

COOLEY LLP
1114 Avenue of the Americas
New York, New York 10036
Tel.: 212-479-6000
Cathy Hershcopf
Jeffrey L. Cohen
Alex R. Velinsky

*Counsel for the Official Committee
Of Unsecured Creditors*

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

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

EX-PARTE MOTION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS FOR AN ORDER, PURSUANT TO BANKRUPTCY RULE 2004, (I) DIRECTING THE PRODUCTION OF DOCUMENTS AND WITNESSES BY (A) THE DEBTORS, (B) ATARI, S.A. AND ATARI EUROPE SAS, (C) ALDEN GLOBAL DISTRESSED OPPORTUNITIES MASTER FUND, L.P. AND ITS AFFILIATES, AND (D) BLUEBAY VALUE RECOVERY (MASTER) FUND LIMITED AND ITS AFFILIATES, AND (II) AUTHORIZING THE ISSUANCE OF SUBPOENAS

The Official Committee of Unsecured Creditors (the “Committee”) of Atari, Inc., et al., as debtors and debtors-in-possession (the “Debtors”), by and through its counsel Cooley LLP, hereby submits this ex-parte motion (the “Motion”) seeking entry of an order, pursuant to section 105(a) of chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) and Rule 2004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) (i) directing the production of documents and the examination of individuals, corporate designees or representatives of (a) the Debtors, (b) Atari, S.A. and Atari Europe SAS (collectively, the

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

“Parent”), (c) Alden Global Distressed Opportunities Master Fund, L.P. and its affiliates (collectively, “Alden”), and (d) BlueBay Value Recovery (Master) Fund Limited and its affiliates (collectively, “BlueBay” and together with the Debtors, the Parent and Alden, the “Producing Parties”) and (ii) authorizing the Committee to issue such other subpoenas for testimony and the production of documents as it deems appropriate in its Investigation (defined below). In support of this Motion, the Committee respectfully represents the following:

I.

PRELIMINARY STATEMENT

Promptly following the Committee’s formation and retention of counsel, it propounded detailed, but tailored document and information requests (the “Initial Document Requests”) on the Debtors, the Parent and Alden, in its capacity as DIP lender and holder of the prepetition secured debt arising under the Parent Facility (defined below). Because Alden only came into possession of BlueBay’s various claims and interests contemporaneously with the bankruptcy filing, the Committee also propounded a detailed information request on BlueBay (the “BlueBay Document Request,” together with the Initial Document Requests, the “Document Requests”). Copies of the Document Requests are attached hereto as Exhibit A.

As a result of a series of transactions that took place shortly after the Petition Date, pursuant to which BlueBay assigned to Alden its claims and interests in the Debtors and the Parent, Alden became not only the Debtors’ postpetition secured lender but also (i) the primary equity holder of, and secured lender to, the Parent, and, by extension, the direct or indirect owner of each of the Debtors, (ii) the holder of an approximately \$28 million dollar secured claim against the Debtors (the “BlueBay Claim”), which is purportedly secured by liens on certain

assets of the Debtors and the Parent, and (iii) in its capacity as the primary equity holder of, and secured lender to, the Parent, the party in control of a \$13 million purportedly secured intercompany claim asserted by the Parent against the Debtors (the “Parent Company Secured Claim”) and approximately \$275 million of unsecured intercompany claims asserted by the Parent Company and its affiliates (the “Unsecured Intercompany Claims”). Not only does Alden assert these various claims, but they also assert that certain of their claims are the only claims at an Atari entity that purportedly owns a substantial majority of the Debtors’ valuable intellectual property. The treatment of the foregoing claims in the Debtors’ bankruptcy cases will have a major impact on the recoveries received by unsecured creditors. The primary thrust of the Document Requests is heavily focused on documents and communications surrounding these various claims. Moreover, the Committee has requested documents and information that would assist it in evaluating whether the substantive consolidation of the Debtors’ bankruptcy estates would be appropriate. To date, the Producing Parties have produced little more than the transactional documents which purportedly relate to each of these claims. The Producing Parties have produced no email communications or other electronically-stored information.

Similarly, in response to the BlueBay Document Request, BlueBay, through its counsel, indicated that it would not provide any email communications or other electronically-stored information. In fact, BlueBay’s counsel indicated that BlueBay would not provide any documents or information other than transactional documents associated with the Credit Facility Agreement, dated April 21, 2006, among Atari Europe SAS, as Borrower, Atari S.A., as guarantor, and BlueBay as lender, as amended (the “Parent Facility”) and the sale of BlueBay’s

claims and interests thereunder to Alden – documents that the Committee has already received from Alden.

It is imperative that the Committee receive documents and communications from the Producing Parties in connection with its investigation of the liens, claims and interests asserted by Alden (as assignee of BlueBay) and the Parent against the Debtors' estates (the "Investigation") pursuant to the rights granted to the Committee in the final order approving debtor in possession financing (Doc. No. 125). The Committee believes that the Producing Parties are in possession of documents and information that will, among other things, shed light on the extent, validity, and priority of the various claims Alden is asserting against the Debtors' estates as well as information necessary to determine whether substantive consolidation is appropriate in these cases. As such, the Committee respectfully requests that the Court issue an order compelling the Producing Parties comply with the Document Requests pursuant to Bankruptcy Rule 2004.

II.

BACKGROUND

1. On January 21, 2013 (the "Petition Date"), the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York (the "Court"). Pursuant to sections 1107 and 1108 of the Bankruptcy Code, the Debtors continue to operate their businesses and properties as debtors-in-possession. No trustee or examiner has been appointed in these cases.

2. On February 6, 2013, the Committee was appointed in these cases by the Office of the United States Trustee for the Southern District of New York, consisting of the following

five members: (i) CD Projekt S.A., f/k/a CD Projekt Red S.A.; (ii) Tavant Technologies, Inc.; (iii) CDV Software Entertainment, USA, Inc.; (iv) Rackspace Hosting; and (v) Liquid Entertainment. On February 8, 2013, the Committee selected Cooley LLP as its counsel. On February 11, 2013, the Committee selected Duff & Phelps LLC to be its financial advisor.

3. On March 7, 2013, this Court entered an order authorizing the Debtors to incur post-petition financing from Alden on a final basis (Doc. No. 125), pursuant to which an investigation deadline was set for 120 days from that date, or July 5, 2013.²

The Debtors' Failure to Produce Responsive Documents and Information

4. On February 14, 2013, the Committee sent a document request to the Debtors that called for two waves of production. The first portion of the document request had a deadline of February 21, 2013, and the second portion sought a rolling production to be completed by April 1, 2013. On February 25, 2013, Committee counsel was informed that the Debtors had loaded certain documents and information responsive to the first portion of the Document Request into an electronic drop-box accessible to the Committee. *See Declaration of Jeffrey L. Cohen in Support of the Ex-Parte Motion Of The Official Committee Of Unsecured Creditors For An Order, Pursuant To Bankruptcy Rule 2004, (I) Directing The Production Of Documents And Witnesses By (A) the Debtors, (B) Atari, S.A. and Atari Europe SAS, (C) Alden Global Distressed Opportunities Master Fund, L.P. and its Affiliates, and (D) BlueBay Value Recovery (Master) Fund Limited And Its Affiliates, And (II) Authorizing The Issuance Of Subpoenas* (the "Cohen

² Alden has offered to extend the Committee's investigation deadline by 30 days if the Committee agrees to continue to hold discovery in abeyance for a corresponding 30 days, but the Committee is not confident that the Debtors' estates will remain sufficiently able to support the Committee's Investigation, either through access to documents, production of witnesses or financing to remain administratively solvent if this extension is granted.

Declaration”) at ¶3. The Debtors provided some additional information with respect to intercompany claims on March 21, 2013. *Id.* As of that time, the Debtors had not produced any emails or other electronically-stored information (“ESI”) sought pursuant to the first portion of the Document Request. *Id.*

5. On March 21, 2013, the Committee sent a letter to the Debtors with suggested search terms with respect to relevant ESI and a reminder that the Document Request propounded a deadline on April 1, 2013. Cohen Declaration, Exh. 1. Shortly thereafter, in light of ongoing settlement communications, in good faith, the Committee paused its Investigation. However, when it was clear that a settlement was not assured, on April 15, 2013, the Committee sent another letter to the Debtors requesting that all responsive documents and information not yet produced as of that date be provided to the Committee by no later than April 22, 2013. Cohen Declaration, Exh. 3. Finally, on April 23, 2013, the Committee sent the Debtors a letter stating that absent immediate indication that the Debtors would promptly produce all responsive documents and information in their possession, the Committee would seek appropriate relief from the Court. Cohen Declaration, Exh. 4. The Committee has not received any written responses or supplemental production of documents and communications since it lifted the standstill on its Investigation. *See* Cohen Declaration ¶9.

The Parent’s Failure to Produce Responsive Documents and Information

6. On February 15, 2013, the Committee sent a document request to the Parent that likewise called for two waves of production. The first portion of the document request had a deadline of March 8, 2013, and the second portion sought a rolling production to be completed by April 1, 2013. On March 4, 2013, the Committee received a letter via email from Allen &

Overy LLP, counsel to the Parent, along with certain responsive documents (the “Parent Response”). *See* Cohen Declaration ¶4. The Parent Response consisted primarily of transactional documents and publicly-available financial reports that were partially responsive to the first portion of the Document Request sent to the Parent. *Id.* The Parent Response did not contain any communications or ESI, nor did it provide a complete response to either portion of the Document Request.

7. On March 21, 2013, the Committee sent a letter to the Parent with suggested search terms with respect to relevant ESI and a reminder that the Document Request propounded a deadline on April 1, 2013. Cohen Declaration, Exh. 1. On April 15, 2013, having received no additional documents or information from the Parent, the Committee sent a letter via email to the Parent, renewing its request that the Parent provide responsive documents and information and setting an amended deadline of April 22, 2013. Cohen Declaration, Exh. 3. Finally, on April 23, 2013, the Committee sent the Parent a letter stating that absent immediate indication that the Parent would promptly produce all responsive documents and information in its possession, the Committee would seek appropriate relief from the Court. Cohen Declaration, Exh. 4. The Committee has not received any written responses or supplemental production of documents and communications since it lifted the standstill on its Investigation. *See* Cohen Declaration ¶9.

Alden’s Failure to Produce Responsive Documents and Information

8. On February 15, 2013, the Committee sent a document request to Alden. The document request sent to Alden set a single production deadline of March 8, 2013. On February 20, 2013, the Committee received a letter via email from Bracewell & Giuliani LLP, counsel to Alden, along with certain responsive documents (the “Alden Response”). *See* Cohen Declaration

¶5. The Alden Response failed to provide information crucial to the Committee's Investigation, which the Committee believes is in Alden's (or BlueBay's) possession, including ESI responsive to certain of the items addressed in the document request sent to Alden. *Id.* On March 1, 2013, the Committee sent Alden a letter detailing the deficiencies of the Alden Response and requesting that Alden produce all documents and information responsive to the Document Request by the stated deadline. Cohen Declaration, Exh. 2. On March 5, 2013, Alden sent the Committee a responsive letter that refuted certain assertions made by the Committee, but also attached certain documents that had been requested by the Committee, albeit on an "professionals eyes only" basis. *See* Cohen Declaration ¶6.

9. On April 15, 2013 following stalled settlement negotiations, the Committee sent another letter to Alden renewing its request for production of responsive documents and information by no later than April 22, 2013. Cohen Declaration, Exh. 3. Finally, on April 23, 2013, the Committee sent Alden an additional letter stating that absent immediate indication that Alden would promptly produce all responsive documents and information in their possession, the Committee would seek appropriate relief from the Court. Cohen Declaration, Exh. 4. The Committee has not received any written responses or supplemental production of documents and communications since it lifted the standstill on its Investigation. *See* Cohen Declaration ¶9.

BlueBay's Failure to Produce Responsive Documents and Information

10. On March 11, 2013, the Committee, through its counsel, Cooley LLP, sent the BlueBay Document Request via email to Scott Greissman of White & Case LLP, counsel to BlueBay. In response, Jeffrey L. Cohen ("Cohen") of Cooley LLP received a telephone call from Andrew W. Hammond ("Hammond") also of White & Case LLP. *See* Cohen Declaration

¶7. On that call, Hammond indicated to Cohen that he did not believe his client, BlueBay, would voluntarily produce electronic documents and information (including email communications) in response to the BlueBay Document Request. *Id.* Cohen asked that Hammond confirm this position with his client. *Id.* Following receipt of a voicemail from Hammond on March 19, 2013 requesting a follow-up call, Cohen and Hammond spoke again on March 21, 2013. *Id.* On that call, Hammond confirmed that BlueBay would not voluntarily produce any documents in response to the BlueBay Document Request other than certain transactional documents that the Committee has already received. *Id.*

11. Since that time, the Committee has engaged in meaningful settlement negotiations with the Debtors and Alden. As a result of the perceived progress achieved in the settlement negotiations, the Committee suspended its Investigation in good faith while a proposed settlement was finalized by the parties. Unfortunately, settlement negotiations have stalled, and the Committee is therefore compelled to renew its Investigation at this time. *See* Cohen Declaration ¶8.

III.

JURISDICTION AND STATUTORY PREDICATES

12. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). The statutory predicates for the relief requested herein are § 105(a) of the Bankruptcy Code and Bankruptcy Rule 2004.

IV.

RELIEF REQUESTED AND REASONS THEREFOR

13. The Committee is distressed by the Producing Parties' prolonged refusal to produce responsive documents and information requested by the Committee in connection with its Investigation. Given the looming deadline by which the Committee must complete its Investigation—July 5, 2013—the Committee cannot waste additional time waiting for the Producing Parties to voluntarily produce documents. Rather, the Committee looks to this Court to facilitate the Committee's efforts to fulfill its fiduciary duties by conducting its Investigation which includes, *inter alia*, a review of BlueBay's former claims and interests in the Debtors and the Parent as well as issues related to the potential substantive consolidation of the Debtors' estates. Accordingly, the Committee seeks this Court's authority to (i) direct the production of documents and the examination of individuals, corporate designees or representatives of the Producing Parties and (ii) authorize the Committee to issue such other subpoenas for testimony and the production of documents as are necessary and appropriate in assisting the Committee in discharging its fiduciary duties.

14. The Debtors, the Parent and Alden have each been given several reminders and over two months to voluntarily comply with the Document Requests. The Committee has not received any written responses or supplemental production of documents and communications since it lifted the standstill on its Investigation. *See* Cohen Declaration ¶9. BlueBay's counsel has also indicated that BlueBay will not voluntarily comply with the BlueBay Document Request. *See* Cohen Declaration ¶7.

15. In light of the fact that the Producing Parties received the Document Requests more than two months ago,³ and that they have all clearly indicated, either directly or by their consistent failure to produce responsive documents and information, that they will not provide any additional information, the Committee respectfully requests that the Court enter an order compelling the Producing Parties to provide the Committee with the requested documents and information by no later than May 13, 2013.

16. The Court may order the examination of any entity pursuant to Bankruptcy Rule 2004 on motion of any party in interest.⁴ The scope of examinations under Bankruptcy Rule 2004(b) may include, among other things, any matter which may relate to the property and assets of the estate, the financial condition of the debtor, any matter which may affect the administration of a debtor's estate and any matter relevant to the case or to the formulation of a plan. *See* Fed. R. Bankr. P. 2004(b). In addition, "the examination may also relate to the operation of any business and the desirability of its continuance, the source of any money or property acquired or to be acquired by the debtor for purposes of consummating a plan and the consideration given or offered therefor, and any other matter relevant to the case or to the formulation of a plan." *Id.* Discovery under Bankruptcy Rule 2004 includes both document discovery and depositions. Fed. R. Bankr. P. 2004(c).

17. The purpose of a Bankruptcy Rule 2004 examination is to assist the investigator in revealing the nature and extent of the estate and to discover assets of the debtor which may have been intentionally or unintentionally concealed. *See In re Bennett Funding Group, Inc.*,

³ The BlueBay Document Request was sent to BlueBay via email on March 11, 2013.

⁴ Under section 1109(b) of the Bankruptcy Code, the Committee is clearly a party in interest. *See* 11 U.S.C. § 1109(b) ("A party in interest, including ... a creditors' committee ... may raise and may appear and be heard on any issue in a case under this chapter").

203 B.R. 24, 27-28 (Bankr. N.D.N.Y. 1996) (stating rule) (citing *In re Drexel Burnham Lambert Group, Inc.*, 123 B.R. 702, 708 (Bankr. S.D.N.Y. 1991)). Emphasizing the broad purpose of Bankruptcy Rule 2004, courts have been inclined to allow examination of any third party who can be shown to have had dealings with the debtor. *In re Ionosphere Clubs, Inc.*, 156 B.R. 414, 432 (S.D.N.Y. 1993), *aff'd* 17 F.3d 600 (2d Cir. 1994); *In re Recoton Corp.*, 307 B.R. 751, 755 (Bankr. S.D.N.Y. 2004) ("Any third party who has a relationship with a debtor may be made subject to a Rule 2004 investigation."). Accordingly, Bankruptcy Rule 2004 affords both debtors and creditors the broad rights of examination of a party's documents and records. *See Snyder v. Society Bank*, 181 B.R. 40, 41 (S.D. Tex. 1994), *aff'd*, 52 F.3d 1067 (5th Cir. 1995) (citing *Cameron v. United States*, 231 U.S. 710, 716 (1914)).

18. There are two critical differences between discovery under Bankruptcy Rule 2004 and discovery under the Federal Rules of Civil Procedure. First, Bankruptcy Rule 2004 discovery is an investigatory tool undertaken prior to the filing of a lawsuit or a motion. In contrast, discovery under the Federal Rules of Civil Procedure is pretrial, that is, after the filing of a complaint. As such, a Bankruptcy Rule 2004 motion need not be tied to specific factual allegations at issue between parties to a complaint or contested matter. *In re Symington*, 209 B.R. 678, 683 (Bankr. D. Md. 1997). Bankruptcy Rule 2004 discovery is subject to fewer objections on grounds of relevance than discovery issued in connection with a contested matter or adversary proceeding. *Id.*

19. Second, the scope of a Bankruptcy Rule 2004 examination is much broader than discovery under the Federal Rules of Civil Procedure. *In re Ecam Publications, Inc.*, 131 B.R. 556, 559 (Bankr. S.D.N.Y. 1991) (noting that the scope of Bankruptcy Rule 2004 questioning

was extremely broad); *In re Drexel Burnham Lambert Group, Inc.*, 123 B.R. 702, 711 (Bankr. S.D.N.Y. 1991) (same); *In re Corso*, 328 B.R. 375, 383 (Bankr. E.D.N.Y. 2005) (same). Indeed, courts have recognized that the scope of Bankruptcy Rule 2004 examinations is broad, unfettered, and can legitimately be in the nature of a "fishing expedition." *In re W&S Investments, Inc.*, No. 91-35830, 1993 WL 18272, at *2 (9th Cir. Jan. 28, 1993); *In re Countrywide Home Loans, Inc.*, 384 B.R. 373, 400 (Bankr. W.D. Pa. 2008); *In re Bakalis*, 199 B.R. 443, 447 (Bankr. E.D.N.Y. 1996); *In re Table Talk, Inc.*, 51 B.R. 143, 145 (Bankr. D. Mass. 1985); *In re Valley Forge Plaza Assocs.*, 109 B.R. 669, 674 (E.D. Pa. 1990).

20. The oral examination of certain witnesses and the production of documents by the Committee are not only authorized by Bankruptcy Rule 2004, but are in the best interests of the Debtors' estates and creditors. Discovery of the information requested is necessary for the Committee to properly discharge its duties under section 1103(c) of the Bankruptcy Code to appropriately investigate all areas which could increase the recovery to unsecured creditors. The Bankruptcy Rule 2004 discovery requested in this Motion will provide the Committee with information it needs from those parties uniquely positioned to have such information. Moreover, the discovery sought is tailored to the factual matters raised or implicated by certain issues and events that precipitated these chapter 11 cases and compliance with these requests will not unduly burden the Producing Parties.

V.

NOTICE AND PRIOR MOTION

21. As permitted by the Chambers Rules of the Honorable James M. Peck, this Application has been submitted *ex parte*. Therefore, the Committee respectfully submits that in

light of the nature of the relief requested, no further notice of the relief requested is necessary or required.

22. No previous motion for the relief sought herein has been made to this or any other court.

WHEREFORE the Committee respectfully request entry of an order granting the relief requested herein, and such other and further relief as is just.

Dated: April 26, 2013
New York, New York

/s/ Jeffrey L. Cohen
COOLEY LLP
1114 Avenue of the Americas
New York, New York 10036
Tel.: 212-479-6000
Cathy Hershcopf
Jeffrey L. Cohen
Alex R. Velinsky

*Counsel for the Official
Committee of Unsecured Creditors*

EXHIBIT A

Document Requests

Debtors



Jeffrey L. Cohen
T: +1 212 479 6218
jcohen@cooley.com

VIA EMAIL

February 14, 2013

Akin Gump Strauss Hauer & Feld LLP
1333 New Hampshire Avenue, N.W.
Washington, DC 20036-1564
Attn: Ira S. Dizengoff, Esq.

RE: Atari, Inc., et al., Case No. 13-10176 (JMP)

Dear Ira:

As you know, the Official Committee of Unsecured Creditors (the "Committee") of Atari, Inc. and its affiliated debtors (collectively, the "Debtors") has retained Cooley LLP as its counsel in the above-styled chapter 11 cases. In furtherance of the investigation rights provided to the Committee in the financing order entered in these cases, and in order for us to assist the Committee in fulfilling its fiduciary duties to general unsecured creditors, below is an initial list of information we request the Debtors provide. With respect to items 1 through 19, please provide such information on a rolling basis by no later than February 21, 2013. With respect to the remaining items, please provide such information on a rolling basis by no later than April 1, 2013. In addition, you have previously informed us that a data room is being set up in connection with the marketing of the Debtors' assets to potential purchasers. Please provide us with access to the data room once it is live, and, to the extent that the information requested herein can be found in the data room, please direct our attention to the specific location of such responsive documents. If the activation of the data room is delayed past February 19, 2013, please provide the responsive documents and information directly.

1. A true and correct copy of the DIP financing credit agreement, including any and all exhibits and schedules thereto.
2. A copy of that certain Credit Facility Agreement, dated April 21, 2006 (as amended) among Atari Europe SAS, as Borrower, Atari S.A., as guarantor, and BlueBay Value Recovery (Master) Fund Limited (together with any affiliates, "BlueBay") as lender, and all ancillary and other documents related thereto, including without limitation any guaranty agreements, pledge agreements, security agreements, or intercreditor agreements (collectively, the "Parent Facility"). To the extent not included therein, copies of any document or agreement establishing any obligation of the Debtors in connection with the Parent Facility.
3. All documents evidencing (i) the amounts owed by the Debtors, directly or indirectly, under the Parent Facility, (ii) the security interests securing such debt, and (iii) perfection of such security interests.



4. A list of all payments by the Debtors, Atari S.A. (the "Parent Company"), Atari Europe SAS, or any other affiliates of the Debtors (together with the Debtors, the Parent Company, and Atari Europe, the "Atari Entities", and each an "Atari Entity") to BlueBay in the six years preceding January 21, 2013 (the "Petition Date"). The list should identify the Atari Entity making the payment, the amount paid, the date of such payment, and the basis for such payment.
5. An organizational chart including each Atari Entity and their respective owners.
6. All documents and communications supporting or refuting Mr. Mattes' statement in his declaration executed on January 22, 2013 in support of the first day motions (the "First Day Declaration") that "Blue Bay's lien on Test Drive Unlimited may be avoidable as a constructively fraudulent conveyance based on its 'upstream' nature."
7. All documents concerning the Debtors' purportedly secured obligation to the Parent Company, including without limitation documents evidencing (i) the amount owed to Parent Company, (ii) the security interests securing such debt, (iii) the agreements under which the debt and security interests arise, and (iv) the perfection of such security interests.
8. All documents concerning the Debtors' purportedly unsecured obligations to the Parent Company, including without limitation documents evidencing (i) the amounts owed to Parent Company, and (ii) the agreements under which the obligations arise.
9. All documents supporting or refuting Mr. Mattes' statement in the First Day Declaration that the Debtors believe that the Parent Company's purportedly secured and unsecured intercompany claims against the Debtors "should and likely will be treated as equity."
10. All documents relating to the sale or assignment of any claims or interests held by BlueBay in any Atari Entity.
11. Any guarantee agreement by and between any Debtor and any non-Debtor Atari Entities.
12. A list of individuals with knowledge of the Debtors' accounting treatment of intercompany transactions between the Atari Entities.
13. Audited and unaudited balance sheets and statements of income and cash flows for the Atari Entities, individually and on a consolidated basis, for the 2008 through 2012 fiscal years.
14. All tax returns filed by each Atari Entity for the tax years 2008 through 2012.
15. A list of payments made by the Debtors to (i) creditors in the 90-days prior to the Petition Date and (ii) Insiders (as defined in the Bankruptcy Code) in the 1-year prior to the Petition Date.



16. Supporting detail for the Accounts Payable Analysis for Atari, Inc. and Atari Interactive, Inc. provided to the Committee at the February 12, 2013 meeting (the "Meeting") between the Debtors, the Committee, and a representative of Alden Global Distressed Opportunities Master Fund, L.P (together with its affiliated funds and entities, the "DIP Lenders"). Please also provide similar analyses and supporting detail for Humongous, Inc., California U.S. Holdings, Inc., Atari S.A., and Atari Europe SAS.
17. All documents concerning the Debtors' severance and PTO policies and obligations, including without limitation (i) employee manuals or policy statements evidencing those policies, and (ii) estimates of the obligations thereunder.
18. All financial reports that have been or will be provided to the DIP Lenders.
19. Copies of all license agreements to which any Debtor is a party.

In addition, the Committee requires the additional information identified below:

1. Any cash management agreement by, between and among any Debtor and any other Atari Entity, and any related and ancillary documents. If there was no cash management agreement governing some or all of the intercompany transfers by and among the Atari Entities, then any other agreements, corporate manuals, memoranda, or other documents and communications setting forth procedures and policies with respect to intercompany transactions, or the accounting treatment thereof.
2. Any tax sharing agreements by, between and among the Debtors and the non-Debtor Atari Entities.
3. Documents concerning the claims asserted or potentially asserted by the non-Debtor Atari Entities against the Debtors (the "Intercompany Claims"), including without limitation:
 - (i) Documents evidencing the amount of the Intercompany Claims, including a ledger listing all transfers between any Debtor and any non-Debtor Atari Entity during the six-year period prior to the Petition Date;
 - (ii) Documents evidencing any fixed maturity date or schedule of repayment in connection with the Intercompany Claims;
 - (iii) Documents evidencing any interest charged in connection with the Intercompany Claims;
 - (iv) Documents evidencing the use of the proceeds of the intercompany transfers underlying the Intercompany Claims;
 - (v) Correspondence by and among the Atari Entities concerning intercompany transfers and cash management; and



- (vi) Documents concerning any attempt by the Debtors to obtain financing from a third-party in the two years prior to the Petition Date, including a list of prospective lenders contacted and any offers or term sheets received by any such potential lender.
4. All documents concerning the legal and operational separateness of the Debtors, including without limitation:
- (i) Copies of the stationery used by each Debtor and non-Debtor Atari Entity;
 - (ii) Copies of paychecks issued by each Debtor;
 - (iii) A list of email domain names used by each Debtor;
 - (iv) All minute books of the Debtors and non-Debtor Atari Entities since January 2009 through the date hereof, and to the extent not included therein, all resolutions of, and minutes of meetings of the board of directors of each of the Debtors, and any committee thereof, any materials presented at such meetings, and all stock ledgers of the Atari Entities;
 - (v) A list of any payments made by a Debtor on account of any indebtedness or obligation of another Debtor or non-Debtor Atari Entity;
 - (vi) Copies of any guarantee agreements by and between the Debtors;
 - (vii) Documents evidencing the allocation, for tax and financial accounting purposes, of any overhead for office space, goods, or services shared by one or more Debtor;
 - (viii) A ledger listing all transfers by and among the Debtors during the six-year period prior to the Petition Date; and
 - (ix) For the period between January 1, 2012 and the January 21, 2013, copies of all invoices, purchase agreements, credit memos, proofs of payment, cancelled checks, wire transfers, or other communications between the Debtors and the parties listed on the Consolidated List of Creditors Holding 30 Largest Unsecured Claims filed by the Debtors on January 21, 2013 (Docket No. 3).
5. Organizational chart of all executives and list of all directors and officers of the Debtors and the Non-Debtor Atari Entities over the past 2 years, including relevant time period for each individual.
6. A list of all payments, dividends or distributions made by any of the Debtors to or for the benefit of any Non-Debtor Atari Entity, BlueBay, or Insider (as defined in the Bankruptcy Code) of the Debtors during the six-year period preceding the Petition Date.



7. All documents and communications concerning the recomposition of the Debtors' boards of directors subsequent to the Petition Date.
8. Documents concerning the disposition or sale, or prospective disposition or sale, of any of the Debtors' assets outside the ordinary course of business during the period between January 2010 and the Petition Date, including without limitation (i) all documents provided by the Debtors or their representatives or advisors to entities who have expressed interest purchasing some or all of the Debtors' assets; (ii) any offers or proposals made by a potential purchaser; (iii) closing documents for any sale or disposition that was consummated and a description of the use of proceeds thereof, including with respect to the Debtors' sale of Cryptic Studios.
9. All valuations, appraisals, liquidation analyses, nonconsolidation, fairness or solvency opinions, or other documents prepared over the course of the last two years by or on behalf of the Debtors concerning the value of the Debtors' assets, including, without limitation, intellectual property, licenses, trade names, brands, or leasehold interests, sold individually or collectively, on a going-concern or liquidating basis.
10. All documents concerning the Debtors' solvency or the liquidation value of the Debtors' assets prepared during the last two years.
11. Any and all insurance policies relating to the directors and officers of the Debtors from January 2008 through the Petition Date.
12. Any and all employment agreements for all executives, senior management and officers of the Debtors.
13. All public filings or disclosures of the Parent Company for the one year preceding the Petition Date.
14. Historical and projected financial information and supporting detail for intellectual property owned and/or licensed by the Debtors, including research and development costs, marketing expenses, average revenue per user or unit (ARPU), estimated user growth, and anticipated game life cycle.
15. List and description of the Debtors' executory contracts, including gross and annual cost, and potential claims for damages arising from the rejection of such contracts.
16. List of the Debtors' off-balance sheet liabilities, if any.
17. All documents concerning the Debtors' potential tax assets, including a description of any Net Operating Loss carry forwards and related deferred tax assets (including foreign NOLs, domestic NOLs, Alternative Minimum Tax credits, and U.S. foreign tax credits) and the amounts and expiration dates thereof.



18. Documents concerning any cost reduction initiatives (e.g. U.S. facility reductions, workforce reductions, business model modifications, etc.) recommended or implemented in the past year or projected in the future.
19. Market and competitive information for the Debtors' products, including usage statistics, competitive analyses, and expansion opportunities.
20. At the Meeting, the Debtors made certain representations regarding the ownership of various intellectual property assets by specific Debtor entities. Please provide all documents and communications identifying the ownership of such assets, as well as the ownership of all other material intellectual property.

Thank you for your cooperation to date and your anticipated cooperation going forward. Please produce documents and materials in their native electronic format (e.g., docx, xlsx, pptx, etc.) and, with respect to logistics and for electronic search terms, please contact my associate, Robert Winning at (212) 479-6525 or rwinning@cooley.com.

Regards,

/s/ Jeffrey L. Cohen

Jeffrey L. Cohen

cc: Cathy Hershcopf, Cooley LLP
Thomas Clark Carlson, Duff & Phelps LLC
Scott L. Alberino, Akin Gump Strauss Hauer & Feld LLP
Kristine Manoukian, Akin Gump Strauss Hauer & Feld LLP

Parent



Jeffrey L. Cohen
T: +1 212 479 6218
jcohen@cooley.com

VIA EMAIL

February 15, 2013

Allen & Overy LLP
1221 Avenue of the Americas
New York, New York 10020
Attn: Ken Coleman, Esq.

RE: Atari, Inc., et al., Case No. 13-10176 (JMP)

Dear Ken:

As you know, the Official Committee of Unsecured Creditors (the "Committee") of Atari, Inc. and its affiliated debtors (collectively, the "Debtors") has retained Cooley LLP as its counsel in the above-styled chapter 11 cases. In furtherance of the investigation rights provided to the Committee in the financing order entered in these cases, below is an initial list of information we request that Atari S.A. and Atari Europe SAS (together, the "Parent") provide. With respect to items 1 through 13, please provide such information on a rolling basis by no later than March 8, 2013. With respect to the remaining items, please provide such information on a rolling basis by no later than April 1, 2013. In addition, please inform me by February 18, 2013 if the Parent will not voluntarily comply with these requests for documents and information.

1. A copy of that certain Credit Facility Agreement, dated April 21, 2006 (as amended) among Atari Europe SAS, as Borrower, Atari S.A., as guarantor, and BlueBay Value Recovery (Master) Fund Limited (together with any affiliates, "BlueBay") as lender, and all ancillary and other documents related thereto, including without limitation any guaranty agreements, pledge agreements, security agreements, or intercreditor agreements (collectively, the "Parent Facility"). To the extent not included therein, copies of any document or agreement establishing any obligation of the Debtors in connection with the Parent Facility.
2. All documents evidencing (i) the amounts owed by the Parent and the Debtors, directly or indirectly, under the Parent Facility, (ii) the security interests securing such debt, and (iii) perfection of such security interests.
3. A list of all payments made by the Debtors, the Parent, or any other affiliates of the Debtors (together with the Debtors, the Parent, the "Atari Entities", and each an "Atari Entity") to BlueBay in the six years preceding January 21, 2013 (the "Petition Date"). The list should identify the Atari Entity making the payment, the amount paid, the date of such payment, and the basis for such payment.
4. All documents concerning the Debtors' purportedly secured obligation to the Parent, including without limitation documents evidencing (i) the amount owed to Parent, (ii)



- the security interests securing such debt, (iii) the agreements under which the debt and security interests arise, and (iv) the perfection of such security interests.
5. All documents concerning the Debtors' purportedly unsecured obligation to the Parent, including without limitation documents evidencing (i) the amounts owed to Parent, and (ii) the agreements under which the obligations arise.
 6. All documents relating to the sale or assignment of any claims or interests held by BlueBay in any Atari Entity.
 7. An organizational chart including each Atari Entity and their respective owners.
 8. Any guarantee agreement by and between any Debtor and any non-Debtor Atari Entities.
 9. A list of individuals with knowledge of the Parent's accounting treatment of intercompany transactions between the Atari Entities.
 10. Audited and unaudited balance sheets and statements of income and cash flows for the Atari Entities, individually and on a consolidated basis, for the 2008 through 2012 fiscal years.
 11. All tax returns filed by each Atari Entity for the tax years 2008 through 2012.
 12. A detailed accounts payable analysis for each non-Debtor Atari Entity.

In addition, the Committee requires the additional information identified below:

1. Any cash management agreement by, between and among any Atari Entity, and any related and ancillary documents. If there was no cash management agreement governing some or all of the intercompany transfers by and among the Atari Entities, then any other agreements, corporate manuals, memoranda, or other documents and communications setting forth procedures and policies with respect to intercompany transactions, or the accounting treatment thereof.
2. Any tax sharing agreements by, between and among the Atari Entities.
3. Documents concerning the claims asserted or potentially asserted by the non-Debtor Atari Entities against the Debtors (the "Intercompany Claims"), including without limitation:
 - (i) Documents evidencing the amount of the Intercompany Claims, including a ledger listing all transfers between any Debtor and any non-Debtor Atari Entity during the six-year period prior to the Petition Date;
 - (ii) Documents evidencing any fixed maturity date or schedule of repayment in connection with the Intercompany Claims;



- (iii) Documents evidencing any interest charged in connection with the Intercompany Claims;
 - (iv) Documents evidencing the use of the proceeds of the intercompany transfers underlying the Intercompany Claims;
 - (v) Correspondence by and among the Atari Entities concerning intercompany transfers and cash management; and
 - (vi) Documents concerning any attempt by the Debtors to obtain financing from a third-party in the two years prior to the Petition Date, including a list of prospective lenders contacted and any offers or term sheets received by any such potential lender.
4. All documents and communications concerning the recomposition of the Debtors' boards of directors subsequent to the Petition Date, including, but not limited to, the following:
 - Corporate resolutions removing or adding board members to any of the Atari Entities;
 - Documents and communications regarding the removal or addition of board members to any of the Atari Entities;
 - Documents and communications regarding the selection of all current board members of the Atari Entities; and
 - Documents and communications conditioning the proposed DIP financing or the acquisition by Alden Global Distressed Opportunities Master Fund, L.P. (or any of its affiliates) of any claims or interests held by BlueBay in any Atari Entity on the recomposition of the board of any of the Atari Entities.
5. Organizational chart of all executives and list of all directors and officers of the Atari Entities over the past 2 years, including relevant time period for each individual.
6. A list of all payments, dividends or distributions made by any of the Debtors to or for the benefit of any Non-Debtor Atari Entity, BlueBay, or Insider (as defined in the Bankruptcy Code) of the Debtors during the six-year period preceding the Petition Date.
7. All documents and communications concerning the recomposition of the boards of directors of any Atari Entity subsequent to the Petition Date.
8. All valuations, appraisals, liquidation analyses, nonconsolidation, fairness or solvency opinions, or other documents prepared over the course of the last two years by or on behalf of any Atari Entity concerning the value of the Debtors' assets, including, without limitation, intellectual property, licenses, trade names, brands, or



- leasehold interests, sold individually or collectively, on a going-concern or liquidating basis.
9. All public filings or disclosures of the Parent for the one year preceding the Petition Date.
 10. Documents evidencing the material intellectual property held by each Atari Entity.

Thank you for your anticipated cooperation. With respect to logistics and for electronic search terms, please contact my associate, Robert Winning at (212) 479-6525 or rwinning@cooley.com.

Regards,

/s/ Jeffrey L. Cohen

Jeffrey L. Cohen

cc: Cathy Hershcopf, Cooley LLP
Thomas Clark Carlson, Duff & Phelps LLC
Scott L. Alberino, Akin Gump Strauss Hauer & Feld LLP
Ira S. Dizengoff, Akin Gump Strauss Hauer & Feld LLP
Kristine Manoukian, Akin Gump Strauss Hauer & Feld LLP

Alden



Jeffrey L. Cohen
T: +1 212 479 6218
jcohen@cooley.com

VIA EMAIL

February 15, 2013

Bracewell & Giuliani LLP
1251 Avenue of the Americas, 49th Floor
New York, New York 10020
Attn: Robert Burns, Esq.

RE: Atari, Inc., et al., Case No. 13-10176 (JMP)

Dear Robert:

As you know, the Official Committee of Unsecured Creditors (the "Committee") of Atari, Inc. and its affiliated debtors (collectively, the "Debtors") has retained Cooley LLP as its counsel in the above-styled chapter 11 cases. In furtherance of the investigation rights provided to the Committee in the interim financing order entered in these cases, below is a list of information we request that Alden Global Distressed Opportunities Master Fund, L.P. in its capacity as DIP lender and holder of the prepetition secured debt arising under the Parent Facility (defined below) (together with its affiliated funds and entities, "Alden") provide. As will be more fully set forth in a timely-filed objection, if such an objection is necessary, the Committee does not consent to, among other things, the proposed (i) adequate protection package, or (ii) limitations to the Committee's right and ability to investigate the Waived Claims (as defined in the financing order). The Committee requests that Alden produce the following information in connection with this contested matter, no later than March 8, 2013:

1. A true and correct copy of the DIP financing credit agreement, including any and all exhibits and schedules thereto.
2. Copies of any term sheets related to the proposed DIP financing.
3. A copy of that certain Credit Facility Agreement, dated April 21, 2006 (as amended) among Atari Europe SAS, as Borrower, Atari S.A., as guarantor, and BlueBay Value Recovery (Master) Fund Limited (together with any affiliates, "BlueBay") as lender, and all ancillary and other documents related thereto, including without limitation any guaranty agreements, pledge agreements, security agreements, or intercreditor agreements (collectively, the "Parent Facility"). To the extent not included therein, copies of any document or agreement establishing any obligation of the Debtors in connection with the Parent Facility.
4. Documents evidencing (i) the amounts owed by the Debtors, directly or indirectly, under the Parent Facility, (ii) the security interests securing such debt, and (iii) perfection of such security interests.



5. All documents relating to the sale or assignment to Alden of any claims or interests held by BlueBay in any Atari Entity (the "BlueBay Acquisition"), including, but not limited to a full set of closing documents with respect to the acquisition of any BlueBay claims or interests.
6. All documents and communications concerning the recomposition of the Debtors' boards of directors subsequent to the Petition Date, including, but not limited to, the following:
 - Corporate resolutions removing or adding board members to any of the Atari Entities;
 - Documents and communications regarding the removal or addition of board members to any of the Atari Entities;
 - Documents and communications regarding the selection of all current board members of the Atari Entities; and
 - Documents and communications conditioning the proposed DIP financing or the BlueBay Acquisition on the recomposition of the board of any of the Atari Entities.
7. All documents and communications regarding the termination of Hunton & Williams LLP as counsel to the Debtors.
8. All documents and communications regarding the selection of Akin Gump Strauss Hauer & Feld LLP as replacement counsel to the Debtors.
9. All financial reports that the Debtors have provided to Alden.

Thank you for your anticipated cooperation. With respect to logistics and for electronic search terms, please contact my associate, Robert Winning at (212) 479-6525 or rwinning@cooley.com.

Regards,

/s/ Jeffrey L. Cohen

Jeffrey L. Cohen

cc: Cathy Hershcopf, Cooley LLP
Thomas Clark Carlson, Duff & Phelps LLC
Scott L. Alberino, Akin Gump Strauss Hauer & Feld LLP
Ira S. Dizengoff, Akin Gump Strauss Hauer & Feld LLP
Kristine Manoukian, Akin Gump Strauss Hauer & Feld LLP

BlueBay



Jeffrey L. Cohen
T: +1 212 479 6218
jcohen@cooley.com

VIA EMAIL

March 11, 2013

White & Case LLP
1155 Avenue of the Americas
New York, New York 10036-2787
Attn: Scott Greissman, Esq.

RE: In re Atari, Inc., et al., Case No. 13-10176 (JMP)

Dear Scott:

As you know, the Official Committee of Unsecured Creditors (the "Committee") of Atari, Inc. and its affiliated debtors (collectively, the "Debtors") has retained Cooley LLP as its counsel in the above-styled chapter 11 cases. In furtherance of the investigation rights provided to the Committee in the financing order entered in these cases, below is a list of information we request that the BlueBay Value Recovery (Master) Fund Limited and its affiliates (collectively, "BlueBay") provide in their capacity as the former secured lender to, board member and equity holder of, the Debtors' parent company, Atari S.A. (the "Parent Company"). Please let me know by March 14, 2013 whether BlueBay will voluntarily produce the documents and information requested herein, or whether your client requires a subpoena.

The Committee requests that BlueBay produce the following documents and information on a rolling basis, with production of all requested documents and information to be completed no later than April 1, 2013:

1. All documents and communications concerning any security interest granted to BlueBay in any asset of the Debtors (including, but not limited to, any intellectual property rights associated with the "Test Drive Unlimited" game) in connection with that certain Credit Facility Agreement, dated April 21, 2006, among Atari Europe SAS, as Borrower, Atari S.A., as guarantor, and BlueBay as lender, as amended (the "Parent Facility"), including without limitation, documents and communication concerning (i) the value of such assets and (ii) the consideration, if any, provided to the Debtors in exchange for the security interest in such assets.
2. All documents and communications concerning BlueBay's security interest in receivables due from Atari Interactive, Inc. to the Parent Company (the "Atari Interactive Receivable"), including without limitation documents and communications concerning the origin of the Atari Interactive Receivable, and a detailed accounting of the Atari Interactive Receivable since April 21, 2006.
3. All documents and communications concerning the Parent Company's intercompany claims against Atari, Inc., including without limitation documents and communications concerning (i) the purported secured claim and blanket lien asserted by the Parent



- Company with respect to Atari, Inc.'s assets, and (ii) any accounting of the Parent Company's secured and unsecured claims against Atari, Inc.
4. All documents and communications relating to the sale or assignment to Alden Global Distressed Opportunities Master Fund, L.P. and its affiliates of any claims or interests held by BlueBay in any of the Debtors, the Parent Company, and Atari Europe SAS (collectively, the "Atari Entities"), or any affiliate thereof.
 5. All documents and communications concerning the increase in Total Commitments (as such term is defined in the Parent Facility) in or about March 2009.
 6. All documents and communications concerning any payment by a Debtor to BlueBay, including without limitation all documents and communications (i) evidencing such payments, (ii) concerning the basis for such payments, and (iii) regarding the consideration, if any, provided to the Debtors in exchange for any such payment.
 7. All valuations, appraisals, liquidation analyses, nonconsolidation, fairness or solvency opinions, or other documents concerning the value of the Debtors' assets, including, without limitation, intellectual property, licenses, trade names, brands, or leasehold interests, valued individually or collectively, on a going-concern or liquidation basis.
 8. A list of individuals with knowledge of the Debtors' practices and procedures regarding transactions and cash flow by, between, and among the Debtors, the Parent Company, and Atari Europe SAS.
 9. Documents and communications concerning any Atari Entities' efforts to obtain additional financing or an infusion of capital.
 10. All documents provided to BlueBay by the Parent Company, or any other borrower under the Parent Facility, pursuant to Clauses 20.1, 20.2, 20.3, 20.4, 20.5, and 20.6 of the Parent Facility.
 11. All documents and communications regarding BlueBay's decision to cease funding the Atari Entities and exit the investment in or about December 2010 (the "Exit").
 12. Communications with directors or management of any of the Atari Entities regarding the Exit, including communications regarding any direction or instruction from BlueBay to management of any of the Atari Entities to take any action to facilitate the Exit.



Thank you for your anticipated cooperation. With respect to logistics and for electronic search terms, please contact my associate, Robert Winning at (212) 479-6525 or rwinning@cooley.com.

Regards,

/s/ Jeffrey L. Cohen

Jeffrey L. Cohen

cc: Cathy Hershcopf, Cooley LLP
Thomas Clark Carlson, Duff & Phelps LLC
Scott L. Alberino, Akin Gump Strauss Hauer & Feld LLP
Ira S. Dizengoff, Akin Gump Strauss Hauer & Feld LLP
Kristine Manoukian, Akin Gump Strauss Hauer & Feld LLP
Robert Burns, Bracewell & Giuliani LLP
Andrew Schouder, Bracewell & Giuliani LLP

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

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

**ORDER, PURSUANT TO BANKRUPTCY RULE 2004,
(I) DIRECTING THE PRODUCTION OF DOCUMENTS AND WITNESSES BY
(A) THE DEBTORS, (B) ATARI, S.A. AND ATARI EUROPE SAS, (C) ALDEN GLOBAL
DISTRESSED OPPORTUNITIES MASTER FUND, L.P. AND ITS AFFILIATES, AND
(D) BLUEBAY VALUE RECOVERY (MASTER) FUND LIMITED AND ITS
AFFILIATES, AND (II) AUTHORIZING THE ISSUANCE OF SUBPOENAS**

Upon the motion, dated April 26, 2013 (the "Motion"),² of the Official Committee of Unsecured Creditors (the "Committee") of Atari, Inc., et al., as debtors and debtors-in-possession (the "Debtors") seeking entry of an order, pursuant to section 105(a) of chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"), Rule 2004 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), (i) directing the production of documents and the examination of individuals, corporate designee(s) or representative(s) of (a) the Debtors, (b) Atari, S.A. and Atari Europe SAS (collectively, the "Parent"), (c) Alden Global Distressed Opportunities Master Fund, L.P. and its affiliates (collectively, "Alden"), and (d) BlueBay Value Recovery (Master) Fund Limited and its affiliates (collectively, "BlueBay" and together with the Debtors, the Parent and Alden, the "Producing Parties") and (ii) authorizing the Committee to issue such other subpoenas for testimony and the production of documents as it deems

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

² Any capitalized term not defined herein shall have the meaning ascribed to it in the Motion.

appropriate in its Investigation; and the Court having reviewed the Motion and the Cohen Declaration; and that it appearing that notice of the Motion was good and sufficient under the circumstances and that no other or further notice need be given; and it appearing that the document requests and testimony sought from the Producing Parties is within the scope of permissible discovery under Bankruptcy Rule 2004; and after due deliberation thereon; and good cause appearing therefore, it is hereby

ORDERED, that the Motion is granted in its entirety; and it is further

ORDERED, that no later than May [___], 2013, the Producing Parties shall produce to the Committee the documents requested by the Committee in the Document Requests attached as **Exhibit A** hereto, including all responsive ESI from appropriate custodians. The Producing Parties shall also take immediate affirmative steps to preserve electronic correspondence, including, without limitation, any and all correspondence between and amongst BlueBay and its affiliates, the Debtors, the Parent and Alden and their representatives or employees; and it is further

ORDERED, that the Committee is authorized to take the oral examination of corporate designee(s) or representative(s) of the Producing Parties, to be selected by the Committee upon written notice. The oral examinations will take place as noticed by the Committee or at such times or adjourned times as shall be mutually agreed; and it is further

ORDERED, that the Committee is authorized to issue document and/or oral examination subpoenas to persons and entities as it deems appropriate in its Investigation; and it is further

ORDERED, that in the event that any Producing Party fails to comply with the provisions of this Order, the Committee shall be permitted to seek an immediate conference with the Court (either in person or telephonically), subject only to the Court's availability and provided that the Committee shall have given such Producing Party at least one day's notice thereof; and it is further

ORDERED, that this Order is without prejudice to the rights of the Committee or other parties in interest to apply for further discovery of any other material witness or document.

Dated: April [__], 2013
New York, New York

HONORABLE JAMES M. PECK,
UNITED STATES BANKRUPTCY JUDGE