

Presentment Date: September 3, 2013 at 12:30 p.m. (prevailing Eastern Time)  
Objection Deadline: September 3, 2013 at 12:00 p.m. (prevailing Eastern Time)

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

**NOTICE OF PRESENTMENT OF THE DEBTORS’ MOTION FOR ENTRY OF AN  
ORDER APPROVING CONSENSUAL EXTENSION OF THE DEADLINE UNDER  
BANKRUPTCY CODE SECTION 365(d)(4)(B)**

**PLEASE TAKE NOTICE** that upon the *Debtors’ Motion for Entry of an Order Approving Consensual Extension of the Deadline Under Bankruptcy Code Section 365(d)(4)(B)* (the “**Motion**”), which Motion includes the reasons underlying the requested relief, the undersigned counsel for the above-captioned debtors and debtors in possession (collectively, the “**Debtors**”) intend to present to the Honorable James M. Peck, United States Bankruptcy Judge, for signature on **September 3, 2013 at 12:30 p.m. (prevailing Eastern time)**, the proposed

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

*Order Approving Consensual Extension of the Deadline Under Bankruptcy Code Section 365(d)(4)(B)* (the “*Order*”), attached as **Exhibit A** to the Motion.

**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) be filed in accordance with General Order M-399 of the Bankruptcy Court, which can be found at [www.nysb.uscourts.gov](http://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 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) Akin Gump Strauss Hauer & Feld LLP, counsel to the Debtors, One Bryant Park, New York, New York 10036 (Attn.: Ira S. Dizengoff, Esq. and Kristine G. Manoukian, Esq.), 1333 New Hampshire Avenue, N.W., Washington, D.C. 20036 (Attn.: Scott L. Alberino, Esq.); (b) the Office of the United States Trustee for the Southern District of New York, 201 Varick Street, Room 1006, New York, New York 10014 (Attn.: Richard C. Morrissey, Esq.); (c) counsel to the Official Committee of Unsecured Creditors, Cooley LLP, 1114 Avenue of the Americas, New York, New York 10036 (Attn.: Cathy Hershcopf, Esq. and Jeffrey Cohen, Esq.); (d) counsel to Alden Global Value Recovery Master Fund, L.P., Bracewell & Giuliani, 1251 Avenue of the Americas, 49th Floor, New York, New York 10020 (Attn.: Robert G. Burns, Esq. and Andrew J. Schouler, 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 **September 3, 2013 at 12:00 p.m. (prevailing Eastern time)** (the “*Response Deadline*”).

**PLEASE TAKE FURTHER NOTICE** that that unless a written response to the Motion with proof of service is filed with the Court by the Response Deadline, there will not be a hearing and the Order may be signed.

**PLEASE TAKE FURTHER NOTICE** that if a written response with respect to the Motion is timely filed and served in accordance with the General Order M-399 and this Notice, a hearing will be held to consider the Motion on a date to be determined before the Honorable James M. Peck, United States Bankruptcy Judge, 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 moving and responding parties are required to attend the hearing, and failure to attend in person or by counsel may result in relief being granted or denied upon default.

**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 Court's website at [www.nysb.uscourts.gov](http://www.nysb.uscourts.gov) through an account obtained from Pacer Service Center at 1-800-676-6856.

New York, New York  
Dated: August 19, 2013

AKIN GUMP STRAUSS HAUER & FELD LLP

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

**DEBTORS’ MOTION FOR ENTRY OF AN ORDER  
APPROVING CONSENSUAL EXTENSION OF THE  
DEADLINE UNDER BANKRUPTCY CODE SECTION 365(d)(4)(B)**

Atari, Inc. (“*Atari*”) and certain of its affiliates, as debtors and debtors in possession (collectively, the “*Debtors*”), file this motion (the “*Motion*”) for entry of an order (the “*Proposed Order*”), substantially in the form attached hereto as **Exhibit A**, approving the consensual extension of the time period within which the Debtors may assume or reject an unexpired lease of nonresidential real property to and including December 31, 2013, which extension has been

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

agreed to by the lessor of such property. In support of the Motion, the Debtors respectfully state as follows:

**Jurisdiction**

1. This 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).
2. Venue in this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409.
3. The basis for the relief requested herein is section 365(d)(4) of title 11 of the United States Code (the “**Bankruptcy Code**”), Rule 6006 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”) and Local Rule 6006-1(c) of the Local Rules for the Bankruptcy Court for the Southern District of New York (the “**Local Rules**”).

**Background**

4. 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 businesses and properties as debtors in possession pursuant to Bankruptcy Code sections 1107(a) and 1108. No request for the appointment of a trustee or an examiner has been made in these cases.
5. By an order entered on January 24, 2013, the Debtors’ chapter 11 cases (the “**Bankruptcy Cases**”) have been consolidated for procedural purposes only and are being jointly administered pursuant to Bankruptcy Rule 1015(b) [Docket No. 27]. 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**”) [Docket No. 64].
6. On March 22, 2013, the Debtors filed a motion requesting entry of an order extending the time period during which the Debtors could assume or reject unexpired leases of nonresidential real property through and including August 19, 2013 (the “**First Extension**”).

*Motion*”) [Docket No. 164]. On April 9, 2013, the Court entered an order granting the relief requested in the First Extension Motion (the “*First Extension Order*”) [Docket No. 176].

7. 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 (the “*Bid Procedures Order*”) [Docket No. 260] approving the Bid Procedures and scheduled the hearing (the “*Sale Hearing*”) on the Sales Transactions for July 24, 2013. On July 17 and 18, 2013, pursuant to the Bid Procedures Order, the Debtors conducted auctions with respect to certain of the Assets. The sale of these Assets was approved by the Court at the Sale Hearing [Docket Nos. 323–329].

#### **Relief Requested**

8. While the Debtors have attempted to move the Bankruptcy 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, the Committee, Alden Global Value Recovery Master Fund, L.P. (“*Alden*”) 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 Bankruptcy Cases, be it further liquidation of the Debtors’ remaining Assets or a plan of reorganization utilizing such Assets. Such discussions are continuing in good-faith between the parties.

9. As a result of the uncertainty surrounding the future course of the Bankruptcy Cases, the Debtors are currently not in a position to assume or reject their remaining unexpired lease of nonresidential real property, which property is the Debtors’ headquarters location (the “*Headquarters Lease*”). Accordingly, the Debtors sought and obtained consent of the lessor (the

“*Lessor*”) of the Headquarters Lease to extend the deadline to assume or reject the Headquarters Lease through and including December 31, 2013 (the “*Headquarters Lease Consent*”), which consent is attached hereto as **Exhibit B**.

10. By the Motion, the Debtors request approval of the Headquarters Lease Consent pursuant to Bankruptcy Code section 365(d)(4)(B)(ii), extending the period during which the Debtors may assume or reject the Headquarters Lease through and including December 31, 2013. Absent this relief, the Headquarters Lease may be deemed rejected as of August 19, 2013 (the date provided in the First Extension Order) by operation of Bankruptcy Code section 365(d)(4), or the Debtors may be compelled to assume the Headquarters Lease prematurely.

#### **Basis for the Relief Requested**

11. Prior to 2005, a debtor could request continuous extensions of the initial sixty day period within which to assume or reject unexpired leases of nonresidential real property, and debtors routinely did so. Numerous courts, in their discretion, granted such extensions because the decision to assume or reject is such a fundamental right of a debtor. *See In re Joshua Slocum Ltd.*, 922 F.2d 1081, 1092 (3d Cir. 1990) (recognizing “the fundamental right to remain in or end a contractual relationship”); *In re Ames Dep’t Stores, Inc.*, 306 B.R. 43, 52 (Bankr. S.D.N.Y. 2004) (noting that “[p]articularly in the case of commercial real estate leases . . . the ability to reject burdensome post-petition obligations is one of the most fundamental rights of a . . . debtor-in-possession . . . under the Bankruptcy Code”); *In re AppliedTheory Corp.*, 312 B.R. 225, 236 (Bankr. S.D.N.Y. 2004) (same).

12. Since the enactment of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, however, a debtor has an initial period of 120 days after the commencement of a chapter 11 case during which it may assume or reject unexpired leases of



nonresidential real property under which the debtor is the lessee. *See* 11 U.S.C. § 365(d)(4)(A).

Bankruptcy Code section 365(d)(4)(B) further provides that:

(i) The court may extend the period determined under subparagraph (A), prior to the expiration of the 120-day period, for 90 days on the motion of the trustee or lessor for cause.

(ii) If the court grants an extension under clause (i), the court may grant a subsequent extension only upon prior written consent of the lessor in each instance.

*Id.* (emphasis added).

13. By the First Extension Order, the Court extended the Debtors' period to assume or reject of the Headquarters Lease under Bankruptcy Code section 365(d)(4)(B)(i) through August 19, 2013. To obtain a further extension, the Debtors need the prior written consent of the Lessor as set forth in Bankruptcy Code section 364(d)(4)(B)(ii).<sup>2</sup>

14. As set forth above, the Debtors have secured the written consent of the Lessor. The Headquarters Lease Consent provides that the Lessor consents to the extension of the deadline to assume or reject the Headquarters Lease to and including December 31, 2013. The Headquarters Lease Consent does not modify any rights that the Debtors or the Lessor may otherwise have under the Headquarters Lease or the Bankruptcy Code.

15. The Debtors have entered into the Headquarters Lease Consent with the Lessor in the exercise of their business judgment and the ordinary course of their business. The Headquarters Lease Consent complies with the provisions of the Bankruptcy Code and enables the Debtors to efficiently obtain an extension of time under Bankruptcy Code section

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<sup>2</sup> Local Rule 6006-1(c) provides, in pertinent part that "If the debtor, debtor in possession, or the trustee files a motion to assume or to extend the time to assume or reject an unexpired lease of nonresidential real property, and the motion is filed not later than 120 days after the order for relief (or, if the time to assume or reject the unexpired lease has been extended previously by order of the Court, before the expiration of the extended time) with a return date no later than 14 days from the date of such filing, the time to assume or reject the unexpired lease will be extended automatically and without court order until the entry of the order resolving the motion . . . ." *See* Bankr. S.D.N.Y. R. 6006-1(c). Therefore, the relief sought herein and the notice provided thereof are timely.

365(d)(4)(B)(ii) without the necessity of litigating over whether the Headquarters Lease constitutes a nonresidential real property lease, determination of the cure amount, if any, or any other issues, and preserves the value of this property of the estate until such time as a reasoned and appropriate decision with respect to its disposition may be made. *See In re Hancock Fabrics, Inc.*, Case No. 07-10353 (BLS) (Bankr. D. Del. Aug. 24, 2007) (approving extension of 365(d)(4) deadline where lessors executed and returned a written consent solicitation letter indicating their consent to the debtor's requested extension).

16. Based on the foregoing, the Debtors believe that sufficient cause exists to extend the time period within which the Debtors may assume or reject the Headquarters Lease to and including December 31, 2013.

#### **Notice**

17. The Debtors have provided notice of this Motion to: (a) the Lessor; (b) the U.S. Trustee; (c) counsel to the Committee; (d) counsel to Atari, S.A.; (e) counsel to Alden; (f) the Internal Revenue Service; (g) the New York State Attorney General; (h) the United States Attorney for the Southern District of New York; and (i) parties in interest who have filed a notice of appearance in these Bankruptcy Cases pursuant to Bankruptcy Rule 2002. The Debtors respectfully submit that no further notice is necessary.

#### **No Prior Request**

18. No prior request for the relief sought in this Motion has been made to this or any other court.

WHEREFORE, for the reasons set forth herein, the Debtors respectfully request that the Court (a) enter an order, substantially in the form attached hereto as **Exhibit A**, extending the time period within which the Debtors may assume or reject the Headquarters Lease through and

including December 31, 2013, and (b) grant such other and further relief as is just, proper and equitable.

New York, New York  
Dated: August 19, 2013

AKIN GUMP STRAUSS HAUER & FELD LLP

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**EXHIBIT A**

**Proposed Order**

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

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

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**ORDER APPROVING CONSENSUAL EXTENSION OF THE  
DEADLINE UNDER BANKRUPTCY CODE SECTION 365(d)(4)**

Upon the motion (the “*Motion*”)<sup>2</sup> of the Debtors for entry of an order extending the time period within which the Debtors may assume or reject the Headquarters Lease; and it appearing that the relief requested in the Motion is in the best interests of the Debtors’ estates, their creditors and other parties in interest; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and the Court being satisfied that notice of the Motion and the opportunity for a hearing on the Motion was appropriate under the particular circumstances and no further or other notice need be given; and the Court having reviewed the Motion; and good, adequate, and sufficient cause having been shown to justify entry of this order; and any objections to the requested relief having been withdrawn or overruled on the merits; and after due deliberation and sufficient cause appearing therefor,

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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 used but not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

**IT IS HEREBY ORDERED THAT:**

1. The Motion is granted to the extent set forth herein.
2. Pursuant to Bankruptcy Code section 365(d)(4), the time by which the Debtors may assume or reject the Headquarters Lease is extended through and including December 31, 2013, without prejudice to the Debtors' right to seek a further extension of their time to assume or reject the Headquarters Lease pursuant to Bankruptcy Code section 365(d)(4)(B)(ii).
3. This order is without prejudice to the right of the Lessor to request that the Court fix an earlier date by which the Debtors must assume or reject the Headquarters Lease, and is also without prejudice to the Debtors' right to oppose such relief.
4. Nothing contained herein shall be deemed to (i) authorize the assumption or rejection of the Headquarters Lease or (ii) determine whether it is an unexpired lease of nonresidential real property within the meaning of Bankruptcy Code section 365(d).
5. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this order in accordance with the Motion.
6. The Court shall retain jurisdiction with respect to all matters arising from or relating to the implementation of this order.

Dated: September \_\_\_\_, 2013  
New York, New York

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THE HONORABLE JAMES M. PECK  
UNITED STATES BANKRUPTCY JUDGE

**EXHIBIT B**

**Lessor Consent**

