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Hearing Date and Time: February 14, 2013 at 10:00 a.m.  
Objection Deadline: February 7, 2013 at 4:00 p.m.

*Proposed Attorneys for Debtors and Debtors-in-Possession*

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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

**MOTION FOR AN ORDER ESTABLISHING  
PROCEDURES FOR INTERIM COMPENSATION  
AND REIMBURSEMENT OF EXPENSES OF PROFESSIONALS**

The above-captioned debtors and debtors-in-possession (collectively, the “Debtors”), by and through their proposed undersigned counsel, hereby move the Court for entry of an order substantially in the form attached hereto as **Exhibit A** (the “Proposed Order”), pursuant to sections 105(a) and 331 of Title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (as amended, the “Bankruptcy Code”), Rule 2016(a) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and Rule 2016-1 of the Local Bankruptcy Rules for the Southern District of New York (the “Local Rules”), establishing procedures for the interim compensation and reimbursement of expenses for professionals retained by order of this Court during these

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

chapter 11 cases (the “Motion”). In support of the Motion, the Debtors respectfully represent as follows:

### **I. Background**

1. On January 21, 2013 (the “Petition Date”), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code commencing the above-captioned chapter 11 cases. By an order [Docket No. 27] 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).

2. The Debtors continue to operate their businesses and manage their properties as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No request for the appointment of a trustee or an examiner has been made in these cases and no statutory committees have been appointed or designated.

3. A description of the Debtors’ businesses, the reasons for filing these chapter 11 cases and the relief sought from this Court to allow for a smooth transition into operations under chapter 11 is set forth in the *Declaration of Robert A. Mattes (I) In Support of Chapter 11 Petitions and First Day Motions and (II) Pursuant to Local Bankruptcy Rule 1007-2* [Docket No. 16], which was filed on January 22, 2013.

### **II. Jurisdiction, Venue and Predicates for Relief**

4. The Court has jurisdiction over this Motion pursuant to 28 U.S.C. § 1334 and the *Amended Standing Order of Reference M-431*, dated January 31, 2012 (Preska, C.J.). Venue in this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

5. The statutory predicates for the relief requested herein are sections 105(a) and 331 of the Bankruptcy Code, Bankruptcy Rule 2016, Local Rule 2016-1, and standing General Order

M-412, *Order Establishing Procedures for Monthly Compensation and Reimbursement of Expenses of Professionals*, dated December 21, 2010.

### **III. Relief Requested**

6. By the Motion, the Debtors seek the entry of an order establishing procedures for the payment of fees and reimbursement of expenses for professionals (collectively, “Professionals”) whose services are authorized by the Court pursuant to sections 327 or 1103 of the Bankruptcy Code and who are required to file applications for allowance of compensation and reimbursement of expenses pursuant to sections 330 and 331 of the Bankruptcy Code, Bankruptcy Rule 2016(a), and Local Rule 2016-1.

#### **A. Retention of Professionals**

7. By applications expected to be filed on or about January 31, 2013, the Debtors are seeking approval to retain and employ, pursuant to section 327 of the Bankruptcy Code: (i) Hunton & Williams LLP, as bankruptcy counsel; (ii) Protiviti Inc., as financial advisors; and (iii) an investment bank. The Debtors may also retain other professionals during the course of the chapter 11 cases if a need arises. A statutory committee of unsecured creditors may be appointed in these cases, and likely would retain counsel, and possibly other professionals, to represent it.

#### **B. The Proposed Interim Compensation Procedures**

8. The Debtors believe that establishing orderly procedures for the payment of Professionals will streamline the administration of these chapter 11 cases and otherwise promote efficiency for the Court, the Office of the United States Trustee for the Southern District of New York (the “U.S. Trustee”) and all parties in interest.

9. Specifically, the Debtors propose that the monthly payment of compensation and reimbursement of expenses of Professionals be structured as follows:

- (a) On or before the 20<sup>th</sup> day of each month following the month for which compensation is sought, each Professional seeking interim compensation will serve a monthly statement (a “Monthly Fee Statement”) by hand or overnight or electronic delivery, on the following parties (collectively, the “Notice Parties”): (i) the Debtors, Atari, Inc., Attn: Robert A. Mattes, CFO, 475 Park Avenue South, Twelfth Floor, New York, New York 10016; (ii) counsel to Debtors, Hunton & Williams LLP, 200 Park Avenue, 53<sup>rd</sup> Floor, New York, New York 10166-1036, Attn: Peter S. Partee, Sr., Esq.; (iii) counsel to DIP lenders, Bracewell & Giuliani LLP, 1251 Avenue of the Americas, 49<sup>th</sup> Floor, New York, New York 10020, Attn: Robert G. Burns, Esq.; (vi) counsel for any statutory committees appointed in these cases; and (v) the Office of the United States Trustee for the Southern District of New York, 271 Cadman Plaza East, Suite 4529, Brooklyn, New York 11201, Attn: Richard C. Morrissey, Esq.
- (b) On or before the 20<sup>th</sup> day of each month following the month for which compensation is sought, each Professional seeking interim compensation will file its Monthly Fee Statement with the Court; however, a courtesy copy need not be delivered to the presiding Judge’s chambers. The order approving the relief requested in this Motion does not alter the fee application requirements outlined in sections 330 and 331 of the Bankruptcy Code. Professionals still are required to serve and file interim and final applications for approval of fees and expenses in accordance with the relevant provisions of the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules.
- (c) Each Monthly Fee Statement must contain a list of the individuals and their respective titles (e.g., attorney, accountant or paralegal) who provided services during the statement period, their respective billing rates, the aggregate hours spent by each individual, a reasonably detailed breakdown of the disbursements incurred (no Professional should seek reimbursement of an expense which would otherwise not be allowed pursuant to the Court’s Administrative Orders or the United States Trustee Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses under 11 U.S.C. § 330 dated January 30, 1996), and contemporaneously maintained time entries for each individual in increments of tenths (1/10) of an hour.
- (d) In the event a Notice Party has an objection to the compensation or reimbursement sought in a particular Monthly Fee Statement, such Notice Party shall, by no later than the 15<sup>th</sup> day following service of the Monthly Fee Statement (the “Objection Deadline”), serve upon the Professional whose Monthly Fee Statement is objected to, with a copy to the other Notice Parties, a written “Notice of Objection to Fee Statement,” setting forth the nature of the objection and the amount of fees or expenses at issue.

- (e) In the event no objection is served by a Notice Party with respect to a Monthly Fee Statement prior to the Objection Deadline, the Debtors promptly shall pay eighty percent (80%) of the fees and one hundred percent (100%) of the expenses identified in such Monthly Fee Statement; provided, however, that any payment of fees or expenses to a Professional shall first be paid in the form of a reduction to any retainer held by such Professional in connection with its engagement by the Debtors.
- (f) If an objection to a Monthly Fee Statement is served in accordance with subparagraph (d) above, the Debtors shall withhold payment of that portion of the fees and expense reimbursements in such Monthly Fee Statement to which the objection is directed and promptly pay the remainder of the fees and disbursements in the percentages and in the form set forth in subparagraph (e) above.
- (g) In the event the objecting parties and the Professional are able to resolve their dispute following the service of an objection to a Monthly Fee Statement, and if the party whose Monthly Fee Statement was the subject of the objection serves on all of the Notice Parties a statement indicating that the objection has been withdrawn and describing in detail the terms of the resolution, then the Debtors shall promptly pay, in accordance with subparagraph (e) above, that portion of the Monthly Fee Statement that is no longer subject to an objection.
- (h) All objections that are not resolved by the parties shall be preserved and scheduled for hearing before the Court at the next interim or final fee application hearing to be heard by the Court in accordance with subparagraph (j) below.
- (i) The service of an objection in accordance with subparagraph (d) above shall not prejudice the objecting party's right to object to any fee application made to the Court in accordance with the Bankruptcy Code on any ground, whether raised in the objection or not. Furthermore, the decision by any party not to object to a Monthly Fee Statement shall not be a waiver of any kind or prejudice that party's right to object to any fee application subsequently made to the Court in accordance with the Bankruptcy Code.
- (j) Approximately every 120 days, but not more than every 150 days, each Professional shall serve and file with the Court an application for interim or final Court approval and allowance, pursuant to sections 330 and 331 of the Bankruptcy Code (as the case may be), of the compensation and reimbursement of expenses requested.
- (k) Any Professional who fails to file an application seeking approval of compensation and expenses previously paid under the order approving the relief requested in this Motion when due shall (i) be ineligible to receive

further monthly payments of fees or reimbursement of expenses as provided for under these procedures until further order of the Court, and (ii) may be required to disgorge any fees paid since retention or the last fee application, whichever is later.

- (l) The pendency of an application alleging or a Court order providing that payment of compensation or reimbursement of expenses was improper as to a particular Monthly Fee Statement shall not disqualify a Professional from the future payment of compensation or reimbursement of expenses as set forth above, unless otherwise ordered by the Court.
- (m) Neither the payment of, nor the failure to pay, in whole or in part, monthly compensation and reimbursement as provided herein shall have any effect on the Court's interim or final allowance of compensation and reimbursement of expenses of any Professional.
- (n) Counsel for any statutory committee may, in accordance with the foregoing procedure for monthly compensation and reimbursement of Professionals, collect and submit statements of expenses, with supporting vouchers, from members of the committee he or she represents; provided, however, that these reimbursement requests comply with the Court's Administrative Orders.

10. The Debtors further propose that all fees and expenses paid to Professionals under the procedures requested herein be subject to disgorgement until final allowance by the Court.

11. The Debtors further request that copies of interim and final fee applications (collectively, the "Applications") are to be served only upon Notice Parties and that all other parties who have filed a request for service pursuant to Bankruptcy Rule 2002 be entitled to receive only notices of hearings on the Applications (the "Hearing Notice").<sup>2</sup> Because the Applications are anticipated to be voluminous, the Debtors submit that serving the Applications and the Hearing Notices in this manner will permit the parties most active in these chapter 11 cases to review and object to the Professionals' fees efficiently and will save the estates from having to pay for unnecessary duplication and mailing expenses.

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<sup>2</sup> If any party that has received only a Hearing Notice requests a copy of any fee applications, the Debtors will furnish that party with the requested copies at the Debtors' expense.

12. The procedures proposed above will enable the Debtors to closely monitor the costs of administration, maintain level cash flow and implement efficient cash management procedures. Moreover, these procedures also will allow the Court and the key parties in interest to ensure the reasonableness and necessity of the compensation and reimbursement sought pursuant to such procedures.

#### **IV. Basis for Relief Requested**

13. Section 331 of the Bankruptcy Code provides in relevant part, as follows:

A trustee, an examiner, a debtor's attorney, or any professional person employed under section 327 or 1103 of this title may apply to the court not more than once every 120 days after an order for relief in a case under this title, or more often if the court permits, for such compensation for services rendered before the date of such an application or reimbursement for expenses incurred before such date as is provided under section 330 of this title.

11 U.S.C. § 331.

14. In addition, section 105(a) of the Bankruptcy Code provides, in relevant part, that “[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). Furthermore, Local Rule 2016-1 and General Order M-412 specifically authorize the use of interim compensation procedures.

15. Factors relevant in deciding whether to establish interim compensation procedures include “the size of [the] reorganization cases, the complexity of the issues involved, and the time required on the part of the attorneys for the debtors in providing services necessary to achieve a successful reorganization of the debtors.” In re Int'l Horizons, Inc., 10 B.R. 895, 897 (Bankr. N.D. Ga. 1981) (establishing procedures for monthly interim compensation). The size of these chapter 11 cases and the amount of time and effort that will be required from the Professionals to successfully reorganize the Debtors' businesses justifies the interim compensation procedures requested herein. Indeed, such interim compensation procedures are

necessary to ensure that Professionals are fairly and timely compensated for their services in these chapter 11 cases and not forced to bear undue financial burden or risk caused by delay in payment.

16. Courts in this district regularly have granted relief similar to the relief requested herein. See, e.g., In re Hawker Beechcraft, Inc., Case No. 12-11873 (Bankr. S.D.N.Y. May 31, 2012); In re Grubb & Ellis Co., Case No. 12-10685 (Bankr. S.D.N.Y. Mar. 16, 2012); In re Eastman Kodak Co., Case No. 12-10202 (Bankr. S.D.N.Y. Feb. 15, 2012); In re Credit-Based Asset Servicing and Securitization LLC, Case No. 10-16040 (Bankr. S.D.N.Y. Dec. 6, 2010); In re Ciena Capital LLC f/k/a Business Loan Express, LLC, Case No 08-13783 (Bankr. S.D.N.Y. Oct. 22, 2008).

17. The Debtors respectfully submit that the interim compensation procedures sought herein are appropriate in light of the foregoing. The Debtors further submit that such procedures substantially comply with the guidelines promulgated by this Court pursuant to Local Rule 2016-1 and General Order M-412.

#### V. Notice

18. Notice of this Motion has been provided to: (a) the U.S. Trustee; (b) counsel to Alden Global Distressed Opportunities Master Fund, L.P., Alden Global Value Recovery Master Fund L.P., and Turnpike Limited; (c) the creditors holding the thirty (30) largest unsecured claims against the Debtors' estates on a consolidated basis, as identified in the Debtors' chapter 11 petitions; (d) counsel for Atari, S.A., (e) the Internal Revenue Service; (f) the New York State Attorney General; and (g) all parties that have filed a notice of appearance or have requested service in these chapter 11 cases. In light of the nature of the relief requested herein and the potential harm to the Debtors' estates if the relief requested herein is not granted, the Debtors respectfully submit that no other or further notice need be provided.



**VI. No Prior Request**

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

WHEREFORE, the Debtors respectfully request that the Court (a) enter an order, substantially in the form of the Proposed Order, granting the relief requested herein, and (b) grant to the Debtors such other and further relief as the Court may deem just and proper.

Dated: New York, New York  
January 31, 2013

Respectfully submitted,

*/s/ Peter S. Partee, Sr.* \_\_\_\_\_

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