

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

|                            |   |                       |
|----------------------------|---|-----------------------|
|                            | X |                       |
| In re                      | : | Chapter 11            |
|                            | : | Case No. 13-10176-jmp |
| ATARI, INC., <i>et al.</i> | : |                       |
|                            | : |                       |
| Debtors <sup>1</sup> .     | : |                       |
|                            | X |                       |

**CERTIFICATE OF SUPPLEMENTAL SERVICE RE:**

**NOTICE OF ENTRY OF ORDER (I) APPROVING DISCLOSURE STATEMENT; (II) APPROVING SOLICITATION AND NOTICE MATERIALS; (III) APPROVING FORMS OF BALLOTS; (IV) ESTABLISHING SOLICITATION AND VOTING PROCEDURES; (V) ESTABLISHING PROCEDURES FOR ALLOWING AND ESTIMATING CERTAIN CLAIMS FOR VOTING PURPOSES; (VI) SCHEDULING A CONFIRMATION HEARING AND (VII) ESTABLISHING NOTICE AND OBJECTION PROCEDURES [Docket No 438 – Annex 6]**

**Exhibit 1  
[sample not  
attached hereto]**

**CDROM DISK containing:**

**(1) Amended Disclosure Statement for the Debtors' Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code, with exhibits (including Debtors' Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code) [Docket No. 435] and;  
(2) Order Approving The Debtors' Disclosure Statement And Establishing Solicitation And Voting Procedures With Respect Thereto (without Annexed Exhibits) [Docket No. 438]**

**Exhibit 2  
[sample not  
attached hereto]**

**BALLOT FOR VOTING TO ACCEPT OR REJECT THE DEBTORS' JOINT PLAN OF REORGANIZATION UNDER CHAPTER 11 OF THE BANKRUPTCY CODE—CLASS 4 GENERAL UNSECURED CLAIMS**

**Exhibit 3  
[custom sample  
attached hereto]**

**DEBTOR LETTER RE: SOLICITATION OF VOTES TO ACCEPT OR REJECT THE DEBTORS' JOINT PLAN OF REORGANIZATION UNDER CHAPTER 11 OF THE BANKRUPTCY CODE**

**Exhibit 4  
[sample attached  
hereto]**

**COMMITTEE LETTER RE: RECOMMENDATION OF CREDITORS' COMMITTEE IN FAVOR OF CHAPTER 11 PLAN OF REORGANIZATION**

**Exhibit 5  
[sample attached  
hereto]**

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

**PRE-ADDRESSED RETURN ENVELOPE with postage affixed thereto**      **Exhibit 6**  
**[sample not**  
**attached hereto]**

I, James H. Myers, state as follows:

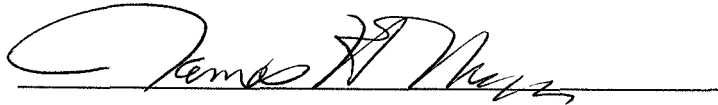
1. I am over eighteen years of age and I believe the statements contained herein are true based on my personal knowledge. My business address is c/o BMC Group, Inc., 300 N. Continental Boulevard, Ste. 570, El Segundo, California 90245.

2. On October 31, 2013, at the direction of Akin Gump Straus Hauer & Feld LLP, counsel for the Debtors and Debtors in Possession, copies of the documents identified above by exhibit number were served on the parties as set forth below in Exhibit A at the addresses shown thereon and via the mode of service indicated thereon:

Exhibit A    Address List regarding Exhibits 1 through 6

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on the 12<sup>th</sup> day of November 2013 at Paramount, California.

A handwritten signature in black ink, appearing to read "James H. Myers", is written over a horizontal line.

James H. Myers

### **EXHIBIT 3**

Claim Number XX

NO PERSON HAS BEEN AUTHORIZED TO GIVE ANY INFORMATION OR ADVICE, OR TO MAKE ANY REPRESENTATION, OTHER THAN WHAT IS CONTAINED IN THE MATERIALS MAILED WITH THIS BALLOT OR OTHER MATERIALS AUTHORIZED BY THE BANKRUPTCY COURT.

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

In re

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

Debtors.

) Chapter 11

) Case No. 13-10176 (JMP)

) (Jointly Administered)

**BALLOT FOR VOTING TO ACCEPT OR REJECT THE DEBTORS' JOINT  
PLAN OF REORGANIZATION UNDER CHAPTER 11 OF THE BANKRUPTCY CODE**

**CLASS 4 GENERAL UNSECURED CLAIMS**

**HOLDERS OF CLASS 4 GENERAL UNSECURED CLAIMS:  
YOUR BALLOT MUST BE RECEIVED BY THE  
SOLICITATION AGENT BY 5:00 P.M. (PREVAILING  
EASTERN TIME) ON NOVEMBER 25, 2013 (THE "VOTING  
DEADLINE") OR YOUR VOTE WILL NOT BE COUNTED  
(UNLESS SUCH DEADLINE IS EXTENDED).**

This Ballot is submitted to you by the above-captioned debtors and debtors in possession (collectively, the "**Debtors**") and Atari, S.A. (the "**Sponsor**" and collectively with the Debtors, the "**Proponents**") to solicit your vote to accept or reject the *Debtors' Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code*, dated September 20, 2013 (the "**Plan**"), which is described in the accompanying *Amended Disclosure Statement for the Debtors' Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code*, dated October 25, 2013 (the "**Disclosure Statement**"). Capitalized terms used in this Ballot or the attached instructions that are not otherwise defined have the meanings given to them in the Plan, Disclosure Statement or order approving the Disclosure Statement, as applicable.

The Plan may be confirmed by the Bankruptcy Court and thereby made binding on you if it is accepted by the Holders of at least two-thirds in amount and more than one-half in number of the Claims or Interests in each impaired Class that vote on the Plan and if the Plan otherwise satisfies the applicable requirements of Bankruptcy Code section 1129(a). If the requisite acceptances are not obtained, the Bankruptcy Court nonetheless may confirm the Plan if it finds that the Plan (i) provides fair and equitable treatment to, and does not unfairly discriminate against, each Class or Classes rejecting the Plan and (ii) otherwise satisfies the requirements of Bankruptcy Code section 1129(b). To have your vote counted, you must complete, sign and return this Ballot to the Solicitation Agent (as defined below) so that it is received by the Voting Deadline indicated above.

Your rights are described in the Disclosure Statement. The Disclosure Statement, Plan, Solicitation Procedures and certain other materials contained in the Solicitation Package are included in the packet you are receiving with this Ballot. The Solicitation Package (except Ballots) can be obtained (i) from the BMC Group, Inc.,

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



Claim Number XX

(the "**Solicitation Agent**") by (a) writing to BMC Group, Inc., Attn: Atari Claims Processing, PO BOX 3020, Chanhassen, MN 55317-3020, (b) calling the Debtors' bankruptcy hotline at (888) 909-0100 or (c) visiting the Debtors' bankruptcy website at [www.bmcgroup.com/atari](http://www.bmcgroup.com/atari) or (ii) for a fee via PACER at <https://ecf.nysb.uscourts.gov>. The Bankruptcy Court has approved the Disclosure Statement as containing adequate information pursuant to Bankruptcy Code section 1125. The Disclosure Statement provides information to assist you in deciding how to vote on the Plan. Bankruptcy Court approval of the Disclosure Statement, however, does not indicate approval of the Plan. This Ballot may not be used for any purpose other than for casting votes to accept or reject the Plan and making certain certifications with respect thereto. If you believe you received this Ballot in error, please contact the Solicitation Agent as specified above.

You should review the Disclosure Statement and the Plan and the instructions contained herein before you vote. You may wish to seek legal advice concerning the Plan and the classification and treatment of your Claim or Claims under the Plan and your acceptance or rejection of the Plan. Your General Unsecured Claim(s) have been placed in Class 4 under the Plan.

**YOUR RECEIPT OF THIS BALLOT DOES NOT INDICATE THAT YOUR GENERAL UNSECURED CLAIM HAS BEEN OR WILL BE ALLOWED.**

**THIS BALLOT REPRESENTS GENERAL UNSECURED CLAIMS AGAINST ATARI INC., ATARI INTERACTIVE, INC., HUMONGOUS, INC., AND CALIFORNIA U.S. HOLDINGS, INC.**

**IF YOU HAVE RECEIVED A DAMAGED BALLOT OR HAVE LOST YOUR BALLOT, OR IF YOU HAVE ANY QUESTIONS CONCERNING THIS BALLOT OR THE VOTING PROCEDURES, PLEASE CALL THE SOLICITATION AGENT AT (888) 909-0100. PLEASE NOTE THAT THE SOLICITATION AGENT IS NOT AUTHORIZED TO, AND WILL NOT, PROVIDE LEGAL ADVICE.**

*[remainder of page intentionally left blank]*

Claim Number XX

INSTRUCTIONS

1. COMPLETE ITEM 1.
2. COMPLETE ITEM 2. CAST YOUR VOTE TO **ACCEPT** OR **REJECT** THE PLAN.
3. REVIEW THE CERTIFICATIONS AND ACKNOWLEDGEMENTS CONTAINED IN ITEM 3.
4. **SIGN AND DATE THE BALLOT AND FILL OUT THE OTHER REQUIRED INFORMATION.**
5. YOU MUST VOTE THE FULL AMOUNT OF YOUR CLAIM REPRESENTED BY THIS BALLOT TO ACCEPT OR REJECT THE PLAN. YOU MAY NOT SPLIT YOUR VOTE.
6. ANY EXECUTED BALLOT RECEIVED THAT DOES NOT INDICATE EITHER AN ACCEPTANCE OR REJECTION OF THE PLAN OR THAT INDICATES BOTH AN ACCEPTANCE AND A REJECTION OF THE PLAN WILL NOT BE COUNTED. IF NO VOTES TO ACCEPT OR REJECT THE PLAN ARE RECEIVED FOR A PARTICULAR CLASS THAT IS ENTITLED TO VOTE ON THE PLAN, SUCH CLASS SHALL BE DEEMED TO HAVE VOTED TO ACCEPT THE PLAN.
7. **IN ORDER FOR YOUR VOTE TO BE COUNTED, YOUR ORIGINAL, EXECUTED AND PROPERLY COMPLETED BALLOT MUST BE ACTUALLY RECEIVED BY BMC GROUP, INC. (THE "SOLICITATION AGENT") NO LATER THAN 5:00 P.M. (PREVAILING EASTERN TIME) ON NOVEMBER 25, 2013 (THE "VOTING DEADLINE") BY MAIL (A PRE-ADDRESSED ENVELOPE IS ENCLOSED FOR YOUR CONVENIENCE), OVERNIGHT COURIER OR PERSONAL DELIVERY AT THE APPLICABLE ADDRESS BELOW:**

**If By Regular Mail:**

BMC Group, Inc.  
Attn: Atari Claims Processing  
P.O. Box 3020  
Chanhassen, MN 55317-3020

**If By Courier/Overnight Delivery**

BMC Group, Inc.  
Attn: Atari Claims Processing  
18675 Lake Drive East  
Chanhassen, MN 55317

**THE SOLICITATION AGENT WILL NOT ACCEPT BALLOTS BY FACSIMILE TRANSMISSION, EMAIL OR OTHER ELECTRONIC MEANS.**

8. ANY BALLOT RECEIVED AFTER THE VOTING DEADLINE WILL NOT BE COUNTED OR CONSIDERED FOR ANY PURPOSE UNLESS THE DEBTORS HAVE GRANTED AN EXTENSION OF THE VOTING DEADLINE WITH RESPECT TO SUCH BALLOT.
9. ALL BALLOTS MUST BE FULLY EXECUTED TO BE COUNTED. IF A BALLOT IS TO BE EXECUTED BY AN AUTHORIZED PARTY OTHER THAN AN OFFICER OR EMPLOYEE OF THE CLAIMANT, OR AN ATTORNEY-AT-LAW ACTING FOR THE CLAIMANT, SUFFICIENT EVIDENCE OF THE AUTHORIZED PARTY'S AUTHORITY TO EXECUTE THE BALLOT MUST BE INCLUDED WITH THE BALLOT.

Claim Number XX

**Item 1. Principal Amount of Class 4 General Unsecured Claim.** The undersigned certifies that as of the Voting Record Date, October 29, 2013, the undersigned was the holder of a Class 4 General Unsecured Claim against the Debtors in the following amount:

\$XXX,XXX.XX

**Item 2. Class 4 General Unsecured Claim Vote.** The undersigned, a holder of a Class 4 General Unsecured Claim identified in Item 1 above votes as follows (check one box; if you fail to check one of the boxes below, or if you check both of the boxes below, but the Ballot is otherwise properly completed and returned, your Ballot will not be counted as either an acceptance or rejection of the Plan):

☐ ACCEPT the Plan.



☐ REJECT the Plan.



*[remainder of page intentionally left blank]*

Claim Number XX

**Item 3. Certifications and Acknowledgments.** By signing this Ballot, the undersigned acknowledges and certifies that:

- (a) the undersigned is the Holder of Class 4 General Unsecured Claim or has the power and authority to vote to accept or reject the Plan on behalf of the claimant;
- (b) the amount indicated in Item 1 is correct or, if incorrect, will be binding as indicated upon the undersigned for purposes of voting to accept or reject the Plan;
- (c) it has been provided with a Solicitation Package and understands that the solicitation of votes for the Plan is subject to all of the terms and conditions set forth in the Disclosure Statement and the Plan;
- (d) the solicitation of votes for the Plan is subject to all the terms and conditions set forth in the Disclosure Statement;
- (e) if this Ballot is validly executed, but does not indicate either acceptance or rejection of the Plan, or indicates both acceptance and rejection of the Plan, it will not be counted as either an acceptance or rejection of the Plan; and
- (f) the vote reflected on this Ballot is binding on its successors, heirs and assigns, including, without limitation, any transferee.

|  |                       |
|--|-----------------------|
| Name of Creditor (Please Print)                  | Street Address        |
| Tax Identification Number/Social Security Number | City, State, Zip Code |
| Authorized Signature                             | Telephone Number      |
| If by Authorized Agent, Name and Title           | Date Completed        |

This Ballot shall not constitute or be deemed a proof of claim or equity interest, an assertions of a claim or equity interest, or the allowance of a claim or equity interest.

<sup>2</sup> As indicated in the Instructions, evidence of authority must be included with this Ballot unless (i) the signatory is an officer or employee of the entity that is the creditor or (ii) the signatory is an individual creditor.



Claim Number XX

 31653437003650

NAME  
STREET ADDRESS  
CITY, STATE ZIP

SAMPLE

## **EXHIBIT 4**

**Atari, Inc., Atari Interactive, Inc., Humongous, Inc. &  
California U.S. Holdings, Inc.**

c/o BMC Group, Inc.  
P.O. Box 3020  
Chanhassen, MN 55317-3020

October 29, 2013

Re: Solicitation of Votes to Accept or Reject the Debtors' Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code

On September 20, 2013, Atari, Inc., Atari Interactive, Inc., Humongous, Inc. and California U.S. Holdings, Inc. as debtors and debtors in possession (collectively, the "**Debtors**") and Atari, S.A. (the "**Sponsor**" and collectively with the Debtors, the "**Proponents**") filed the following documents with the United States Bankruptcy Court for the Southern District of New York (the "**Bankruptcy Court**"):

- (a) Disclosure Statement for the Debtors' Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code; and
- (b) Debtors' Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code (as amended from time to time and including all exhibits and supplements thereto, the "**Plan**").

On September 20, 2013, the Proponents also filed the Motion for an Order Approving the Debtors' Disclosure Statement and Establishing Solicitation and Voting Procedures with Respect Thereto (the "**Disclosure Statement Motion**"). On October 25, 2013, the Debtors filed the Amended Disclosure Statement for the Debtors' Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code (the "**Disclosure Statement**").

On October 29, 2013, the Bankruptcy Court entered an order (the "**Disclosure Statement Order**") approving the Disclosure Statement and the relief sought in the Disclosure Statement Motion, which, among other things, approved certain procedures with respect to the solicitation of votes to accept or reject the Plan. A hearing on confirmation of the Plan (the "**Confirmation Hearing**") currently is scheduled to commence on December 5, 2013 at 10:00 a.m. (prevailing Eastern Time). A supplement to the Plan and/or Disclosure Statement may be filed on or before ten (10) days before the Confirmation Hearing.

**You have received this letter and the enclosed materials because you may be entitled to vote on the Plan.**

The enclosed materials constitute the Proponents' "**Solicitation Package**" and consist of the following:

- (a) this cover letter;
- (b) a CD-ROM containing the following:

- (i) the approved form of the Amended Disclosure Statement (with the Plan annexed thereto and other exhibits); and
  - (ii) the Disclosure Statement Order (without exhibits), as approved by the Bankruptcy Court;
- (c) the appropriate form of Ballot<sup>1</sup> and instructions with respect thereto; and
- (d) a letter from the Creditors' Committee regarding acceptance of the Plan, to the extent such letter is provided to the Debtors by the Creditors' Committee sufficiently in advance of production of the Solicitation Package to allow inclusion.

The Board of Directors of each of the Debtors has approved the filing and solicitation of the Plan. The Proponents believe that the acceptance of the Plan is in the best interests of the holders of Claims against and Interests in each of the Debtors. Moreover, the Proponents believe that any alternative other than confirmation of the Plan could result in extensive delays and increased administrative expenses, thereby resulting in smaller distributions or no distributions at all on account of Claims or Interests.

**THE PROPONENTS THEREFORE RECOMMEND THAT ALL ENTITIES ENTITLED TO VOTE SUBMIT A TIMELY BALLOT VOTING TO ACCEPT THE PLAN.**

The materials in the Solicitation Package are intended to be self-explanatory. If you have any questions, however, please feel free to contact the Solicitation Agent by mail at BMC Group, Inc., Attn: Atari Claims Processing, PO BOX 3020, Chanhassen, MN 55317-3020 or by phone at (888) 909-0100.

Sincerely,

/s/ *Kristen J. Keller*

Name: Kristen J. Keller

Title: EVP & General Counsel

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<sup>1</sup> Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Amended Disclosure Statement, the Disclosure Statement Motion or the Disclosure Statement Order, as applicable.

## **EXHIBIT 5**



October 14, 2013

The General Unsecured Creditors  
of Atari, Inc., et al.

**RE: Recommendation of Creditors' Committee in Favor of Chapter 11 Plan of  
Reorganization**

Dear Creditor:

The undersigned are counsel and financial advisors to the official committee of unsecured creditors (the "Committee") of Atari, Inc. and its affiliated debtors and debtors-in-possession (the "Debtors"). The Committee supports the Debtors' chapter 11 plan of reorganization (the "Plan") and urges you to vote to accept the Plan. Copies of the Plan and related disclosure statement (the "Disclosure Statement") are being distributed to each holder of a claim against the Debtors who is entitled to vote to accept or reject the Plan, along with a ballot with which to cast its vote.

Since its appointment on February 6, 2013, the Committee has participated in all aspects of these bankruptcy cases, including the sale and marketing processes related to the Debtors' assets. In addition, the Committee has been integrally involved in negotiations with the Debtors and Atari, S.A. (the "Plan Sponsor") regarding the Plan. The Debtors' Plan accomplishes several significant goals for the Committee's constituency, which consists of vendors of goods, service providers and litigation claimants, including the following:

- (i) the Plan Sponsor, whose own claims against the Debtors will not be repaid under the Debtors' Plan, agrees to make a cash contribution (the "Sponsor Cash Contribution") in the amount of \$3,419,000 in addition to contributing various non-monetary consideration totaling an additional \$1,749,000;
- (ii) a portion of the Sponsor Cash Contribution will be used to fund an initial distribution to holders of allowed general unsecured claims in an amount equal to the lesser of (a) 8% of such holder's allowed general unsecured claim and (b) such holder's pro rata share of \$560,000;
- (iii) the Sponsor also agrees to make a cash payment on the first anniversary of the Effective Date to be distributed to holders of allowed general unsecured claims in an amount equal to the lesser of (a) eight percent (8%) of such holder's allowed general unsecured claim and (b) such holder's pro rata share of \$560,000.00 (the "Second GUC Distribution");
- (iv) the Sponsor also agrees to make a cash payment on the second anniversary of the Effective Date to be distributed to holders of allowed general unsecured claims in an amount equal to the lesser of (a) nine percent (9%) of such holder's allowed general unsecured claim and (b) such holder's pro rata share of \$630,000.00 (the "Third GUC Distribution");



October 14, 2013  
Page Two

- (v) in support of its obligations under the Plan to make the Second GUC Distribution and Third GUC Distribution, the Sponsor will enter into a promissory note secured by a first priority lien on all assets of the Reorganized Debtors;
- (vi) the Plan Sponsor has further agreed to fund \$50,000 to the Committee Designee who will be responsible for making the Second GUC Distribution and the Third GUC Distribution as well as for monitoring and enforcing the obligations of the Reorganized Debtors under the Secured GUC Note;
- (vii) the Plan Sponsor has also agreed to waive any right to receive distributions on account of its intercompany claims totaling in excess of \$260 million;
- (viii) the Reorganized Debtors and the Plan Sponsor agree not to pursue avoidance actions, including preference actions, against any current or former trade creditors; and
- (ix) rather than face a protracted and uncertain litigation over the validity, extent and priority of the liens and claims against the Debtors' estates held by the Plan Sponsor and other parties, unsecured creditors are guaranteed a distribution on account of their allowed claims as set forth above and more fully in the Plan.

The beneficial aspects of the Plan described above are fully contingent on acceptance of the Plan by the Debtors' general unsecured creditors. If the class of general unsecured creditors does not vote to accept the Plan, the Debtors and Plan Sponsor will preserve the ability to pursue avoidance actions against current and former vendors, and no amounts will be contributed to fund the distributions described above.

As a result of the Plan, the Reorganized Debtors' will retain Atari's classic intellectual property, among other assets not previously sold to third parties. In addition, if the Plan is approved, preference and other avoidance actions will not be pursued against the Debtors' current and former trade creditors, except as otherwise noted in the Plan. Finally, as stated above, the Plan Sponsor has agreed to fund distributions to general unsecured creditors. The Debtors believe that there were approximately \$6.2 million in general unsecured claims outstanding as of the Petition Date, excluding potential duplicative claims. If the amount of general unsecured claims ultimately allowed is \$7 million or less, then holders of allowed general unsecured claims will stand to receive distributions, over the course of the next 2 years, totaling approximately 25% of the allowed amount of such claims.

The Committee voted to support the Plan because it believes that acceptance of the Plan is in the best interests of the holders of general unsecured claims. The Committee concluded that the relief provided for in the Plan, including the meaningful distribution to unsecured creditors, represents a substantial improvement over the recovery that unsecured creditors might expect under chapter 7 of the Bankruptcy Code. **Accordingly, the Committee recommends that creditors vote in favor of the Plan by so indicating on the enclosed ballot.** However, you should make your own determination on whether to accept or reject the Plan after reading and giving careful consideration to both the Plan and Disclosure Statement, and in consultation with your own advisors and professionals.

## **EXHIBIT A**



## Atari

Total number of parties: 2

### Exhibit A - Solicitation (suppl)

| Svc Lst | Name and Address of Served Party  | Mode of Service     |
|---------|---|---------------------|
| 53745   | ACE AMERICAN INSURANCE COMPANY, C/O PAUL B. BECH, ESQUIRE - ACE GROUP, 436 WALNUT STREET - WA04K, PHILADELPHIA, PA, 19106     | US Mail (1st Class) |
| 53745   | WESTCHESTER FIRE INSURANCE COMPANY, C/O PAUL B. BECH, ESQUIRE - ACE GROUP, 436 WALNUT STREET - WA0RK, PHILADELPHIA, PA, 19106 | US Mail (1st Class) |

Subtotal for this group: 2