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

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In re:) Chapter 11 Case No.
)
ATARI, INC., <u>et al.</u> ,) 13-10176 (JMP)
)
Debtors, ¹)
)
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**OBJECTION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS
WITH RESPECT TO 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 Official Committee of Unsecured Creditors (the "Committee") of Atari, Inc., *et al.*, debtors and debtors-in-possession in these proceedings (the "Debtors"), by its undersigned counsel, hereby submits this objection (the "Objection") with respect to 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 (Doc. No. 337).

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

² Capitalized terms used herein but not otherwise defined shall have the meanings given to them in the Motion.

PRELIMINARY STATEMENT

As the Court is well aware, the Debtors efforts to dispose of their assets have faced several challenges. To their credit, on a post-petition basis, the Debtors effectively pivoted from a going concern to a liquidation process, which culminated in three days of auctions followed by a sale hearing held on July 24, 2013. Since the sale hearing, the Debtors have provided their parent company and secured lender, Atari S.A. and Alden Global Value Recovery Master Fund, L.P. ("Alden"), with the exclusive opportunity to negotiate and sponsor a plan of reorganization around Atari's remaining core IP assets. While the Debtors and Committee have been actively involved in good faith discussions regarding the terms of a consensual insider-sponsored plan, discussions have not advanced far enough to instill confidence in the Committee that these negotiations will result in a confirmable plan of reorganization.

The Debtors are now seeking a second 60-day extension of their exclusive period to file a chapter 11 plan to continue to provide the Debtors' insiders with the sole and exclusive opportunity to formulate a plan sponsorship arrangement and raise financing. Respectfully, the Debtors' insiders have been involved in every aspect of this case for six months and have been engaged in discussions on plan terms for nearly one month since the auctions were held in July. Despite the depth and duration of their involvement, the insiders have yet to negotiate definitive and binding documentation or demonstrate proof of financial wherewithal. Accordingly, the Committee believes that the Debtors' exclusivity should terminate immediately so third-party, non-insiders could propose their own plans of reorganization in these cases. An extension of the Debtors' exclusivity would serve only to further delay the re-marketing of the Debtors' remaining assets while administrative expenses of the estates continue to accrue. The Committee has expressed its concerns to the Debtors and has urged them to reengage in the active marketing

of their remaining assets (see Exhibit A). By this Objection, the Committee requests that the Court deny the Motion to formally open the plan process to non-insiders.

OBJECTION

1. Following the sale hearing, the Debtors reduced their employee headcount to two people for the purpose of overseeing the disposition of the Debtors' remaining core IP assets and to wind down these estates. This stripped down version of the Debtors has spent the last four weeks, in consultation with the Committee, providing their parent company and secured lender with the sole and exclusive opportunity to negotiate and sponsor a plan of reorganization to acquire the Debtors' remaining assets. The only reason the Debtors now seek a further extension of exclusivity is to give their insiders more time to raise financing and propose a plan of reorganization neither of which may ever materialize. In light of the substantial amount of time that has already passed since the Petition Date, and the insiders' inability to negotiate a binding agreement in the exclusive four-week window of opportunity the Debtors just provided them, the Debtors' request to further extend their exclusivity period should be denied.

2. The Committee believes that terminating the Debtors' exclusivity period will facilitate the process of searching for a non-insider plan sponsor. Removing the barrier of exclusivity to allow a non-insider to file its own plan will allow all third parties potentially interested in sponsoring a plan to acquire the Debtors' remaining core IP assets, to step forward and negotiate with the estate parties, rather than providing that opportunity solely to the Debtors' insiders.

3. Terminating the exclusivity period will not prejudice the Debtors because it does not prevent them from proposing a Chapter 11 plan; instead, it simply opens up the process for competing proposals and levels the playing field. *See, e.g., In re R.G. Pharmacy, Inc.*, 374 B.R.

484, 488 (Bankr. D. Conn. 2007) (“The fact that the debtor no longer has the exclusive right to file a plan does not affect its concurrent right to file a plan.”).

4. More importantly, the only plausible motive the Debtors have for extending the window of time during which others are foreclosed from filing a plan of reorganization is to benefit Atari, S.A. and Alden to the exclusion of other non-insider potential plan sponsors. Competing paths – the Atari, S.A./Alden plan (which has yet to materialize) versus a renewed search for a non-insider plan sponsor – will allow the process to speak for itself. If Atari, S.A. and Alden are able to come up with a viable plan supported by the Debtors, the Committee will then be in a position to assess whether such plan is more value-maximizing than any alternative plan that might be proposed by a non-insider. On the other hand, if the Atari, S.A./Alden plan never materializes, the estates will have the benefit of time to find an alternative, non-insider plan sponsor without the specter of exclusivity deterring potential non-insider plan sponsors.

WHEREFORE, the Committee respectfully requests that the Court sustain the foregoing Objection, deny the Motion, and grant such other and further relief as the Court may deem just and proper.

Dated: August 13, 2013
New York, New York

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