

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

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<b>In re:</b>	)	<b>Chapter 11 Case No.</b>
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ATARI, INC., <u>et al.</u> ,	)	<b>13-10176 (JMP)</b>
	)	
Debtors, <sup>1</sup>	)	
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**STIPULATION AND PROTECTIVE ORDER BETWEEN  
BLUEBAY VALUE RECOVERY (MASTER) FUND LIMITED AND  
THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS**

This Stipulation and Protective Order is entered into by and between the undersigned counsel, acting for and on behalf of their respective clients: (a) BlueBay Value Recovery (Master) Fund and its affiliates (collectively “BlueBay”); and (b) the Official Committee of Unsecured Creditors (the “Committee”).

WHEREAS, on January 21, 2013, each of the Debtors commenced cases (the “Cases”) under chapter 11 of title 11 of United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the Southern District of New York (the “Court”);

WHEREAS, 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

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

(v) Liquid Entertainment. On February 8, 2013, the Committee selected Cooley LLP as its counsel;

WHEREAS, on March 11, 2013, the Committee sent a letter to BlueBay seeking the voluntary production of documents and information by BlueBay (the "March 11 Letter");

WHEREAS, with the exception of certain transactional documents, BlueBay refused to voluntarily produce the documents and information requested in the March 11 Letter;

WHEREAS, on April 26, 2013, the Committee filed a motion (the "2004 Motion") seeking an order pursuant to Federal Rule of Bankruptcy Procedure 2004 requiring the production of documents and information by various parties, including BlueBay [D.I. 198];

WHEREAS, on May 1, 2013, the Court entered an order approving the 2004 Motion [D.I. 201], and on May 14, 2013, the Court entered an amended order approving the 2004 Motion [D.I. 212] and compelling the production of documents and information from various parties, including BlueBay, by no later than June 15, 2013.

WHEREAS, BlueBay and the Committee met and conferred on May 15, 2013 regarding the documents and information sought from BlueBay in the March 11 Letter (all documents and information provided by BlueBay to the Committee, "Discovery Materials");

WHEREAS BlueBay has requested, and the Committee has agreed, that Discovery Materials to be provided by BlueBay in response to the March 11 Letter should be subject to this Stipulation and Protective Order in accordance with Rule 7026 of the Federal Rules of Bankruptcy Procedure, and that Discovery Materials to be provided by BlueBay in response to any future formal or informal discovery demand also should be subject to this Stipulation and Protective Order; and

WHEREAS, BlueBay and the Committee have entered into this Stipulation and Protective Order and have agreed to be bound by its terms;

NOW, THEREFORE, IT IS HEREBY STIPULATED, AGREED, AND UPON COURT APPROVAL HEREOF, IT IS ORDERED THAT:

1. Discovery Materials, or information derived therefrom, shall be used solely for the purposes of the Cases and any adversary proceedings or contested matters arising in connection therewith, and shall not be used for any other purpose.

2. BlueBay may designate as “Highly Confidential” that portion of any Discovery Materials that BlueBay in good faith and in its sole discretion believes constitutes or contains nonpublic information that is highly personal in nature or is competitively sensitive and proprietary to BlueBay or any of its subsidiaries or affiliates, or from which competitively sensitive and proprietary information belonging to BlueBay or any of its subsidiaries or affiliates could be derived (the “Highly Confidential Discovery Materials”).

3. BlueBay may designate as “Confidential” that portion of any Discovery Materials that BlueBay in good faith and in its sole discretion believes constitutes or contains nonpublic proprietary or confidential business information, financial information, personal information, or otherwise private or confidential information (the “Confidential Discovery Materials”); provided, however, that neither Highly Confidential Discovery Materials nor Confidential Discovery Materials shall include Discovery Materials that (i) are or become publicly available other than as a result of an act or omission by the Committee in breach of this Stipulation and Protective Order, (ii) is already in the Committee’s possession, provided that such information is not subject to another confidentiality agreement binding upon the Committee, (iii) are or become available to the Committee on a nonconfidential basis from a

source (other than BlueBay), which source is not to the Committee's knowledge, after reasonable inquiry, subject to any prohibition from disclosing such information to the Committee, (iv) are independently developed by the Committee without using the Highly Confidential Discovery Materials and Confidential Discovery Materials; or (v) are determined by a court of competent jurisdiction to be non-confidential.

4. BlueBay may designate Discovery Materials as Confidential or Highly Confidential by applying the legend "Confidential" or "Highly Confidential," as appropriate, to the Discovery Materials and, in the case of an electronic document produced in native format (such as, for example, an Excel spreadsheet), by applying the appropriate legend to a slip sheet corresponding to the native document.

5. Discovery Materials that have been designated Confidential or Highly Confidential shall, subject to the terms of this Stipulation and Protective Order, be maintained in confidence by, and stored under the direct control of, counsel of record for the Committee, who shall be responsible for preventing any disclosure not in accordance with this Stipulation and Protective Order.

6. Provided that disclosure is not otherwise prohibited by this Stipulation and Protective Order, Highly Confidential Discovery Materials may be disclosed by the Committee's counsel only to: (i) persons who have already lawfully seen or received the materials; (ii) professional firms, vendors, or persons retained by the Committee to provide specialized advice or services in connection with the Cases, including their staff, subject to paragraph 11 of this Stipulation and Protective Order; (iii) persons expected to be deponents, trial witnesses, and hearing witnesses in such proceedings, and counsel therefor, subject to paragraph 12 of this Stipulation and Protective Order; (iv) the Bankruptcy Court; (v) other persons upon further order

of the Bankruptcy Court or consent of BlueBay, subject to the provisions of paragraphs 8 and 12 of this Stipulation and Protective Order. For the avoidance of doubt, no Highly Confidential Discovery Materials may be shared with any member of the Committee, nor with any affiliates or representatives thereof, other than professionals described in paragraph 6(ii), without the consent of BlueBay or order of the Bankruptcy Court.

7. Provided that disclosure is not otherwise prohibited by this Stipulation and Protective Order, Confidential Discovery Materials may be disclosed by the Committee's counsel only to: (i) parties or persons to whom Highly Confidential Discovery Materials may be disclosed as set forth in paragraph 6; (ii) members of the Committee and their affiliates and representatives; (iii) current employees, officers, directors, or representatives of a party to a contested matter or proceeding in the Cases in which the Confidential Discovery Materials are relevant, provided that disclosure is reasonably necessary to the litigation; (iv) persons expected to be deponents, trial witnesses, and hearing witnesses in proceedings in connection with the Cases, and counsel therefor, subject to paragraph 12 of this Stipulation and Protective Order; and (v) other persons upon further order of the Bankruptcy Court or consent of BlueBay, subject to the provisions of paragraphs 8 and 12 of this Stipulation and Protective Order.

8. In the event the Committee believes that providing Highly Confidential Discovery Materials to a person other than as described in paragraph 6(i) – (iv), or providing Confidential Discovery materials to a person other than as described in paragraph 7(i) – (iv), is reasonably necessary, the Committee shall first inform BlueBay of the identity of the person in question and any entities with which that person is affiliated and provide notice to BlueBay of the Discovery Materials that the Committee seeks to disclose. The parties shall use their best efforts within 7 days to allow the use of such material while protecting BlueBay's need for

confidentiality, including, but not limited to (i) considering whether portions of such material can be redacted; and (ii) reevaluating whether such Discovery Material must be protected as “Confidential” or “Highly Confidential.” In the event the Committee and BlueBay cannot resolve any dispute between them concerning such disclosure of Confidential or Highly Confidential Discovery Materials, the Committee may present the issue to the Bankruptcy Court for resolution.

9. During any deposition conducted in connection with these Cases, if any answer to a question will result in the disclosure of Confidential or Highly Confidential Discovery Materials, counsel for BlueBay shall have the option to require that all persons other than the reporter, counsel, and individuals entitled to view Confidential or Highly Confidential Discovery Materials leave the room during the Confidential or Highly Confidential portion of the deposition or interview.

10. Any portion of a deposition or other recorded testimony may be designated by BlueBay as “Confidential” or “Highly Confidential,” subject to this Stipulation and Protective Order. Such designation can be made orally on the record, or by letter within 3 days following the conclusion of testimony. If such a designation is made, then the entire transcript and all exhibits shall be treated as Highly Confidential or Confidential, as the case may be, until the date that is 21 days following the conclusion of the recorded testimony, at which time counsel for BlueBay shall advise counsel for the Committee by letter of which lines and exhibits, if any, should be de-designated. In the event the Committee disputes the validity of any such designation by BlueBay and the parties cannot consensually resolve the issue, the Committee may present the issue to the Bankruptcy Court for resolution.

11. Counsel for the Committee shall provide a copy of this Stipulation and Protective Order to a representative of any professional firm or individual who is retained by the Committee in connection with the Cases (the "Permitted Recipients"), and the firm representative or individual, as the case may be, must execute a Non-Disclosure Declaration in the form annexed as an Exhibit hereto before the firm or individual receives any Confidential or Highly Confidential Discovery Materials.

12. Confidential or Highly Confidential Discovery Materials may not be provided by the Committee's counsel to an individual described in paragraph 6(v) or paragraph 7(v), or to any deposition, hearing, or trial witness who is not a BlueBay representative or an individual otherwise entitled to view such Discovery Materials, unless and until counsel for the Committee has provided such person with a copy of this Stipulation and Protective Order and such person has executed a Non-Disclosure Declaration in the form annexed as an Exhibit hereto.

13. In the event that the Committee or any Permitted Recipient is required, by interrogatories, subpoena, civil investigative demand, or similar legal process or applicable law or regulation, to disclose any Confidential or Highly Confidential Discovery Materials, it is agreed that the Committee or Permitted Recipient will provide BlueBay with prompt notice of such event so that BlueBay may seek a protective order or other appropriate remedy or waive compliance with the applicable provisions of this Stipulation and Protective Order. In the event that BlueBay determines to seek such a protective order or other remedy, the Committee or Permitted Recipient shall not oppose BlueBay's seeking such protective order or other remedy. In the event such a protective order or other remedy is not obtained and disclosure of Confidential or Highly Confidential Discovery Materials is required under law, or BlueBay

grants a waiver hereunder, the Committee or Permitted Recipient, as the case may be, (i) may, without liability hereunder, furnish that portion (and only that portion) of the Discovery Materials that the Committee or Permitted Recipient is legally required to disclose, and (ii) will exercise its best efforts to have confidential treatment accorded the Discovery Materials so furnished.

14. The failure to designate any Discovery Materials as Confidential or Highly Confidential does not constitute a waiver of such claim. If at any time BlueBay realizes or determines in its sole discretion that certain testimony or some portion of Discovery Materials that it previously produced should be designated as Confidential or Highly Confidential, BlueBay may apprise the Committee in writing, and such designated testimony or portion of Discovery Materials will thereafter be treated as Confidential or Highly Confidential, as appropriate, under the terms of this Stipulation and Protective Order.

15. All Confidential and Highly Confidential Discovery Materials filed with the Bankruptcy Court, and all portions of pleadings, motions, or other papers filed with the Bankruptcy Court that disclose Confidential or Highly Confidential information, shall be filed under seal with the Clerk of the Court in accordance with the Federal Rules of Bankruptcy Procedure, Local Rules for the Southern District of New York Bankruptcy Court, and Chambers' Rules of Judge James M. Peck.

16. In the event the Committee objects to any designation of testimony or Discovery Materials as Confidential or Highly Confidential, the Committee shall so inform BlueBay, stating the grounds of the objection. If the parties are unable to resolve the issue consensually, then the Committee may seek a ruling from the Bankruptcy Court that such information should not be treated as Confidential or Highly Confidential, provided that no



Confidential or Highly Confidential information shall be filed in the public record before such a determination by the Bankruptcy Court.

17. In the event that BlueBay inadvertently produces any materials that it determines, in its sole discretion, are privileged or otherwise immune from discovery, in whole or in part, in accordance with the attorney-client privilege, the work product doctrine, or any other applicable privilege or protection from disclosure, such materials ("Protected Information") may be retrieved by BlueBay by giving written notice to the Committee. Upon receipt of notice that BlueBay intends to retrieve Protected Information, the Committee and any other persons who have received a copy of the inadvertently produced materials shall promptly return all copies of those materials to BlueBay, and within 10 days of receiving such notice, certify to BlueBay that the requirements of this paragraph 17 have been complied with. Any inadvertent production of any material that is subsequently retrieved under this paragraph shall not be deemed a waiver of, or estoppel as to, any claim asserted by BlueBay that the materials in question constitute Protected Information. Neither the Committee nor any other person or party shall use any inadvertently produced Protected Information, or information gleaned from any inadvertently produced Protected Information, in connection with these chapter 11 cases or any related actions.

18. In the event that Confidential or Highly Confidential Discovery Materials are used in any court proceeding in these Cases or in any appeal arising therefrom, such Discovery Materials shall not lose their status as Confidential or Highly Confidential through such use. At the appropriate time, counsel shall confer on such procedures as are necessary to protect the confidentiality of any Confidential or Highly Confidential documents, information, or

transcripts used in the course of any court proceedings, and in the event counsel cannot agree on such procedures, the question shall be submitted to the Bankruptcy Court for resolution.

19. The provisions of this Stipulation and Protective Order, absent written permission of BlueBay, shall continue to be binding through and after the conclusion of the Cases. Within 30 days after all proceedings in the Cases have been fully and finally concluded, the Committee shall either return all Confidential and Highly Confidential Discovery Materials and all copies thereof (including summaries and excerpts and including all such material provided by the Committee to any other persons, whether or not in accordance herewith) to counsel for BlueBay, or destroy or cause to be destroyed all such Confidential and Highly Confidential Discovery Materials and certify to counsel for BlueBay that the requirements of this paragraph 19 have been fully complied with. Documents that have been received electronically and that cannot be returned or destroyed must be electronically deleted from “trash” files, and the recipient must take reasonable measures to ensure that unauthorized persons do not have access to Confidential or Highly Confidential Discovery Materials present on the recipient’s computer, server, or any backup media. Nothing in this paragraph 19 shall be construed to require a party to erase or return electronically stored Confidential Discovery Materials or Highly Confidential Discovery Materials to the extent they have been saved to a back-up file in accordance with that party’s ordinary electronic back-up practices, provided that any such Discovery Materials shall remain confidential and fully subject to the protections of this Stipulation and Protective Order.

20. The Committee agrees to be bound by the terms herein pending Bankruptcy Court approval of this Stipulation and Protective Order, or an alternative hereto that is satisfactory to BlueBay, and any violation of its terms shall be subject to the same sanctions

and penalties as if this Stipulation and Protective Order had been approved by the Bankruptcy Court.

Dated: June 11, 2013  
New York, New York

**WHITE & CASE LLP**

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*Counsel for the Official Committee of  
Unsecured Creditors*

**SO ORDERED:**

Dated: New York, New York  
July 2, 2013



/s/ James M. Peck

Honorable James M. Peck  
United States Bankruptcy Judge