

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. <sup>1</sup>	)	(Jointly Administered)

**INTERIM ORDER (I) AUTHORIZING, BUT NOT DIRECTING, THE DEBTORS TO PAY PREPETITION WAGES, SALARIES AND BENEFITS, (II) AUTHORIZING, BUT NOT DIRECTING, THE DEBTORS TO PAY PREPETITION PAYROLL TAXES, WITHHOLDINGS AND REIMBURSABLE EXPENSES; (III) AUTHORIZING, BUT NOT DIRECTING, THE DEBTORS TO CONTINUE EMPLOYEE BENEFIT PROGRAMS ON A POSTPETITION BASIS; AND (IV) AUTHORIZING ALL FINANCIAL INSTITUTIONS TO HONOR ALL RELATED CHECKS AND ELECTRONIC PAYMENT REQUESTS**

Upon consideration of the motion (the “Motion”)<sup>2</sup> of the debtors and debtors-in-possession in the above-captioned chapter 11 cases (the “Debtors”) for entry of an order (this “Order”) pursuant to sections 105(a), 363(b)(1), 507(a)(4), 507(a)(5), 1107(a) and 1108 of Title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (as amended, the “Bankruptcy Code”) and Rule 6003(b) and 6004(h) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), (a) authorizing, but not directing, the Debtors, in the exercise of their business judgment, to pay the pre-petition wages, salaries and benefits of their employees, (b) authorizing, but not directing, the Debtors, in the exercise of their business judgment, to pay employee-related taxes, withholdings and reimbursable expenses; (c) authorizing, but not directing, the Debtors, in the exercise of their business judgment, to continue employee benefit programs on a postpetition basis; (d) authorizing all financial institutions to receive, process, honor, and pay all checks presented for payment and electronic payment requests relating to the foregoing; and (e)

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

<sup>2</sup> Unless otherwise defined herein, capitalized terms shall have the meanings ascribed to them in the Motion.

waiving any applicable stays that would serve to limit the immediate effectiveness of this Order; and upon consideration of the *Declaration of Robert A. Mattes (I) In Support of Chapter 11 Petitions and First Day Motions and (II) Pursuant To Local Bankruptcy Rule 1007-2* (the “First Day Declaration”); and the Court having held a hearing on January 24, 2013 (the “Hearing”) on the Motion and having considered the arguments of counsel made, and the evidence submitted, proffered, or adduced at the Hearing; the Court hereby finds:

A. The Court has jurisdiction to consider the Motion pursuant to 28 U.S.C. § 1334 and the *Amended Standing Order of Reference M-431*, dated January 31, 2012 (Preska, C.J.).

B. Venue of these chapter 11 cases and the Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

C. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

D. The payment of prepetition amounts outstanding on account of the Employee Obligations, including Unpaid Wages, Unpaid Reimbursable Expenses, Independent Contractor Compensation, Unpaid Severance, Unremitted Other Employee Deductions, and Unpaid Payroll Taxes, on the terms and conditions described in the Motion, is necessary and appropriate to prevent serious, and potentially irreparable, disruptions to the Debtors’ chapter 11 cases, will serve to protect and preserve the value of the Debtors’ business assets for the benefit of all stakeholders, will facilitate the Debtors’ chapter 11 cases, and will maximize value available to stakeholders.

E. The requirements of Bankruptcy Rule 6003(b) have been satisfied with respect to the payments authorized by this Order.

F. Notice of the Motion and the Hearing was adequate and appropriate under the particular circumstances.

G. There is good cause to waive the fourteen-day stay imposed by Bankruptcy Rule 6004(h) to the extent it is applicable.

The Court having determined that the factual and legal bases set forth in the Motion and the First Day Declaration and at the Hearing establish just cause for the relief granted herein,

**IT IS HEREBY ORDERED THAT:**

1. The Motion is **GRANTED**.
2. The Debtors are authorized, in their sole discretion unless otherwise required by law, to honor and pay, in the ordinary course of business, in accordance with the Debtors' prepetition policies and practices, the Employee Obligations as set forth in the Motion, including, without limitation, prepetition amounts outstanding on account of: (a) Unpaid Wages; (b) Unpaid Reimbursable Expenses; (c) unpaid Independent Contractor Compensation; (d) Health and Welfare Benefits; (e) Unpaid Severance; (f) Unremitted Other Employee Deductions; (g) Unpaid Payroll Taxes; and (h) administration of the 401(k) Plan.
3. The Debtors are authorized, in their sole discretion unless otherwise required by law, to continue the Health and Welfare Benefits, Workers' Compensation Coverage, 401(k) Plan, and Severance Policy in accordance with the Debtors' prepetition policies and practices.
4. The Debtors are authorized, but not directed, to honor the liabilities owed to the Employees with respect to PTO that arose prior to the Petition Date and to continue their PTO policies after the Petition Date.
5. The Debtors are authorized, but not directed, to pay all postpetition costs and expenses incidental to the payment of the Employee Obligations, including all administrative and processing costs and payments to outside service providers in the ordinary course of business.

6. The Debtors are authorized, but not directed, to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a consequence of these chapter 11 cases with respect to prepetition amounts owed to the Employees and on account of the Employee Obligations.

7. All applicable banks and other financial institutions are authorized to receive, process, honor, and pay any and all checks or fund transfer requests evidencing amounts paid by the Debtors under this Order or any other order of this Court whether presented prior to or after the Petition Date to the extent the Debtors have good funds standing to their credit with such bank or other financial institution. Such banks and financial institutions are authorized to rely on the representations of the Debtors as to which checks or fund transfers are issued or authorized to be paid pursuant to this Order without any duty of further inquiry and without liability for following the Debtors' instructions.

8. Notwithstanding the relief granted herein and any actions taken hereunder, nothing in this Order shall constitute, nor is it intended to constitute, an admission as to the validity or priority of any claim against the Debtors, the creation of an administrative priority claim on account of the Employee Obligations, or the assumption or adoption of any contract or agreement under section 365 of the Bankruptcy Code.

9. Any party receiving payment from the Debtors is authorized and directed to rely upon the representations of the Debtors as to which payments are authorized by this Order without any duty of further inquiry.

10. Pursuant to Bankruptcy Rule 6004(h), the terms and conditions of this Order are immediately effective and enforceable upon its entry.

11. Any response or objections to granting the relief requested in the Motion on a final basis shall be filed with the Clerk of the Bankruptcy Court electronically in accordance with General Order M-399, and served so that they are received no later than 4:00 p.m. (prevailing Eastern Time) on February 11, 2013 (the “Objection Deadline”) (with a courtesy copy to the Chambers of the Honorable James M. Peck, United States Bankruptcy Court, One Bowling Green, New York, New York 10004) by: (i) proposed attorneys for the Debtors, Hunton & Williams LLP, 200 Park Avenue, 53<sup>rd</sup> Floor, New York, New York 10166, Attn: Peter S. Partee, Sr., Esq.; (ii) the Office of the United States Trustee, 33 Whitehall Street, 21<sup>st</sup> Floor, New York, New York 10004, Attn: Richard C. Morrissey, Esq.; (iii) counsel for the proposed DIP Lenders, Bracewell & Guiliani LLP, 1251 Avenue of the Americas, 49<sup>th</sup> Floor, New York, New York 10020, Attn: Robert G. Burns, Esq.; and (iv) counsel for the statutory committee of unsecured creditors, once appointed. Any such response or objection shall be set for hearing on February 14, 2013 at 10:00 a.m. (prevailing Eastern Time).

12. In the event that no objection to the Motion or this Order is timely filed and served, then this Order shall become a final order as of the day immediately following the Objection Deadline, without further hearing or order of this Court.

13. The Court shall retain exclusive jurisdiction to hear and determine all matters arising from or related to the implementation of this Order.

Dated: New York, New York  
January 24, 2013

s/ James M. Peck  
HONORABLE JAMES M. PECK  
UNITED STATES BANKRUPTCY JUDGE