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*Counsel to the Debtors and Debtors in Possession*

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

In re:

ATARI, INC. *et al.*,

Debtors.<sup>1</sup>

Chapter 11

Case No. 13-10176 (JMP)

Jointly Administered

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

**NOTICE OF HEARING ON MOTION OF THE DEBTORS FOR ENTRY OF AN ORDER, PURSUANT TO 11 U.S.C. § 363(b) AND FEDERAL RULE OF BANKRUPTCY PROCEDURE 9019, APPROVING THE STIPULATION BETWEEN THE DEBTORS AND TENOR CAPITAL MANAGEMENT COMPANY, L.P.**

**PLEASE TAKE NOTICE** that on November 8, 2013, the above-captioned debtors and debtors in possession (the “*Debtors*”) filed a motion (the “*Motion*”) seeking entry of an order approving the stipulation between the Debtors and Tenor Capital Management Company, L.P.

**PLEASE TAKE FURTHER NOTICE** that a hearing (the “*Hearing*”) to consider the Motion has been scheduled for **December 5, 2013 at 10:00 a.m. (prevailing Eastern time)** before the Honorable James M. Peck, United States Bankruptcy Judge, One Bowling Green, Room 601, 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 of 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](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 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 upon the following: (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) Olshan Frome Wolosky LLP, counsel to the Debtors, Park Avenue Tower, 65 East 55th Street, New York, New York 10022 (Attn.: Michael S. Fox,

Esq.); (c) 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.); (d) 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.); (e) 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.); (f) counsel to Atari, S.A., Allen & Overy LLP, 1221 Avenue of the Americas, New York, New York 10020 (Attn.: Ken Coleman, Esq.); (g) counsel to Tenor Capital Management Company, L.P., Dentons US LLP, 1221 Avenue of the Americas, New York, New York New York 10020-1089 (Attn.: Hugh M. McDonald); (h) the Debtors' claims and noticing agent, BMC Group, Inc. ("BMC"), P.O. Box 3020, Chanhassen, MN 55317-3020 (Attn.: Atari, Inc. Claims Processing); and (i) all parties in interest who have filed a notice of appearance in these cases pursuant to Bankruptcy Rule 2002, **in each case so as to be received no later than November 27, 2013 at 4:00 p.m. (prevailing Eastern time).**

**PLEASE TAKE FURTHER NOTICE** that copies of the Motion may also be obtained from the Debtors' claims and noticing agent, BMC Group, Inc., by visiting the Debtors' case information website at <http://www.bmcgroup.com/atari>; writing to BMC Group, Inc, Attention: Atari, Inc. Claims Processing, P.O. Box 3020, Chanhassen, MN 55317-3020; or by calling the Debtors' case information hotline at (888) 909-0100. Copies of the Motion may also be obtained by accessing the Bankruptcy Court's website at [www.nysb.uscourts.gov](http://www.nysb.uscourts.gov) through an account obtained from the Pacer Service Center at 1-800-676-6856.

New York, New York  
Dated: November 8, 2013

**AKIN GUMP STRAUSS HAUER & FELD LLP**

*/s/ Ira S. Dizengoff*  
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**UNITED STATES BANKRUPTCY COURT  
THE SOUTHERN DISTRICT OF NEW YORK**

In re:

ATARI, INC. *et al.*,

Debtors. <sup>1</sup>

Chapter 11

Case No. 13-10176 (JMP)

Jointly Administered

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

**MOTION OF THE DEBTORS FOR ENTRY OF AN ORDER,  
PURSUANT TO 11 U.S.C. § 363(b) AND FEDERAL RULE OF BANKRUPTCY  
PROCEDURE 9019, APPROVING THE STIPULATION BETWEEN  
THE DEBTORS AND TENOR CAPITAL MANAGEMENT COMPANY, L.P.**

The above-captioned debtors and debtors-in-possession (collectively, the “*Debtors*”), hereby move this Court pursuant to section 363(b) of title 11 of the United States Code (the “*Bankruptcy Code*”) and Rule 9019 of the Federal Rules of Bankruptcy Procedure (the “*Bankruptcy Rules*”) for entry of the stipulation and agreed order, substantially in the form attached hereto as Exhibit A (the “*Stipulation*”), by and between the Debtors and Tenor Capital Management Company, L.P. (“*Tenor*” and together with the Debtor, the “*Parties*”) as more fully set forth herein. In support of this Motion, the Debtors respectfully represent as follows:

**Preliminary Statement**<sup>2</sup>

1. After arms’-length and good faith negotiations with Tenor, the Debtors determine that it is in the best interests of their estates and their creditors to enter into the Stipulation, which fully and finally resolves the Tenor Proofs of Claim – each of which have been asserted against the Debtors in amount that total potentially over \$2,000,000. The benefits of the Stipulation outweigh the risks, burdens and expenses associated with the present disputes and anticipated litigation between the Debtors and Tenor, and entry into the Stipulation is more than reasonable under the facts and circumstances of these chapter 11 cases. Moreover, as noted above, the Stipulation is the result of arms’-length and good faith negotiations among the Parties, a product of the Debtors’ sound business judgment and manifestly in the best interest of the Debtors’ estates and creditors.

2. In accordance with the terms of the Stipulation, in full and final satisfaction of the Tenor Proofs of Claim, Tenor’s proof of claim against Debtor Atari, Inc. will be modified and

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<sup>2</sup> Capitalized terms used but not otherwise defined in the preliminary statement shall have the meanings ascribed to such terms in the body of this motion.

allowed as an administrative claim in the amount of \$125,000 (the “*Tenor Administrative Claim*”). In exchange, Tenor will withdraw its remaining three proofs of claims against the other three Debtor entities.

3. In sum, rather than the Debtors potentially incurring significant costs in time and money in objecting to the Tenor Proofs of Claim, which have been asserted against every Debtor entity, and, if valid, could make confirmation of the proposed plan of reorganization more difficult, the Debtors, Atari, S.A., in its capacity as the plan sponsor (the “*Plan Sponsor*”), and Alden Global Value Recovery Master Fund L.P., in its capacity as the debtor-in-possession lender (“*Alden*”), will have the support of Tenor for the Plan and will only need to pay an administrative claim of \$125,000 upon the effective date of the Plan.

4. The Debtors believe that this settlement is well within the range of reasonableness, easily meets the requirements of Bankruptcy Rule 9019, provides benefits to the Debtors’ estates and, thus, should be approved. This settlement is supported by (i) Alden, (ii) the Plan Sponsor, and (iii) the official committee of unsecured creditors appointed in these chapter 11 cases (the “*Creditors’ Committee*”).<sup>3</sup>

### **Jurisdiction**

5. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). The Debtors submit that venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

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<sup>3</sup> In the event the Stipulation is not approved by the Bankruptcy Court, the Debtors, the Plan Sponsor, Alden and the Creditors’ Committee have each agreed that Tenor’s claim against Atari, Inc. will be allowed in full as a general unsecured claim in the amount of \$482,193.07 and will not be subject to any objections by any parties in interest. Upon entry of an order allowing such claim, Tenor will support confirmation of the Plan and will be deemed to have withdrawn all other claims against the Debtors.

6. The statutory predicates for the relief requested herein is section 363(b) of the Bankruptcy Code and Bankruptcy Rule 9019 and Rule 9013-1(a) of the Local Bankruptcy Rules for the Southern District of New York (the “*Local Rules*”).

### **Background**

7. On January 21, 2013 (the “*Petition Date*”), each the Debtors filed with this Court voluntary petitions for relief under chapter 11 of the Bankruptcy Code.

8. The Debtors continue to operate their businesses and manage their properties pursuant to §§ 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in these cases.

9. By an order entered on January 24, 2013, the Debtors’ chapter 11 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 Creditors’ Committee [Docket No. 64].

10. Prior to the *Petition Date*, the Debtors’ management determined that the Debtors would require additional working capital after the commencement of these chapter 11 cases. The Debtors approached five (5) financial firms in the months leading up to the *Petition Date* regarding potential post-petition financing arrangements. Four of the five entities signed non-disclosure agreements with the Debtors. The Debtors then paid due diligence deposits to two of the firms and those firms came forward with proposals for financing. However, only the proposal from Tenor offered the Debtors sufficient flexibility and met all of the Debtors’ financing needs to proceed with their chapter 11 cases.

11. In or about October 2012, the Debtors also began discussions with, among other potential buyers, a private equity/investment firm with experience in the gaming company



business (the “*Potential Strategic Buyer*”) that expressed interest in purchasing equity from Atari S.A. and/or providing financing to the Debtors. Negotiations with the Potential Strategic Buyer continued through the week before the filing of these cases. On the eve of the bankruptcy filing, however, negotiations with the Potential Strategic Buyer broke down. Of the remaining parties that indicated an interest in lending to the Debtors, only Tenor provided a term sheet that met the structure and liquidity requirements of the Debtors. The Debtors and their advisors subsequently engaged in round-the-clock negotiations with Tenor to obtain the best terms possible. These negotiations were at arms’-length and at all times were characterized by hard bargaining by all interested parties.

12. The Debtors and Tenor entered into a commitment letter as a result of that bargaining, pursuant to which Tenor agreed to provide debtor-in-possession financing to the Debtors on specific terms. Among other things, the commitment letter provided for, *inter alia*, payment of a \$250,000 commitment fee earned upon execution, as well as payment of reasonable fees and expenses (the “*Tenor Fees*”).

13. On January 24, 2013, the Court held a hearing to consider the interim relief with respect to the Debtors’ proposed debtor-in-possession financing with Tenor (the “*Tenor DIP*”), at which time the Debtors informed the Court that they would no longer be pursuing the Tenor DIP, but would seek approval of financing with Alden. At the January 24<sup>th</sup> hearing, the Court approved the debtor-in-possession financing with Alden (the “*Alden DIP*”) on an interim basis, which was substantially based upon the term sheet for the Tenor DIP. On March 7, 2013, the Court approved the Alden DIP on a final basis.

14. In light of the fact that the Bankruptcy Court approved the Alden DIP, the Tenor Fees were not paid by the Debtors.

15. On March 21, 2013, the Court entered an order (the “*Bar Date Order*”) [Docket No. 157] establishing, among other things, April 30, 2013 (the “*Bar Date*”) as the last date for all non-governmental creditors wishing to assert pre-petition and certain other “Claims” (as that term is defined in Bankruptcy Code section 101(5)) against any of the Debtors to file a written proof of claim with respect to each such Claim. In addition, the Bar Date Order established July 22, 2013 as the deadline for all “Governmental Units” (as that term is defined in Bankruptcy Code section 101(27)) to file proofs of claim against the Debtors.

16. On April 30, 2013, Tenor filed four (4) proofs of claim, Claim No. 158 against Atari, Inc., Claim No. 159 against Atari Interactive, Inc., Claim No. 160 against California U.S. Holdings, Inc. and Claim No. 161 against Humongous, each asserting a general unsecured claim for not less than \$482,193.07 (Claim Numbers 158, 159, 160 and 161, collectively referred to as the “*Tenor Proofs of Claim*”) with respect to a commitment fee and attorney fees (as of the date of filing) in connection with the commitment letter for the Tenor DIP.

17. The Debtors dispute the basis and validity with respect to the Tenor Proofs of Claim. Prior to entering into arms’-length negotiations with Tenor, the Debtors intended to file an objection to the Tenor Proofs of Claim seeking to expunge the claims in their entirety. Tenor has advised it would contest those efforts, and that it would file administrative claims of at least \$482,193.07 plus further fees that have accrued against the Debtors.

18. Understanding the risks and costs associated with litigation, the Parties engaged in arms’-length negotiations in an effort to reach a consensual resolution with respect to the Tenor Proofs of Claim.

### The Stipulation

19. To resolve the Tenor Proofs of Claim and thereby relieve the Debtors' estates from needing to litigate the Tenor Proofs of Claim and any other further administrative claims (which litigation would likely include, among other things, discovery and depositions), the Parties have agreed to the Stipulation, which terms are in the best interests of the Debtors' estates and creditors. The salient terms of the Stipulation are as follows:<sup>4</sup>

- (i) On the Effective Date, (i) Tenor will withdraw Proofs of Claim Numbers 159, 160 and 161 (the "*Tenor Withdrawn Claims*") and (ii) Proof of Claim Number 158 shall be modified and allowed as an administrative claim not subject to setoff, recoupment, allocation, avoidance, subordination, recharacterization, or reduction for any reason against Debtor Atari, Inc. in the total amount of \$125,000.00, payable in full in cash on the effective date of the plan of reorganization (the "*Tenor Allowed Administrative Claim*");
- (ii) Upon the Effective Date, the Tenor Withdrawn Claims shall be disallowed and expunged in their entirety (the "*Expunged Tenor Proofs of Claim*") and the Debtors' claims and noticing agent shall be authorized to update the official claims register to reflect the Expunged Tenor Proofs of Claim;
- (iii) In the event that the Bankruptcy Court does not approve the Tenor Allowed Administrative Claim, Tenor's Proof of Claim No. 158 shall be deemed an allowed general unsecured claim against Debtor Atari Inc. in the total amount of \$482,193.07 (the "*Tenor Allowed General Unsecured Claim*");
- (iv) Upon the Effective Date, Tenor agrees to release the Debtors and their predecessors, successors, assigns, subsidiaries, current and former employees, current and former directors, officers, agents, financial advisors, attorneys, accountants, investment bankers, consultants, representatives, and other professionals (collectively, the "*Debtors' Releasees*") of and from any and all claims, liabilities, demands, damages, actions, causes of action, rights, costs, losses, expenses, adverse consequences, debts, deficiencies, diminution in value, or liens Tenor may have against the Debtors' Releasees with respect to the Tenor DIP and the Tenor Proofs of Claim through the Effective Date, except for the Tenor Allowed Administrative Claim or the Tenor Allowed General Unsecured Claim, as applicable;

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<sup>4</sup> The terms set forth herein are qualified in their entirety by the terms of the Stipulation. To the extent that the terms set forth below are inconsistent with the terms of the Stipulation, the terms of the Stipulation shall govern. Capitalized terms not defined in this section have the meanings ascribed in the Stipulation.

- (v) Upon the Effective Date, the Debtors, on behalf of themselves, their estates, and the Reorganized Debtors agree to release Tenor and its predecessors, successors, assigns, affiliates, subsidiaries, agents, representatives, attorneys, other professionals, and current and former officers, directors and employees (collectively, the “*Tenor Releasees*”) of and from any and all known or unknown claims, liabilities, demands, damages, actions, causes of action, rights, costs, losses, expenses, adverse consequences, debts, deficiencies, diminution in value, or liens with respect to the Tenor DIP and the Tenor Proofs of Claim, including, but not limited, to any claims under chapter 5 of the Bankruptcy Code.
- (vi) Tenor agrees that it will not file any objection to the Debtors’ proposed plan of reorganization presently filed or any amended or subsequent plan of reorganization (the “*Plan*”), nor support any other party’s objection to any plan of reorganization.
- (vii) With the exception of the Tenor Allowed Administrative Claim, Tenor agrees that it will not file any administrative claim, as such term is defined in the Debtor’s Plan, against the Debtors in their chapter 11 cases.
- (viii) The Parties agree that the Stipulation will fully and finally resolve any and all issues, disputes or controversies related to the Tenor Proofs of Claim and any other claims in connection with, arising out of or relating to the Tenor DIP;

20. In light of the above terms and as further explained in this motion, the Debtors believe that entry into and approval of the Stipulation is in the best interest of the Debtors’ estates.

### **Relief Requested**

21. By this Motion, the Debtors seek entry of an order approving the Stipulation between the Parties that fully and finally resolves any and all issues, disputes or controversies related to the Tenor Proofs of Claim and the Tenor DIP. The relief requested herein is supported by Alden, the Plan Sponsor and the Creditors’ Committee.

#### **A. Basis for Relief**

22. Pursuant to Bankruptcy Rule 9019, bankruptcy courts have the authority to approve a compromise or settlement if it is in the best interest of the estate. *See Vaughn v. Drexel Burnham Lambert Grp., Inc. (In re Drexel Burnham Lambert Grp., Inc.)*, 134 B.R. 499, 505

(Bankr. S.D.N.Y. 1991). The settlement need not result in the best possible outcome for the debtor, but must not “fall below the lowest point in the range of reasonableness,” which low threshold is due to the general public policy favoring settlements. *Id.* (internal citations omitted). The decision to accept or reject a compromise or settlement is within the sound discretion of the bankruptcy court. *See Nellis v. Shugrue*, 165 B.R. 115, 121-23 (S.D.N.Y. 1994); *Drexel Burnham Lambert*, 134 B.R. at 505; *see also In re Hibbard Brown & Co., Inc.*, 217 B.R. 41, 46 (Bankr. S.D.N.Y. 1998) (noting that a bankruptcy court may exercise its discretion “in light of the general public policy favoring settlements”); 10 COLLIER ON BANKRUPTCY ¶ 9019.02 (Alan N. Resnick & Henry J. Sommer, eds., 16th ed. 2010).

23. In exercising its discretion, the bankruptcy court must make an independent determination that the settlement is fair and equitable. *See Protective Comm. for Indep. Stockholders of TMT Trailer Ferry Inc. v. Anderson*, 390 U.S. 414, 424 (1968); *Shugrue*, 165 B.R. at 122. That does not mean that the bankruptcy court should substitute its judgment for the debtor’s judgment, or determine the merits of the claims to be settled. *See In re Carla Leather, Inc.*, 44 B.R. 457, 465 (Bankr. S.D.N.Y. 1984), *aff’d*, 50 B.R. 764 (S.D.N.Y. 1985). Instead, a bankruptcy court should “canvass the issues and see whether the settlement fall[s] below the lowest point in the range of reasonableness.” *In re Adelpia Commc’ns Corp.*, 327 B.R. 143, 159 (Bankr. S.D.N.Y. 2005) (*quoting In re W.T. Grant Co.*, 699 F.2d 599, 608 (2d Cir. 1983)). Stated differently, the court does not need to conduct a “mini-trial” of the facts and merits underlying the dispute; it needs only to be apprised of those facts that are necessary to enable it to evaluate the reasonableness of the settlement. *See id.*

24. To evaluate whether a settlement is fair and equitable, courts in the Second Circuit consider factors including:

- (a) the balance between any litigation's possibility of success and the settlement's future benefits;
- (b) the likelihood of complex and protracted litigation, with its attendant expense, inconvenience, and delay;
- (c) the paramount interests of the creditors, including each affected class's relative benefits and the degree to which creditors either do not object to or affirmatively support the proposed settlement;
- (d) whether other parties in interest support the settlement;
- (e) the competency and experience of counsel supporting the settlement; and
- (f) the extent to which the settlement is the product of arms'-length bargaining.

*See Iridium Promotions, Inc. v. Official Comm. of Unsecured Creditors (In re Iridium Operating LLC)*, 478 F.3d 452, 462 (2d Cir. 2007) (internal citations omitted); *see also Air Line Pilots Ass'n, Int'l v. Am. Nat'l Bank & Trust Co. (In re Ionosphere Clubs, Inc.)*, 156 B.R. 414, 428 (S.D.N.Y. 1993), *aff'd*, 17 F.3d 600 (2d. Cir. 1994).

**B. The Stipulation Satisfies the Applicable Standard for Settlements**

25. The Debtors believe that the terms of the Stipulation are in the best interest of the Debtors' estates and creditors and satisfy the standard for approval under applicable law. Indeed, as explained throughout this motion, the Debtors respectfully submit that all of the applicable factors weigh in favor of approving the Stipulation.

26. First, the Debtors believe that the Stipulation embodies a fair balance between the likely success of each party to the Tenor Proofs of Claim. The Debtors believe that they have valid defenses against the Tenor Proofs of Claim because, among other reasons, the Debtors believe that Tenor is not entitled to a commitment fee or its legal fees since the Tenor DIP was not the approved DIP and such fees were not earned. The Debtors are cognizant, however, that Tenor opposes the Debtors' position and will vigorously defend its right to receive the full

amount of its asserted claims as administrative expenses. As in any contested matter, there are risks and the Stipulation's overall benefits include, among other things, the avoidance of risk, value maximization for the estates through the elimination of litigation and professional fees, as well as the avoidance of an objection to confirmation of the Plan.

27. Second, and significantly, approval of the Stipulation will resolve the Parties' outstanding claims and issues in the near term and will provide the Debtors the ability to pursue confirmation of the Plan without having to expend further time or resources on account of the Tenor Proofs of Claim, including the costs associated with motion practice and discovery, and any objection Tenor may file to confirmation of the plan.

28. The third factor also supports approval of the Stipulation because by resolving the Tenor Proofs of Claim and obviating the need for protracted litigation, Tenor's claims will be fully and finally resolved and settled. Further, approval of the Stipulation will enable the Debtors to better estimate their claims pool and thereby ensure the value to be distributed under the Plan. Moreover, the Stipulation will make confirmation of the Plan easier, as it has eliminated one potential objection. Notably, with respect to the fourth factor, the Stipulation is supported by Alden, the Plan Sponsor and the Creditors' Committee – an important consideration under the fourth factor.

29. The fifth factor – the quality and experience of counsel - and the sixth factor – whether the Debtors negotiated the Stipulation at arms'-length, both weigh in favor of approval of the Stipulation. The Parties negotiated the Stipulation completely at arms'-length and engaged in discussions on the terms of the settlement with Alden, the Plan Sponsor and the Creditors' Committee and solicited and incorporated feedback regarding same. The Debtors'

correspondence regarding the settlement ensures arms'-length negotiations and that creditor' interests were fairly represented.

30. In sum, the resolution embodied in the Stipulation is the result of extensive, good faith negotiations between the Parties, each of whom was (and continues to be) represented by experienced and skilled counsel. As a result of, and consistent with, their fiduciary duties to maximize values for their estates, the Debtors submit that the Stipulation is within their sound business judgment and is in the best interests of their estates and creditors.

**No Prior Request**

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

**Notice**

32. The Debtors have provided notice of this motion to (a) the Office of the United States Trustee for the Southern District of New York, (b) counsel to the Official Committee of Unsecured Creditors, Cooley LLP, (c) counsel to Alden Global Value Recovery Master Fund, L.P., Bracewell & Giuliani, (d) counsel to Atari, S.A., Allen & Overy LLP, (e) the District Director of the Internal Revenue Service for the Southern District of New York, and (f) all parties who have filed notices of appearance in these cases. In light of the nature of the relief requested, the Debtors respectfully submit that no further notice is necessary.



**WHEREFORE**, the Debtors respectfully request that the Court (a) approve and so order the attached Stipulation and (b) grant such other and further relief as the Court may deem equitable and just.

Dated: New York, New York  
November 8, 2013

**OLSHAN FROME WOLOSKY LLP**

By: /s/ Michael S. Fox

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*Counsel to the Debtors and Debtors in  
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**EXHIBIT A**

**Stipulation**

**OLSHAN FROME WOLOSKY LLP**

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

In re:

ATARI, INC. *et al.*,  
Debtors.<sup>1</sup>

Chapter 11  
Case No. 13-10176 (JMP)  
Jointly Administered

**STIPULATION AND AGREED ORDER DISALLOWING CLAIM  
NOS. 159, 160 AND 161, AND MODIFYING AND ALLOWING CLAIM NO. 158**

The above-captioned debtors and debtors-in-possession (collectively, the “*Debtors*”) and Tenor Capital Management Company, L.P. (“*Tenor*” with the Debtors, each a “*Party*” and collectively, the “*Parties*”), by and through their respective undersigned counsel, hereby agree

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

and stipulate (this “*Stipulation*”) to the disallowance and expunging of certain proofs of claim filed by Tenor, specifically Claim Nos. 159, 160 and 161, and the modification and allowance of Claim No. 158, and respectfully state as follows:

**WHEREAS**, on January 21, 2013 (the “*Petition Date*”), each of the Debtors commenced a voluntary case pursuant to chapter 11 of title 11 of the United States Code (the “*Bankruptcy Code*”) in the United States Bankruptcy Court for the Southern District of New York;

**WHEREAS**, prior to the Petition Date, the Debtors and Tenor entered into a commitment letter, pursuant to which Tenor agreed to provide debtor-in-possession financing to the Debtors on specific terms. Among other things, the commitment letter provided for, *inter alia*, payment of a \$250,000 commitment fee earned upon execution as well as payment of reasonable fees and expenses (the “*Tenor Fees*”);

**WHEREAS**, on January 24, 2013, the Court held a hearing to consider the interim relief with respect to the Debtors’ proposed debtor-in-possession financing with Tenor (the “*Tenor DIP*”), at which time the Debtors informed the Court that they would no longer be pursuing the Tenor DIP, but would seek approval of financing with Alden Global Value Recovery Master Fund L.P. (“*Alden*”). At the January 24th hearing, the Court approved debtor-in-possession financing with Alden (the “*Alden DIP*”) on an interim basis. On March 7, 2013, the Court approved the Alden DIP on a final basis;

**WHEREAS**, as a result of the Bankruptcy Court approving the Alden DIP, the Tenor Fees were not paid by the Debtors;

**WHEREAS**, on March 21, 2013, the Court entered an order [Docket No. 157] establishing, among other things, April 30, 2013 (the “*Bar Date*”) as the last date for certain parties to file a written proof of claim asserting “Claims” (as that term is defined in Bankruptcy Code section 101 (5)) against any of the Debtors with respect to each such Claim;

**WHEREAS**, on April 30, 2013, Tenor filed four (4) proofs of claim, Claim No. 158 against Atari, Inc., Claim No. 159 against Atari Interactive, Inc., Claim No. 160 against California U.S. Holdings, Inc. and Claim No. 161 against Humongous, Inc., each asserting a general unsecured claim for not less than \$482,193.07 (Claim Numbers 158, 159, 160 and 161, collectively referred to as the “*Tenor Proofs of Claim*”) with respect to a commitment fee and attorney fees (as of the date of filing) in connection with proposed debtor-in-possession financing;

**WHEREAS**, the Debtors dispute the validity and amount of each of the Tenor Proofs of Claim, and prior to entering into arms’-length negotiations with Tenor, the Debtors intended to file an objection to the Tenor Proofs of Claim seeking to expunge the claims in their entirety;

**WHEREAS**, Tenor has advised it would contest those efforts, likely object to the Debtors’ Plan (as defined below), and that it would file administrative claims of at least \$482,193.07 plus further fees that have accrued against the Debtors;

**WHEREAS**, the Debtors and Tenor have engaged in arms’-length negotiations with respect to the Tenor Proofs of Claim;

**WHEREAS**, after an exchange of information, and to avoid the risks, delays and costs of litigation, the Parties have agreed to resolve their disputes and all claims and causes of action between Tenor and the Debtors or their estates on the terms and conditions set forth herein;

**NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED**, based upon the foregoing recitals, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties, and intending to be legally bound hereby, the Parties, subject only to Bankruptcy Court approval, hereto agree, by and through their respective counsel, as follows:

1. This Stipulation shall become effective upon the date it is “So Ordered” by the

Bankruptcy Court (the “*Effective Date*”).

2. On the Effective Date, (i) Tenor Proofs of Claim Numbers 159, 160 and 161 (the “*Tenor Expunged Claims*”) and (ii) Proof of Claim Number 158 shall be modified and allowed as an administrative claim not subject to setoff, recoupment, allocation, avoidance, subordination, recharacterization or reduction for any reason against Debtor Atari, Inc. in the total amount of \$125,000.00, payable in full, in cash, on the effective date of the Debtors’ Plan (the “*Tenor Allowed Administrative Claim*”).

3. Upon the Effective Date, the Tenor Expunged Claims shall be disallowed and expunged in their entirety (the “*Expunged Tenor Proofs of Claim*”) and the Debtors’ claims and noticing agent shall be authorized to update the official claims register to reflect the Expunged Tenor Proofs of Claim.

4. In the event that the Bankruptcy Court does not approve the Stipulation allowing Tenor Allowed Administrative Claim, Tenor’s Proof of Claim No. 158 shall be an allowed general unsecured claim against Debtor Atari Inc. in the total amount of \$482,193.07 (the “*Tenor Allowed General Unsecured Claim*”).

5. Upon the Effective Date, (a) Tenor hereby releases, acquits and forever discharges the Debtors, and Atari, Inc., Atari Interactive, Inc., Humongous, Inc., and California U.S. Holdings, Inc., as such entities are reorganized upon the effective date of the Plan (the “*Reorganized Debtors*”), and the Debtors’ predecessors, successors, assigns, affiliates, subsidiaries, current and former employees, current and former directors, officers, agents, financial advisors, attorneys, accountants, investment bankers, consultants, representatives, and other professionals (collectively, the “*Debtors’ Releasees*”) of and from any and all claims, liabilities, demands, damages, actions, causes of action, rights, costs, losses, expenses, adverse consequences, debts, deficiencies, diminution in value, or liens Tenor may have against the

Debtors' Releasees with respect to the Tenor DIP and the Tenor Proofs of Claim through the Effective Date, except for the Tenor Allowed Administrative Claim or the Tenor Allowed General Unsecured Claim, as applicable; and (b) the Debtors, on behalf of themselves, their estates, and the Reorganized Debtors hereby release, acquit and forever discharge Tenor and its predecessors, successors, assigns, affiliates, subsidiaries, agents, representatives, attorneys, other professionals, and current and former officers, directors and employees (collectively, the "*Tenor Releasees*") of and from any and all known or unknown claims, liabilities, demands, damages, actions, causes of action, rights, costs, losses, expenses, adverse consequences, debts, deficiencies, diminution in value, or liens with respect to the Tenor DIP and the Tenor Proofs of Claim, including, but not limited, to any claims under chapter 5 of the Bankruptcy Code.

6. Tenor agrees that it will not file any objection to the Debtors' proposed plan of reorganization presently filed or any amended or subsequent plan of reorganization (the "*Plan*"), nor support any other party's objection to any plan of reorganization.

7. With the exception of the Tenor Allowed Administrative Claim, Tenor agrees that it will not file any administrative claim, as such term is defined in the Debtor's Plan, against the Debtors or the Reorganized Debtors in its chapter 11 cases.

8. The Debtors represent and warrant that this Stipulation is supported and approved by Atari, S.A., in its capacity as the Plan Sponsor, Alden Global Value Recovery Master Fund L.P., ("*Alden*") in its capacity as the debtor-in-possession lender, and the Official Committee of Unsecured Creditors ("*Creditors Committee*") appointed in these chapter 11 cases. In the event that this Stipulation is not approved, Tenor's Proof of Claim No. 158 shall be an allowed general unsecured claim against Debtor Atari Inc. in the total amount of \$482,193.07, and the Debtors, the Plan Sponsor, Alden and the Creditors Committee each agree not to object to such claim.

9. This Stipulation may be executed in multiple counterparts, each of which shall be

deemed an original, including any facsimile or “PDF” counterparts, and which together shall constitute one and the same agreement.

10. This Stipulation constitutes the entire agreement between the Parties with respect to the subject matter of the Tenor Proofs of Claim and the Tenor Allowed Administrative Claim or the Tenor Allowed General Unsecured Claim, as applicable, and supersedes all prior agreements and undertakings between the Parties relating to the subject matter hereof. This Stipulation fully and finally resolves any and all issues, disputes or controversies between the Parties with respect to the Tenor Proofs of Claim and the Tenor DIP. There are no other covenants, promises, agreements, conditions or understandings, either oral or written, express or implied, between the Parties, except for this Stipulation with respect to its subject matter. The terms are contractual and not merely recitals. No alteration, amendment or modification shall be effective or binding upon any Party unless in writing and duly executed by all Parties or by further order of the Bankruptcy Court.

11. The Parties acknowledge that with respect to any liability whatsoever as to any Party nothing in this Stipulation shall be construed or interpreted as an admission, or as an acknowledgement thereof by any of the Parties (or by anyone acting on the Parties’ behalf).

12. The Parties have participated jointly in the negotiation and drafting of this Stipulation. In the event an ambiguity or question of intent or interpretation arises with respect to this Stipulation, this Stipulation shall be construed as if drafted jointly by the Parties, and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Stipulation.

13. This Stipulation shall be filed and become part of the record in the Debtors’ chapter 11 cases.

14. Each Party and signatory to this Stipulation represents and warrants to each other



Party hereto that such Party or signatory has full power, authority and legal right and has obtained all approvals and consents necessary to execute, deliver and perform all actions required under this Stipulation.

15. This Stipulation is binding on the Parties' successors and assigns, including any Chapter 7 Trustee that may be appointed in these chapter 11 cases.

16. The Court shall retain jurisdiction to hear any matters or disputes arising from or relating to this Stipulation.

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Dated: New York, New York  
November 8, 2013

Dated: New York, New York  
November 8, 2013

OLSHAN FROME WOLOSKY LLP  
By:

DENTONS US LLP  
By:

*/s/ Michael S. Fox*  
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and

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*Counsel to the Debtors  
and Debtors in Possession*

**ON CONSENT OF ALDEN GLOBAL VALUE RECOVERY MASTER FUND L.P.,  
ATARI, S.A., AND THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS**

**SO ORDERED:**

Date: \_\_\_\_\_, 2013

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THE HONORABLE JAMES M. PECK  
UNITED STATES BANKRUPTCY JUDGE