

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

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In re:

ATARI, INC., *et al.*,<sup>1</sup>

Debtors.

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

**ORDER UNDER BANKRUPTCY CODE SECTION 327(a)  
AUTHORIZING THE EMPLOYMENT AND RETENTION OF  
MARKS PANETH & SHRON LLP AS THE DEBTORS' 401(k) PLAN AUDITOR**

Upon consideration of the application (the “*Application*”) of the above-captioned debtors and debtors in possession (collectively, the “*Debtors*”) for the entry of an order (the “*Order*”) authorizing the Debtors to retain and employ Marks Paneth & Shron LLP (“*Marks Paneth*”), as the Debtors’ 401(k) Plan<sup>2</sup> auditor pursuant to Bankruptcy Code section 327(a), Bankruptcy Rule 2014(a), Local Rule 2014-1; and upon the Declaration of Michael J. Fosorile (the “*Fosorile Declaration*”) in support of the Application; and the Court having jurisdiction pursuant to sections 157 and 1334 of title 28 of the United States Code to consider the Application and the relief requested therein; and venue being proper in this Court pursuant to sections 1408 and 1409 of title 28 of the United States Code; and the Court being satisfied that notice of the Application and the opportunity for a hearing on the Application was appropriate under the particular circumstances and no further or other notice need be given; and the Court being satisfied, based on the representations made in the Application and the Fosorile Declaration that Marks Paneth does not hold or represent any interest adverse to the Debtors, their creditors, or any party-in-interest, or their respective attorneys and is a “disinterested person” as that term is defined under

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

<sup>2</sup> Capitalized terms not defined herein shall have the meaning ascribed to them in the Application.

Bankruptcy Code section 101(14), as modified by Bankruptcy Code section 1107(b), and as required under Bankruptcy Code section 327(a); and any objections of the U.S. Trustee to the Application having been consensually resolved with the Debtors; and the Court having determined that the relief sought in the Application is in the best interests of the Debtors, their creditors, and all parties in interest; and the Court having determined that the legal and factual bases set forth in the Application and the Fosorile Declaration establish just cause for the relief granted herein,

IT IS HEREBY ORDERED THAT:

1. The Application is approved as set forth herein.
2. Pursuant to Bankruptcy Code section 327(a), Bankruptcy Rule 2014(a), Local Rule 2014-1, the Debtors are hereby authorized to employ and retain Marks Paneth as their 401(k) Plan auditor, pursuant to the terms set forth in the Engagement Agreement, a copy of which is attached as **Exhibit 1** to the Fosorile Declaration.
3. The engagement shall be effective as of the later of (1) the entry of this Order or (2) the execution of the Engagement Agreement by the Debtors and Marks Paneth.
4. Marks Paneth shall (a) provide ten (10) business days' notice to the Debtors, the U.S. Trustee and counsel to the Committee of any increases in the rates set forth in the Engagement Agreement and (b) file such notice with the Court.
5. Marks Paneth shall be compensated in accordance with the terms of the Engagement Agreement, subject to the procedures set forth in the Bankruptcy Code, the Bankruptcy Rules, the Local Rules and any other applicable orders of this Court.
6. Marks Paneth shall use its best efforts to avoid any duplication of services provided by any of the Debtors' other retained professionals in these chapter 11 cases.

7. Notwithstanding anything to the contrary in the Engagement Agreement, any limitation of liability and any other amounts to be contributed by the parties to the Engagement Agreement under the terms of the Engagement Agreement shall be eliminated and of no force and effect.

8. Marks Paneth shall apply for compensation for professional services rendered and reimbursement of reasonable and actual expenses incurred in connection with these chapter 11 cases in compliance with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Bankruptcy Rules, the guidelines established by the Office of the United States Trustee (the “*U.S. Trustee Guidelines*”), the *Order Establishing Procedures for Interim Compensation and Reimbursement of Expenses of Professionals* [Docket No 81] (the “*Compensation Procedures Order*”), and such other procedures as may be fixed by an order of this Court.

9. All compensation and reimbursement of expenses to be paid to Marks Paneth, shall be paid in accordance with the Compensation Procedures Order, the requirements of Bankruptcy Code sections 330 and 331, the Bankruptcy Rules, the U.S. Trustee Guidelines, and any other applicable orders of the Court.

10. The Debtors, their officers, employees and agents, are authorized to take or refrain from taking such acts as are necessary and appropriate to implement and effectuate the relief granted herein.

11. To the extent this Order is inconsistent with the Engagement Agreement, this Order shall govern.

12. This Court retains jurisdiction over all matters arising from or related to the interpretation, implementation, and enforcement of this Order.

NO OBJECTION:

United States Trustee for Region 2

s/ Richard Morrissey  
By: Richard Morrissey  
Trial Attorney

Dated: New York, New York  
August 6, 2013



/s/ James M. Peck

Honorable James M. Peck  
United States Bankruptcy Judge