) Chapter 11
)
) Case No. 13-10176 (JMP)
)
) (Jointly Administered)
)

**ORDER EXTENDING THE TIME PERIOD DURING WHICH THE DEBTORS
MAY ASSUME OR REJECT UNEXPIRED LEASES OF
NONRESIDENTIAL REAL PROPERTY**

Upon the motion (the “*Motion*”)² of the Debtors for entry of an order extending the time period within which the Debtors may assume or reject the Unexpired Leases; 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 to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and the Court being satisfied that notice of the Motion and the opportunity for a hearing on the Motion was appropriate under the particular circumstances and no further or other notice need be given; and the Court having reviewed the Motion; and good, adequate, and sufficient cause having been shown to justify entry of this order; and any objections to the requested relief having been withdrawn or overruled on the merits; and after due deliberation and sufficient cause appearing therefor,

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 ascribed to such terms in the Motion.

IT IS HEREBY ORDERED THAT:

1. The Motion is granted to the extent set forth herein.
2. Pursuant to Bankruptcy Code section 365(d)(4), the time by which the Debtors may assume or reject the Unexpired Leases is extended through and including August 19, 2013 (the 210th day following the Petition Date), without prejudice to the Debtors' right to seek a further extension of their time to assume or reject some or all of the Unexpired Leases pursuant to Bankruptcy Code section 365(d)(4)(B)(ii).
3. This order is without prejudice to the right of any lessor under any of the Unexpired Leases to request that the Court fix an earlier date by which the Debtors must assume or reject an Unexpired Lease, and is also without prejudice to the Debtors' right to oppose such relief.
4. Nothing contained herein shall be deemed to (i) authorize the assumption or rejection of any of the Unexpired Leases or (ii) determine whether any of the Debtors' leases is an unexpired lease of nonresidential real property within the meaning of Bankruptcy Code section 365(d).
5. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this order in accordance with the Motion.
6. This Court shall retain jurisdiction with respect to all matters arising from or relating to the implementation of this order.

Dated: April _____, 2013
New York, New York

THE HONORABLE JAMES M. PECK
UNITED STATES BANKRUPTCY JUDGE