

Hearing Date: August 20, 2013 at 10:00 a.m. (prevailing Eastern Time)
Objection Deadline: August 13, 2013 at 4:00 p.m. (prevailing Eastern Time)

AKIN GUMP STRAUSS HAUER & FELD LLP
One Bryant Park
New York, New York 10036
Telephone: (212) 872-1000
Facsimile: (212) 872-1002
Ira S. Dizengoff
Kristine G. Manoukian

Robert S. Strauss Building
1333 New Hampshire Avenue, N.W.
Washington, DC 20036-1564
Telephone: (202) 887-4000
Facsimile: (202) 887-4288
Scott L. Alberino (*Admitted Pro Hac Vice*)

Counsel to the Debtors and Debtors in Possession

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

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

**NOTICE OF DEBTORS’ MOTION FOR ENTRY OF AN ORDER PURSUANT TO
BANKRUPTCY CODE SECTION 1121(d) EXTENDING THEIR EXCLUSIVE PERIODS
TO FILE A CHAPTER 11 PLAN AND SOLICIT ACCEPTANCES THEREOF**

PLEASE TAKE NOTICE that on August 6, 2013, the above-captioned debtors and debtors in possession (collectively, the “*Debtors*”) filed the *Debtors’ Motion for Entry of an Order Pursuant to Bankruptcy Code Section 1121(d) Extending Their Exclusive Periods to File a Chapter 11 Plan and Solicit Acceptances Thereof* (the “*Motion*”).²

¹ The “*Debtors*” are Atari, Inc., Atari Interactive, Inc., Humongous, Inc., and California U.S. Holdings, Inc.
² Capitalized terms not defined herein shall have the meaning ascribed to them in the Motion.

PLEASE TAKE FURTHER NOTICE that a hearing to consider the Motion will be held on **August 20, 2013 at 10:00 a.m. (prevailing Eastern Time)** before the Honorable James M. Peck, United States Bankruptcy Judge, at the United States Bankruptcy Court for the Southern District of New York, Alexander Hamilton Custom House, One Bowling Green, New York, New York 10004 (the “*Bankruptcy Court*”).

PLEASE TAKE FURTHER NOTICE that responses, if any, to the relief requested in the Motion: (i) must be in writing; (ii) shall conform to the Federal Rules of Bankruptcy Procedure and the Local Bankruptcy Rules for the Southern District of New York; (iii) shall be filed in accordance with General Order M-399 of the Bankruptcy Court, which can be found at www.nysb.uscourts.gov; (iv) shall set forth the name of the objecting party and the basis for the objection and the specific grounds therefore; (v) shall be filed with the Clerk of the Bankruptcy Court (with a courtesy copy delivered directly to the Chambers of the Honorable James M. Peck), together with the proof of service thereof; and (vi) shall be served in a manner so as to actually be received by: (a) counsel to the Debtors, Akin Gump Strauss Hauer & Feld LLP, One Bryant Park, New York, New York 10036 (Attn.: Ira S. Dizengoff, Esq. and Kristine G. Manoukian, Esq.) and 1333 New Hampshire Avenue, N.W., Washington, D.C. 20036 (Attn.: Scott L. Alberino, Esq.); (b) the U.S. Trustee, Office of the United States Trustee, U.S. Federal Office Building, 201 Varick Street, Room 1006, New York, NY 10014 (Attn.: Richard C. Morrissey, Esq.); (c) counsel to the Committee, Cooley LLP, 1114 Avenue of the Americas, New York, New York 10036 (Attn.: Cathy Hershcopf, Esq. and Jeffrey Cohen, Esq.); (d) counsel to Alden, Bracewell & Giuliani, 1251 Avenue of the Americas, 49th Floor, New York, New York 10020 (Attn.: Robert G. Burns, Esq. and Andrew J. Schouder, Esq.); and (e) counsel to Atari,

S.A., Allen & Overy LLP, 1221 Avenue of the Americas, New York, New York 10020 (Attn.: Ken Coleman, Esq.), no later than **August 13, 2013 at 4:00 p.m. (prevailing Eastern Time)**.

PLEASE TAKE FURTHER NOTICE that if you fail to file and serve a timely response to the Motion in accordance with the above requirements, the Bankruptcy Court may grant the relief requested in the Motion without further notice or hearing.

PLEASE TAKE FURTHER NOTICE that copies of the Motion may be obtained from the Debtors' claims and noticing agent, BMC Group, Inc., by visiting <http://www.bmcgroup.com/atari>. Copies of the Motion also may be obtained by accessing the Bankruptcy Court's website at www.nysb.uscourts.gov through an account obtained from Pacer Service Center at 1-800-676-6856.

Dated: August 6, 2013
New York, New York

AKIN GUMP STRAUSS HAUER & FELD LLP

By: /s/ Ira S. Dizengoff
Ira S. Dizengoff
Kristine G. Manoukian
One Bryant Park
New York, New York 10036
Telephone: (212) 872-1000
Facsimile: (212) 872-1002
idezengoff@akingump.com
kmanoukian@akingump.com

Scott L. Alberino
Robert S. Strauss Building
1333 New Hampshire Avenue, N.W.
Washington, DC 20036-1564
Telephone: (202) 887-4000
Facsimile: (202) 887-4288
salberino@akingump.com

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

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

**DEBTORS' MOTION FOR ENTRY OF
AN ORDER PURSUANT TO BANKRUPTCY CODE
SECTION 1121(d) EXTENDING THEIR EXCLUSIVE PERIODS TO
FILE A CHAPTER 11 PLAN AND SOLICIT ACCEPTANCES THEREOF**

The above-captioned debtors and debtors in possession hereby submit this motion (the "*Motion*") for entry of an order (the "*Order*"), in substantially the form attached hereto as **Exhibit A**, extending the exclusive period during which only the Debtors may file a chapter 11 plan (the "*Exclusive Filing Period*") and solicit acceptances thereof (the "*Exclusive Solicitation Period*" and together with the Exclusive Filing Period, the "*Exclusive Periods*") by sixty (60)

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

days to and including October 18, 2013 and December 17, 2013, respectively. In support of the Motion, the Debtors respectfully represent as follows:

Jurisdiction

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue in this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory basis for the relief requested herein is section 1121(d) of title 11 of the United States Code (the “*Bankruptcy Code*”).

Background

2. 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. The Debtors’ chapter 11 cases have been consolidated for procedural purposes only and are being jointly administered [Docket No. 27].

3. 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*”) in these chapter 11 cases [Docket No. 64].

4. On March 7, 2013, the Court entered a final order [Docket No. 125] approving the senior secured super priority financing (the “*DIP Facility*”) provided by Alden Global Value Recovery Master Fund, L.P. (“*Alden*”).

5. On May 9, 2013, the Debtors filed their first motion with the Court for an order extending the Exclusive Filing Period and the Exclusive Solicitation Period to August 19, 2013 and October 18, 2013, respectively (the “*First Exclusivity Motion*”) [Docket No. 209]. On June 6, 2013, the Court entered an order granting the relief requested in the First Exclusivity Motion

and extended the Exclusive Periods to August 19, 2013 and October 18, 2013, respectively (the “*First Exclusivity Order*”) [Docket No. 248].

6. On May 22, 2013, the Debtors filed a motion (the “*Sale Motion*”) [Docket No. 222] with the Court for entry of an order approving, among other things, bid procedures (the “*Bid Procedures*”) in connection with the sales (the “*Sales Transactions*”) of substantially all of the Debtors’ assets (the “*Assets*”). On June 14, 2013, the Court entered an order approving the Bid Procedures and scheduled the hearing (the “*Sale Hearing*”) on the Sales Transactions for July 24, 2013 (the “*Bid Procedures Order*”) [Docket No. 260]. On July 17 and 18, 2013, pursuant to the Bid Procedures Order, the Debtors conducted the auctions with respect to certain of the Assets. The sale of these Assets was approved by the Court at the Sale Hearing on July 24, 2013. [Docket Nos. 323–329].

7. Throughout these chapter 11 cases, the Debtors have worked diligently to stabilize their business operations and move forward with their restructuring efforts. Specifically, since entry of the First Exclusivity Order, the Debtors and their advisors have expended considerable time and resources:

- a) obtaining Court approval of the Bid Procedures;
- b) marketing the Debtors’ assets pursuant to the Bid Procedures and responding to numerous diligence requests from potential bidders;
- c) analyzing bids submitted by third-parties and negotiating the terms of such bids;
- d) performing an extensive review of all of the Debtors’ leases and executory contracts to determine which leases and executory contracts to assume and assign to third-party bidders in connection with the Auctions;
- e) conducting the Auctions of a significant portion of the Assets;
- f) seeking and obtaining court approval of the sale of such Assets; and
- g) closing the Sales Transactions with the applicable buyers.

Relief Requested

8. While the Debtors have attempted to move these chapter 11 cases forward as expeditiously as possible, the Sales Transactions have consumed the time and resources of the Debtors' and their professionals. In addition, the Debtors—in concert with, among others, Alden, the Committee and Atari S.A., the Debtors' non-Debtor parent—have discussed and continue to discuss the most efficient and value-maximizing path to consummate the Debtors' chapter 11 cases, be it further liquidation of the Debtor's remaining Assets or a plan of reorganization utilizing such Assets. Such discussions are continuing in good-faith between the parties.

9. As a result, the Debtors are not in a position to propose a chapter 11 plan before the expiration of the current Exclusive Filing Period on August 19, 2013. Accordingly, the Debtors request a sixty (60) day extension to, should they deem it a value-maximizing proposition, formulate and propose a chapter 11 plan.

10. By the Motion, the Debtors seek entry of an order, pursuant to Bankruptcy Code section 1121(d), extending the Exclusive Periods to file a chapter 11 plan and solicit acceptances thereof to and including October 18, 2013 and December 17, 2013, respectively, and in each case without prejudice to the Debtors' right to seek further extensions of the Exclusive Periods.²

Basis for Relief Requested

11. Bankruptcy Code section 1121(d) permits a bankruptcy court to extend a debtor's exclusive period to file a chapter 11 plan and solicit acceptances thereof upon a demonstration of "cause." Specifically, Bankruptcy Code section 1121(d)(1) states:

² Pursuant to Local Bankruptcy Rule for the Southern District of New York 9006-2, effective as of August 1, 2013, the Debtors are not seeking entry of a bridge order with respect to the relief requested herein, as such orders are no longer required. *See* L.B.R. 9006-2.

[O]n request of a party in interest made within the respective periods specified in subsections (b) and (c) of this section and after notice and a hearing, the court may for cause reduce or increase the 120-day period or the 180-day period referred to in this section.

11 U.S.C. § 1121(d)(1).³

12. Although the Bankruptcy Code does not define “cause,” the legislative history indicates that “cause” is intended to be a flexible standard that balances the competing interests of a debtor and its creditors. *See* H.R. Rep. No. 95-595 at 231, 232 (1978), as reprinted in 1978 U.S.C.C.A.N. 5963, 6191. This flexibility is intended to give a debtor an adequate opportunity to stabilize its business operations at the outset of the case and to then negotiate a plan with its creditors. *See In re Ames Dep’t Stores Inc.*, 1991 WL 259036, at *3 (S.D.N.Y. Nov. 25, 1991) (“The purpose of the Bankruptcy Code’s exclusivity period is to allow the debtor flexibility to negotiate with its creditors.”).

13. In determining whether an extension is warranted, courts in this district consider: (1) the size and complexity of the cases; (2) whether the debtors are paying their debts as they come due; (3) the existence of good faith progress towards reorganization; (4) the necessity of sufficient time to permit the debtors to negotiate a plan of reorganization and prepare adequate information; (5) whether the debtors have demonstrated reasonable prospects for filing a viable plan; (6) whether the debtors have made progress in negotiating with their creditors; (7) the length of time the cases have been pending; (8) whether the debtors are seeking an extension to pressure creditors; and (9) whether unresolved contingencies exist. *See, e.g., In re Adelpia Commc’ns Corp. (Adelpia I)*, 336 B.R. 610, 674 (Bankr. S.D.N.Y. 2006) (citing *In re Dow Corning Corp.*, 208 B.R. 661, 664 (Bankr. E.D. Mich. 1997)); *see also In re Lionel L.L.C.*, Case

³ The 120-day period “may not be extended beyond a date that is 18 months after the [petition] date” and the 180-day period “may not be extended beyond a date that is 20 months after the [petition] date.” 11 U.S.C. § 1121(d)(2). The Debtors are not seeking to extend the Exclusive Periods beyond the 18-month limit imposed by Bankruptcy Code section 1121(d)(2).

No. 04-17324, 2007 WL 2261539 at *6 (Bankr. S.D.N.Y. Aug. 3, 2007). The Debtors assert that the foregoing factors justify an extension of the Exclusive Periods in these cases.

A. *The Debtors Chapter 11 Cases are Complex*

14. These chapter 11 cases are complex, involving multiple debtors with a unique portfolio of Assets. The Debtors have engaged in a comprehensive sale process to sell their Assets, and although, certain of the Assets have been sold, certain Assets remain that the Debtors must either sell or reorganize.

B. *The Debtors are Paying Their Debts as They Come Due*

15. In the ordinary course of business, the Debtors have been paying their undisputed post-petition debts as they become due. Additionally, the liquidity available to the Debtors under the DIP Facility, from the revenues generated through the Debtors' ongoing operations and from the proceeds of the Asset sales, provides added assurance that the Debtors will continue to meet their post-petition obligations. Thus, the requested extension of the Exclusive Periods will not jeopardize the rights of creditors and other parties with whom the Debtors transact business.

C. *These Bankruptcy Cases Have Been Pending for a Reasonable Time*

16. This is the Debtors' second request to extend the Exclusive Periods and the requested extension is reasonable given the Debtors' progress to date and the current posture of these chapter 11 cases. Affording the Debtors a meaningful opportunity to formulate a strategy to maximize the value of the Debtors' remaining assets will not harm or prejudice the Debtors' creditors. Instead, an extension of the Exclusive Periods will increase the likelihood of a greater distribution to the Debtors' stakeholders by facilitating an efficient and value-maximizing resolution to these cases.

17. Courts in this jurisdiction have routinely granted similar relief. *See, e.g., In re Quebecor World (USA) Inc.*, Case No. 08-10152 (JMP) (Bankr. S.D.N.Y.) (debtors granted

exclusivity for maximum eighteen-month period); *In re Lehman Brothers Holdings Inc.*, Case No. 08-13555 (JMP) (Bankr. S.D.N.Y.) (granting initial extension of approximately six months and subsequent extension of approximately eight months); *In re Frontier Airlines Holdings, Inc.*, Case No. 08-11298 (RDD) (Bankr. S.D.N.Y.) (debtors granted exclusivity for maximum eighteen-month period); *In re Dana Corp.*, Case No. 06-10354 (BRL) (Bankr. S.D.N.Y.) (granting initial extension of six months and subsequent extension of eight months); *In re Calpine Corp.*, Case No. 05-60200 (BRL) (Bankr. S.D.N.Y.) (granting initial extension of eight months and subsequent extension of six months).

D. *The Debtors are Not Seeking the Extension to Pressure Creditors*

18. The Debtors' request to extend the Exclusive Periods is not intended to maintain leverage over a group of creditors whose interests are being harmed by the chapter 11 cases. Indeed, the facts in the instant case are just the opposite. Rather than using time to gain leverage over their creditors, the Debtors have been working closely with their relevant stakeholders to maximize value for all creditors. The Debtors, therefore, submit that cause exists to give the Debtors a window of opportunity to achieve these results.

19. For all of these reasons, the Debtors submit that ample cause exists to extend the Exclusive Filing Period to October 18, 2013 and the Exclusive Solicitation Period to December 17, 2013.

Notice

20. The Debtors have provided notice of the Motion to: (a) the U.S. Trustee, 201 Varick Street, Room 1006, New York, New York 10014 (Attn.: Richard C. Morrissey); (b) Counsel to the Committee, Cooley LLP, 1114 Avenue of the Americas, New York, New York 10036 (Attn.: Jeffrey Cohen and Cathy Hershcopf); (c) counsel to Alden, Bracewell & Giuliani, 1251 Avenue of the Americas, 40th Floor, New York, NY 10020 (Attn.: Robert G. Burns and

Andrew Schouder); (d) counsel to Atari, S.A., Allen & Overy, 1221 Avenue of the Americas, New York, NY 10020 (Attn.: Kenneth Coleman); (e) the Internal Revenue Service; and (f) all parties that have filed a notice of appearance or have requested services in these chapter 11 cases.

No Prior Request

21. No prior motion for the relief requested herein has been made to this or any other court.

WHEREFORE the Debtors respectfully request that the Court: (a) enter an order extending the Exclusive Periods to and including October 18, 2013 and December 17, 2013, respectively and (b) grant to the Debtors such other and further relief as the Court may deem just, proper and equitable.

New York, New York
Dated: August 6, 2013

AKIN GUMP STRAUSS HAUER & FELD LLP

/s/ Ira S. Dizengoff

One Bryant Park
New York, New York 10036
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Kristine G. Manoukian

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Counsel to the Debtors and Debtors in Possession

Exhibit A

Proposed Order

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

In re:)

) Chapter 11

ATARI, INC., *et al.*,)

) Case No. 13-10176 (JMP)

Debtors.¹)

) (Jointly Administered)

**ORDER PURSUANT TO BANKRUPTCY CODE SECTION 1121(d) EXTENDING THE
EXCLUSIVE PERIODS DURING WHICH ONLY THE DEBTORS MAY FILE
A CHAPTER 11 PLAN AND SOLICIT ACCEPTANCES THEREOF**

Upon the motion (the “*Motion*”)² of the Debtors for entry of the Order pursuant to Bankruptcy Code section 1121(d) extending the Exclusive Periods to file a chapter 11 plan and solicit acceptances thereof; and it appearing that the Court has jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and this appearing to be a core proceeding pursuant to 28 U.S.C. § 157(b); and the venue appearing proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that notice of the Motion and the opportunity for a hearing on the Motion was appropriate, and that no other or further notice need be given; and the Court having considered the papers and the arguments of counsel at the hearing in support of the Motion, and after due deliberation and sufficient cause appearing therefor; and all objections to the Motion having been overruled; and the Court having found that the relief requested in the Motion is in the best interests of the Debtors’ estates, their creditors and other parties in interest,

IT IS HEREBY ORDERED THAT:

1. The Motion is granted to the extent set forth herein.

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.

2. The exclusive periods during which only the Debtors may file a chapter 11 plan and solicit acceptances thereof are hereby extended to and including October 18, 2013 and December 17, 2013, respectively.

3. This Order is without prejudice to the Debtors' ability to seek further extensions of the Exclusive Periods pursuant to Bankruptcy Code section 1121(d), or to the rights of any party in interest to seek termination of same.

4. The terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

5. All time periods set forth in this Order shall be calculated in accordance with Federal Rule of Bankruptcy Procedure 9006(a).

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

7. The Court shall have and retain jurisdiction to interpret, enforce and resolve any disputes arising under or related to this Order.

Dated: August ____, 2013
New York, New York

THE HONORABLE JAMES M. PECK
UNITED STATES BANKRUPTCY JUDGE