

EXHIBIT D

UNITED STATES BANKRUPTCY COURT SOUTHERN DISTRICT OF NEW YORK		PROOF OF CLAIM	of 12
Name of Debtor: Atari Interactive, Inc.		Case Number: 13-10177	
<small>NOTE: See reverse and attached for List of Debtors/Case Numbers/important details. Other than claims under 11 U.S.C. § 503(b)(9), this form should not be used to make a claim for Administrative Expenses arising after the commencement of the case. A "request" for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503(a).</small>			
Name of Creditor (the person or other entity to whom the debtor owes money or property) : Interplay Entertainment Corp.			
Name and address where notices should be sent: Attn: Herve Caen Interplay Entertainment Corp. 12301 Wilshire Blvd. Suite 502 Los Angeles, CA 9025			
Creditor Telephone Number (310-979-7070) email: hcaen@interplay.com			THIS SPACE IS FOR COURT USE ONLY
Name and address where payment should be sent (if different from above):		<input type="checkbox"/> Check box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.	<input checked="" type="checkbox"/> Check this box to indicate that this claim amends a previously filed claim. Court Claim Number (if known): 156 Filed on: 04/30/2013
Payment Telephone Number () email:			
1. AMOUNT OF CLAIM AS OF DATE CASE FILED \$ <u>Not less than \$4.5 million</u>			
If all or part of your claim is secured, complete item 4. If all or part of your claim is entitled to priority, complete item 5.			
<input type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of claim. Attach itemized statement of interest or charges.			
2. BASIS FOR CLAIM: <u>Business torts under NY state law. See attachment A and accompanying exhibits.</u> <small>(See instruction #2)</small>			
3. LAST FOUR DIGITS OF ANY NUMBER BY WHICH CREDITOR IDENTIFIES DEBTOR:		3a. Debtor may have scheduled account as: <small>(See instruction #3a)</small>	3b. Uniform Claim Identifier (optional): <small>(See instruction #3b)</small>
4. SECURED CLAIM: (See instruction #4) Check the appropriate box if your claim is secured by a lien on property or a right of set off, attach required redacted documents, and provide the requested information.			
Nature of property or right of setoff: Describe: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other _____ Value of Property: \$ _____ Annual Interest Rate: _____ % <input type="checkbox"/> Fixed or <input type="checkbox"/> Variable <small>(when case was filed)</small>		Amount of arrearage and other charges, as of time case filed, included in secured claim, if any: \$ _____ Basis for Perfection: _____ Amount of Secured Claim: \$ _____ Amount Unsecured: \$ _____	
5. Amount of Claim Entitled to Administrative Expense status under 11 U.S.C. § 503(b)(9) or Priority under 11 U.S.C. § 507(a). If any part of the claim falls into one of the following categories, check the box specifying the administrative expense or priority and state the amount.			
Amount entitled to priority: \$ _____		Amount entitled to administrative expense under 11 U.S.C. § 503(b)(9): \$ _____	
You MUST specify the priority of the claim:			
<input type="checkbox"/> Domestic support obligations under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).		<input type="checkbox"/> Taxes or penalties owed to governmental units - 11 U.S.C. § 507(a)(8).	
<input type="checkbox"/> Up to \$2,600* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use -11 U.S.C. § 507(a)(7).		<input type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. § 507(a)(5).	
<input type="checkbox"/> Wages, salaries, or commissions (up to \$11,725*), earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. § 507(a)(4).		<input type="checkbox"/> Other - Specify applicable paragraph of 11 U.S.C. § 507(a) (_____).	
		<input type="checkbox"/> Value of goods received by the debtor within 20 days before the date of the bankruptcy filing - 11 U.S.C. § 503(b)(9).	
<small>* Amounts are subject to adjustment on 4/1/13 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.</small>			
6. CREDITS: The amount of all payments on this claim has been credited for the purpose of making this proof of claim. (See instruction #6)			

7. DOCUMENTS: Attached are redacted copies of documents that support the claim such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements, or, in the case of a claim based on an open-end or revolving consumer credit agreement, a statement providing the information required by FRBP 3001(c)(3)(A). If the claim is secured, box 4 has been completed, and redacted copies of documents providing evidence of perfection of a security interest are attached. If the claim is secured by the debtor's principal residence, the Mortgage Proof of Claim Attachment is being filed with this claim. (See instruction #7, and definition of "redacted").

DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.

If the documents are not available, please explain:

DATE-STAMPED COPY: To receive an acknowledgment of the filing of your claim, enclose a stamped, self-addressed envelope and copy of this proof of claim.

The original of this completed proof of claim form must be sent by mail or hand delivered (FAXES OR EMAILS NOT ACCEPTED) so that it is actually received on or before 5:00 pm, prevailing Eastern Time on April 30, 2013 for Non-Governmental Claimants OR on or before 5:00 pm, prevailing Eastern Time on July 22, 2013 for Governmental Units.

BY MAIL TO: BMC Group, Inc Attn: Atari Claims Processing PO Box 3020 Chanhassen, MN 55317-3020	BY MESSENGER OR OVERNIGHT DELIVERY TO: BMC Group, Inc Attn: Atari Claims Processing 18675 Lake Drive East Chanhassen, MN 55317	OR BY DELIVERING THE ORIGINAL PROOF OF CLAIM BY HAND TO: United States Bankruptcy Court Southern District of New York One Bowling Green, Room 534 New York, NY 10004-1408
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8. SIGNATURE: (See instruction #8)

Check the appropriate box.

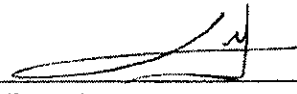
I am the creditor. I am the creditor's authorized agent. I am the trustee, or the debtor, or their authorized agent. I am a guarantor, surety, indorser, or other codebtor. (See Bankruptcy Rule 3005.)

I declare under penalty of perjury that the information provided in this claim is true and correct to the best of my knowledge, information, and reasonable belief.

Print Name: Herve Caen
Title: CEO
Company: Interplay Entertainment Corp.

Address and telephone number (if different from notice address above):

Telephone number: _____ email: _____


(Signature)

09-17-13
(Date)

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

LIST OF DEBTORS:

Debtor	Case No.
Atari, Inc.	13-10176
Atari Interactive, Inc.	13-10177
California U.S. Holdings, Inc.	13-10178
Humongous, Inc.	13-10179

ATTACHMENT A TO PROOF OF CLAIM NO. 156

Interplay Entertainment Corp. asserts its claim against Atari Interactive on the basis that Atari Interactive interfered with the performance of or procured the breach of an exclusive license agreement entered into between Interplay and debtor Atari, Inc.

By License Agreement effective April 27, 2006, Interplay licensed its intellectual property related to the Earthworm Jim video game franchise to Atari, Inc. (See, License Agreement, attached as Exhibit 1.) Earthworm Jim is an established game franchise. At the time the parties entered into the License Agreement, Interplay had already released several Earthworm Jim video games, as well as merchandising in the form of a line of action figures, comic books, and an animated television series. Under the License Agreement, Atari, Inc.'s rights were exclusive with respect to development of additional Earthworm Jim video games on certain platforms.

The exclusive License Agreement is governed by New York state law, which imposes a duty upon an exclusive licensee to exploit the license for the benefit of the licensor. See, *Wood v. Lady-Duff Gordon*, 222 N.Y. 88, 92 (1917) (Cardozo, J.)(promise to pay percentage of revenues resulting from the exclusive agency and to issue accounting reports "was promise to use reasonable efforts to bring profits and revenues into existence"). The duty to exploit the licensed property arises even when an advance is paid. See, *Reback v. Store Prods., Inc.*, 15 Misc.2d 681 (Sup. Ct. N.Y.Cty. 1958)(licensee had duty to exploit rights despite \$100,000 minimum guaranteed payment). During the five year license term, however, Atari, Inc. never developed or released a single Earthworm Jim video game on any platform. Therefore, Atari, Inc. breached the license agreement to Interplay's substantial damage according to proof.

Interplay is informed and believes that Atari, Inc.'s failure to perform under the License Agreement was due to the influence and interference of Atari Interactive. As acknowledged by insiders, Atari Interactive was to publish Earthworm Jim games that were developed by Atari, Inc. under the License Agreement. See, email from Jean-Marcel Nicolai to Hervé Caen, dated October 31, 2007, attached to as Exhibit 2. In the interactive entertainment industry, a publisher promotes and places games for sale through distributors or retailers, provides core functions such as marketing and advertising, and oftentimes finances the development in whole or in part. Thus, a publisher significantly influences the developer of a video game title through both its approval process over the games at various stages of development and through financial payments that are usually conditioned upon those approvals.

The email attached as Exhibit 2 indicates that Atari Interactive's involvement as publisher 'complicated' the development of games under the License Agreement. Atari, Inc. and Atari Interactive reportedly shared several key employees, including at various times, CEO

and Chairman of the Board. Through exercise of influence over Atari, Inc. at the executive, financial and other levels, Atari Interactive 'complicated' the development process for the licensed Earthworm Jim video games and caused or influenced Atari, Inc. to fail to develop any Earthworm Jim product whatsoever. New York courts recognize a cause of action for tortious interference with a contract, including when, as here, a defendant is alleged to have procured a party's breach of the contract or has interfered with performance of the agreement. *See, e.g., Phillips & Benjamin Co. v. Ratner*, 206 F.2d 372, 376 (2nd Cir. 1953).

EXHIBIT 1

LICENSE AGREEMENT

This Agreement is made and entered into this 27th day of April, 2006, (the "Effective Date") by and between Atari, Inc., a Delaware corporation with offices at 417 Fifth Avenue, NY, NY 10016 ("Licensee"), and Interplay Entertainment, Inc., a Delaware corporation with offices at 100 North Crescent Drive, Suite#324, Beverly Hills, CA 90210 ("Licensor").

1. GRANT OF LICENSE.

Licensor hereby grants to Licensee and Licensee hereby accepts the worldwide (the "Territory"), exclusive right, license and privilege of utilizing the universe of Earthworm Jim intellectual property, including without limitation, all copyrights, trademarks (including US trademark Reg. No. 2267445), names and characters associated with Earthworm Jim and any and all existing Earthworm Jim materials, including all existing print, video and animation materials (collectively, the "Property") in connection with the development, publishing, advertising, marketing, manufacture, distribution, sale and exploitation of Handheld Video Games and Online Video Games. Such license shall become non-exclusive and shall not include development after the expiration of the Development Term, defined below, but shall otherwise continue for as long as such games are exploited. "Handheld Video Games" means games playable on Nintendo GameBoy Advance, Nintendo DS, Sony PSP, and any other handheld gaming devices that are or become available in the Territory during the Development Term, including all successors to, or next generations of, any of the foregoing platforms. "Online Video Games" means games, including but not limited to versions of and/or additional levels of the Handheld Video Games, downloaded via the Internet or any similar proprietary or non-proprietary networks or mechanisms, including, but not limited to, the World Wide Web, the Xbox 360 Live arcade and PSP environments and any similar online realms or environments, including those relating to proprietary networks and/or gaming systems.

2. TERM.

The Development Term of this Agreement shall commence on the signing hereof and expire on May 1, 2011 (the "Development Term").

3. ADVANCE AND ROYALTIES.

(A) Licensee agrees to pay Licensor an advance against royalties of REDACTED, payable as follows:
REDACTED by May 1, 2006; and
REDACTED by June 1, 2006 (collectively, the "Advance").

(B) The Advance shall be recouped and royalties paid at the following rates: for Handheld Video Games: REDACTED of Net Sales per unit or for Online Video Games: REDACTED REDACTED of Net Receipts per download. Royalties shall be calculated on a quarterly basis and:

4/27/2006



shall be due, after recoupment, sixty (60) days after the close of each calendar quarter, together with an accompanying statement. "Net Sales" means Licensee's gross receipts received from the exploitation Handheld Video Games (excluding downloads), less only the costs of their manufacturing and packaging, freight, taxes, insurance, customs and brokerage fees, returns, markdowns, price protection and charge backs given in lieu of physical returns and license fees, royalties and other consideration payable by Licensee to licensors, and/or platform manufacturers. "Net Receipts" means Licensee's gross receipts received from the download of Online Video Games, less only the costs of chargebacks and license fees, bandwidth and hosting fees, royalties and other consideration payable by Licensee to licensors, and/or platform manufacturers.

4. PAYMENT AND NOTICES:

All transactions under this Agreement, including without limitation all payment of royalties, and all notices, statements, and other communications, shall be with or made payable in the name of INTERPLAY ENTERTAINMENT, INC., 100 North Crescent Drive, Beverly Hills, CA 90210. All correspondence, notices, and other communications to Licensee shall be sent via first class mail or overnight courier to Atari, Inc., 417 Fifth Avenue, NY, NY 10016, Attn: General Counsel.

5. REPRESENTATIONS AND WARRANTIES.

5.1 Representations and Warranties by Licensee: Licensee warrants and represents that: (a) it is duly organized, validly existing and in good standing under the laws of its state of incorporation and has (and the officer executing on its behalf) full right and power to enter into this Agreement; (b) the execution and the delivery of this Agreement, will not violate any agreement Licensee has with any third party or any constitution, statute, regulation, rule, injunction, judgment, order, decree ruling, law, charge or other restriction of any government, governmental agency, or court to which Licensee is subject or any provision of its charter or bylaws; (c) any and all marketing materials, sales and packaging which will be used in connection with the Property shall not knowingly contain any libelous or otherwise unlawful material or knowingly violate or infringe upon any personal or proprietary right of any person or entity, including any copyright, patent, trademark or other intellectual property rights; (d) Licensee shall not use the Property other than as specifically provided herein; and (e) Licensee shall comply with all applicable laws, statutes, regulations and rules related to its performance hereunder (including product safety and advertising laws).

5.2 Representations and Warranties by Licensor: Licensor warrants and represents that: (a) it is duly organized, validly existing and in good standing under the laws of its state of incorporation and has (and the officer executing on its behalf) full right and power to enter into this Agreement and to grant the rights granted to Licensee herein; (b) the execution and the delivery of this Agreement, will not violate any agreement Licensor has with any third party or any constitution, statute, regulation, rule, injunction, judgment, order, decree ruling, law, charge or other restriction of any government, governmental agency, or court to which Licensor is subject or any provision of its charter or bylaws; (c) so long as this Agreement remains in effect, Licensor shall not commit any act or enter into any agreement with any third party which is inconsistent or in conflict with this



Agreement; (c) the Property and any and all other materials delivered by Licensor to Licensee shall be original and wholly owned by Licensor; (d) the execution and performance of this Agreement by Licensor, Licensor's transactions contemplated herein and the Property do not infringe, misuse, misappropriate or conflict with the any rights of any third parties, including copyright, patent and other intellectual property rights or contract rights; (e) the Property and other materials delivered by Licensor to Licensee shall not contain any libelous or otherwise unlawful material or violate any commercial rights to one's name and likeness, or any privacy or personal rights of any third party; (f) Licensor shall comply with all applicable laws, statutes, regulations and rules related to its performance hereunder and (g) the Property is not subject to any lien or other encumbrance which would prevent or otherwise interfere with Licensee's rights to exploit the Property pursuant to this Agreement.

6. TERMINATION.

This Agreement may be terminated upon written notice by a non-breaching party if not cured within (a) ten (10) business days of receipt of written notice by the breaching party of the occurrence of a breach of any payment provision contained herein or (b) within thirty (30) days of receipt of written notice of a breach by the breaching party of any other material terms, covenants, representations and/or warranties of this Agreement. No such termination shall be effective unless and until the party electing to terminate delivers a written notice of termination following the notice of breach and the expiration of the applicable cure period, provided the defaulting has not cured such default prior to receipt of such termination notice.

7. INDEMNITY.

Licensor will indemnify, defend and hold harmless Licensee and its affiliates, parent company, its subsidiaries and their officers, directors, employees, agents, suppliers, customers, contractors, vendors and sublicensees from and against any loss, damage, liability, and expense (including reasonable attorneys' fees) suffered or incurred by any of them arising out of any third party demand, claim, or legal proceedings containing allegations that, if true, would constitute a breach by Licensor of its representations and warranties contained herein.

8. LIMITATION OF LIABILITY

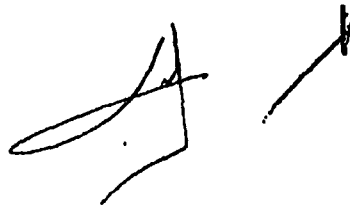
THE LIABILITY OF EITHER PARTY, IF ANY, FOR DAMAGES FOR ANY CLAIM OF ANY KIND WHATSOEVER AND REGARDLESS OF THE LEGAL THEORY, SHALL NOT INCLUDE DAMAGES ON ACCOUNT OF THE LOSS OF PROSPECTIVE PROFITS.

9. NO PARTNERSHIP.

Nothing herein contained shall be construed to place Licensor and Licensee in the relationship of partners or joint venturers.

10. WAIVER AND/OR MODIFICATION.

4/27/2006



None of the terms of this Agreement shall be waived or modified except by an express agreement in writing signed by both parties. There are no representations, promises, warranties, covenants or undertakings other than those contained in this Agreement, which represents the entire understanding of the parties. No written waiver shall excuse the performance of an act other than those specified therein. The failure of either party hereto to enforce, or delay by either party in enforcing any of its rights under this Agreement shall not be deemed a continuing waiver or modification thereof and either party may, within the time provided by applicable law, commence appropriate legal proceedings(s) to enforce any or all of such rights.

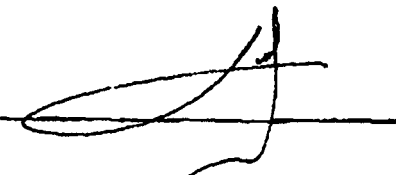
11. CONSTRUCTION AND SURVIVAL

This Agreement shall be governed by, and shall be construed in accordance with the laws of the State of New York of the United States of America. The parties consent to the exclusive jurisdiction of the courts located in the State of New York and designate the courts of the State of New York as the exclusive venue for any dispute arising out of, under or relating to this Agreement. Sections 5, 7 and 11 of this Agreement shall survive the expiration or termination of this Agreement.

IN WITNESS WHEREOF, the parties hereto have signed this Agreement as of the day and date written first above.

INTERPLAY ENTERTAINMENT, INC.

ATARI, INC.

By: 
Title: CEO

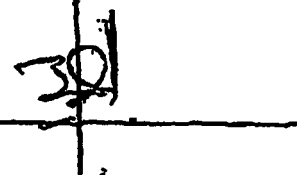
By: 
Title: CEO

EXHIBIT 2

FW Earthworm Jim

On 10/31/07 9:00 AM, "Nicolai, Jean-Marcel" <jeanmarcel.nicolai@atari.com>
wrote:

>
>Under discussion between Atari Inc and Atari Interactive.
>The contract being with Inc and the publishing being with Interactive
>makes things very complicated.
>I will put you in touch with someone at the Inc level, it will be
>better
>;-)
>JMN
>-----Original Message-----
>From: Herve Caen [mailto:hcaen@interplay.com]
>Sent: Wednesday, October 31, 2007 11:54 AM
>To: Nicolai, Jean-Marcel
>Subject: Earthworm Jim
>
>Jean Marcel,
>On s'est raté hier soir. Quoi de neuf sur Earthworm?
>Hervé