

AKIN GUMP STRAUSS HAUER & FELD LLP
One Bryant Park
New York, New York 10036
Telephone: (212) 872-1000
Facsimile: (212) 872-1002
Ira S. Dizengoff
Kristine G. Manoukian

Robert S. Strauss Building
1333 New Hampshire Avenue, N.W.
Washington, DC 20036-1564
Telephone: (202) 887-4000
Facsimile: (202) 887-4288
Scott L. Alberino (*Admitted Pro Hac Vice*)

Counsel to the Debtors and Debtors in Possession

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

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

**DECLARATION OF KRISTEN J. KELLER IN SUPPORT OF CONFIRMATION
OF THE DEBTORS’ JOINT PLAN OF REORGANIZATION
UNDER CHAPTER 11 OF THE BANKRUPTCY CODE**

Pursuant to 28 U.S.C. § 1746, I, Kristen J. Keller, declare as follows:

1. I am Executive Vice-President and General Counsel for the above-captioned debtors and debtors in possession (collectively, the “Debtors”).

2. I am duly authorized to make and submit this declaration (the “Declaration”) on behalf of the Debtors. In my capacity as Executive Vice-President and General Counsel of the Debtors, I am generally familiar with all aspects of the Debtors’ financial affairs, business operations and reorganization efforts.

¹ The “*Debtors*” are: Atari, Inc.; Atari Interactive, Inc.; Humongous, Inc.; and California U.S. Holdings, Inc.

3. I submit this declaration in support of confirmation of the *Debtors' Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code* (as amended and supplemented, the "Plan").² I am familiar with the terms and conditions of the Plan, the Disclosure Statement and all other documents related thereto, having participated in the negotiation and development of many features thereof.

4. All matters set forth in this declaration are based on: (a) my review of relevant documents; (b) my views, based upon my experience and knowledge of the Debtors' business operations, legal and financial affairs and restructuring efforts; or (c) as to certain restructuring issues, advice from the Debtors' advisors. If called to testify, I would testify to the facts set forth herein.

The Plan

5. Following the conclusion of the sales process in connection with the sale of certain of the Debtors' assets, the Debtors engaged in extensive discussions with Atari, S.A. ("S.A." or the "Sponsor"), Alden and the Creditors' Committee regarding the most efficient and value-maximizing path to conclude these Cases. After several weeks of intense negotiations, the parties reached an agreement regarding the terms of a chapter 11 plan, pursuant to which S.A. agreed to sponsor the Plan in exchange for retaining their equity interest in the Reorganized Debtors upon reorganization. The terms of the parties' agreement were memorialized initially in a restructuring term sheet (the "Term Sheet") and subsequently in the Plan and Disclosure Statement filed with the Court on September 20, 2013 [Docket Nos. 378, 379]. The Debtors filed an amended Disclosure Statement on October 25, 2013 [Docket No. 435]. Finally, the Debtors filed the Plan Supplement on November 27, 2013 [Docket No. 487].

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms the Plan.

6. On October 29, 2013, the Bankruptcy Court entered the Disclosure Statement Order [Docket No. 438] approving, among other things, the Disclosure Statement and solicitation procedures for purposes of voting on the Plan.

7. The Plan is supported by each of the Debtors' key stakeholders—the Creditors' Committee, Alden and S.A.

The Plan Satisfies Bankruptcy Code Section 1129

8. On the basis of my understanding of the Plan, the events that have occurred throughout the Cases and discussions I have had with the Debtors' advisors regarding various orders entered during the Cases and the requirements of the Bankruptcy Code, I believe that the Plan satisfies all of the applicable requirements of Bankruptcy Code section 1129(a).

A. The Plan Complies with Bankruptcy Code Section 1129(a)(1)

9. It is my understanding that Bankruptcy Code section 1129(a)(1) requires that the Plan comply with Bankruptcy Code sections 1122 and 1123. I believe that the Plan complies with each of these sections as follows:

- Bankruptcy Code Section 1122. Article III of the Plan provides for the classification of Claims and Interests in six individual Classes: (i) Class 1 – Priority Non-Tax Claims; (ii) Class 2 – Secured Tax Claims; (iii) Class 3 – Alden Secured Claim Against Atari, Inc.; (iv) Class 4 – General Unsecured Claims; (v) Class 5 – Sponsor Intercompany Claims; and (vi) Class 6 – Interests. Thus, the Plan designates the classification of Claims and Interests. Such classification complies with Bankruptcy Code section 1122(a) because each Class contains only Claims or Interests that are substantially similar to each other. Moreover, I believe that valid business, factual and legal reasons exist for the separate classification of the various Classes of Claims and Interests created under the Plan and the classifications were not done for any improper purpose. In addition, the creation of such Classes does not unfairly discriminate between or among holders of Claims or Interests.
- Bankruptcy Code Section 1123(a)(1). Article III of the Plan designates Classes of Claims, other than Claims of the type described in Bankruptcy Code sections 507(a)(1), 507(a)(2) and 507(a)(8).

- Bankruptcy Code Section 1123(a)(2). Article III of the Plan identifies that Claims or Interests in Classes 1, 2 and 6 are Unimpaired.
- Bankruptcy Code Section 1123(a)(3). Article IV of the Plan specifies the treatment of each Impaired Class under the Plan, including Classes 3, 4 and 5.
- Bankruptcy Code Section 1123(a)(4). Article IV of the Plan provides that the treatment of each Claim or Interest in each particular Class is the same as the treatment of each other Claim or Interest in such Class, unless the holder of a particular Claim agrees to less favorable treatment.
- Bankruptcy Code Section 1123(a)(5). The Plan provides for adequate means for its implementation. Specifically, articles II, VII, VIII, IX, X, XII and various other provisions of the Plan and the various documents and agreements set forth in the Plan Supplement provide adequate and proper means for the implementation of the Plan, including (a) the consolidation of the Debtors for certain purposes set forth in the Plan; (b) the sources of consideration for distributions under the Plan; (c) the continued corporate existence of the Reorganized Debtors after the Effective Date; (d) the implementation of distributions under the Plan; (e) procedures for treating Disputed Claims; (f) the assumption and assignment or rejection of the Debtors' Executory Contracts and unexpired leases; and (g) the vesting of the Debtors' assets and releases of liens.
- Bankruptcy Code Section 1123(a)(6). The Reorganized Debtors' amended certificates of incorporation, attached as Exhibit A to the Plan Supplement, prohibit the issuance of nonvoting equity securities to the extent prohibited by Bankruptcy Code section 1123(a)(6).
- Bankruptcy Code Section 1123(a)(7). The identities and affiliations of the initial members of the board and initial officers of each of the Reorganized Debtors as of the Effective Date are listed in Exhibit D to the Plan Supplement. The Postconfirmation Organizational Documents, which are deemed part of the Plan, describe the manner of the selection of additional members of the boards of directors of the Reorganized Debtors following the Effective Date. I believe that the selection of the initial directors and officers of each Reorganized Debtor was, is and will be consistent with the interests of holders of Claims and Interests and public policy.

10. Further, I am informed by the Debtors' counsel that Bankruptcy Code section 1123(b)(6) provides that a plan may "include any other appropriate provision not inconsistent with the applicable provisions of [the Bankruptcy Code]." In accordance with Bankruptcy Code section 1123(b)(6), based on my understanding of the law, I believe that the Plan contains settlement, release, exculpation and injunction provisions that are consistent with the applicable

provisions of the Bankruptcy Code and conform to the requirements of applicable case law within the Court of Appeals for the Second Circuit. The specific provisions of the Plan are incorporated by reference herein. To my knowledge, no party in interest has objected to the settlement, release, exculpation and injunction provisions contained in the Plan.

11. To the best of my knowledge, the releases given by the Debtors are a necessary and important aspect of the Plan. I believe that the Debtor Release provision is an important component of the Plan and is a valid exercise of the Debtors' business judgment. It is also my understanding that each release, exculpation, Third-Party Release, and Plan injunction provisions set forth in the Plan is warranted, appropriate and necessary in these Cases because the Released Parties and the Exculpated Parties played an integral role in the formulation of the Plan, including the settlements embodied therein, and have compromised aspects of their asserted Claims or other legal and/or equitable rights to reach the consensual resolution that allowed for the maximization and preservation of value for all of the Debtors' creditors. Moreover, each of the settlement, release, exculpation, Third-Party Release and Plan injunction provisions set forth in the Plan: (a) is an essential means of implementing the Plan pursuant to Bankruptcy Code section 1123(a)(6); (b) is an integral element of the transactions incorporated into the Plan; (c) confers material benefits on, and is in the best interests of, the Debtors, the Estates and all stakeholders in the Cases; (d) is important to the overall objectives of the Plan to finally resolve all Claims among or against the parties-in-interest in the Cases with respect to the Debtors; and (e) is consistent with Bankruptcy Code sections 105, 1123 and 1129, other applicable provisions of the Bankruptcy Code and applicable law.

B. The Plan Complies with Bankruptcy Code Section 1129(a)(2)

12. Based on my understanding and discussions with the Debtors' counsel, I believe that the Debtors have complied with the applicable provisions of the Bankruptcy Code, including

the disclosure and plan solicitation requirements of Bankruptcy Code sections 1125 and 1126. I believe it is undisputed that the Debtors complied with Bankruptcy Code section 1125 in light of this Bankruptcy Court's entry of the Disclosure Statement Order. Further, it is my understanding, based upon the *Declaration of Noticing and Balloting Agent Regarding Solicitation and Tabulation of Votes in Connection with the Debtors' Joint Plan of Reorganization* [Docket No. 486] (the "Voting Certification"), that the Debtors have properly solicited and tabulated votes with respect to the Plan. Accordingly, I believe that the Debtors have complied with Bankruptcy Code section 1129(a)(2).

C. The Plan Complies with Bankruptcy Code Section 1129(a)(3)

13. Based on my understanding and discussions with the Debtors' counsel, I believe that the Plan has been proposed in good faith, with the legitimate and honest purposes of reorganizing the Debtors' ongoing businesses and maximizing the value of the Debtors and the recovery to stakeholders. The Plan is the result of extensive, good faith, arm's length negotiations between the Debtors and their principal stakeholders—the Sponsor, the Creditors' Committee, Alden and their respective representatives. As noted above, the Plan and the Disclosure Statement, which reflect the culmination of such negotiations, are supported by each of the Debtors' key stakeholders. Moreover, the Plan was supported by all of the Debtors' creditors who voted on the Plan. I believe the support of the key stakeholders and the overwhelming acceptance of the Plan by holders of Claims entitled to vote on the Plan reflect the overall fairness of the Plan and the acknowledgement by the Debtors' creditors that the Plan has been proposed in good faith and for proper purposes.

D. The Plan Complies with Bankruptcy Code Section 1129(a)(4)

14. I have been informed that all payments made or to be made by the Debtors to their retained advisors for services or for costs and expenses in or in connection with the Cases, or in

connection with the Plan and incidental to the Cases, have been approved by, or are subject to the approval of, the Bankruptcy Court as reasonable. Thus, I believe that the Plan satisfies Bankruptcy Code section 1129(a)(4).

E. The Plan Complies with Bankruptcy Code Section 1129(a)(5)

15. I believe that the Debtors' disclosure of the proposed directors and officers of the Reorganized Debtors as set forth in Exhibit D of the Plan Supplement complies with Bankruptcy Code section 1129(a)(5), because the appointment and/or continuance of the proposed directors and officers is consistent with the interests of creditors and with public policy.

F. The Plan Complies with Bankruptcy Code Section 1129(a)(6)

16. The Plan does not provide for any changes in any rates subject to regulatory approval.

G. The Plan Complies with Bankruptcy Code Section 1129(a)(7)

17. I have been informed that the Bankruptcy Code requires that, with respect to each impaired Class of Claims and Interests, each holder of such Claim or Interest must either (a) accept the Plan or (b) receive or retain under the Plan property of a value, as of the Effective Date, that is not less than the value such holder would receive or retain if the Debtors were to be liquidated under chapter 7 of the Bankruptcy Code. For purposes of determining whether the Plan meets this requirement, the Debtors' financial advisor, Protiviti, has prepared, and I have reviewed, an estimated liquidation analysis. The results of that liquidation analysis are set forth in Exhibit C to the Disclosure Statement and explained further in the *Declaration of Guy Davis in Support of Confirmation of the Debtors' Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code* (the "Davis Declaration") filed concurrently herewith. As discussed in the Davis Declaration and based on my understanding of the Bankruptcy Code and discussions with

the Debtors' advisors, I believe this requirement of Bankruptcy Code section 1129(a)(7) has been satisfied.

H. The Plan Complies with Bankruptcy Code Section 1129(a)(8)

18. As set forth in the Voting Certification, each Class of Impaired Claims has accepted the Plan. Accordingly, the Plan satisfies the requirements of Bankruptcy Code section 1129(a)(8).

I. The Plan Complies with Bankruptcy Code Section 1129(a)(9)

19. Based on my own understanding as well as discussions with the Debtors' counsel, I believe that, except to the extent that the holder of a particular Claim has agreed to different treatment, the Plan provides treatment for Administrative Expense Claims, Priority Tax Claims, Professional Fee Claims and Priority Non-Tax Claims that is consistent with the requirements of Bankruptcy Code section 1129(a)(9). Additionally, with respect to U.S. Trustee Fees, the Debtors will pay all U.S. Trustee Fees that are due and owing as of the Effective Date on the Effective Date.

J. The Plan Complies with Bankruptcy Code Section 1129(a)(10)

20. I have been informed that Bankruptcy Code section 1129(a)(10) requires that if a Class of Claims is Impaired under the Plan, then at least one Class of Impaired Claims must accept the Plan without counting any acceptance of the Plan by any insider. It is my understanding that the Plan satisfies Bankruptcy Code section 1129(a)(10), as that section and the relevant case law have been explained to me, because the holders of Class 3, Class 4 and Class 5 Claims have voted to accept the Plan, determined in the case of Class 4 without including any acceptance of the Plan by any insider.

K. The Plan Complies with Bankruptcy Code Section 1129(a)(11)

21. Based on my understanding and discussions with the Debtors' counsel and financial advisor, I am aware that Bankruptcy Code section 1129(a)(11) permits a plan to be confirmed if it is feasible, *i.e.*, it is not likely to be followed by liquidation or the need for further financial reorganization. For purposes of determining whether the Plan meets this requirement, the Debtors have analyzed their ability to meet the obligations under the Plan. As part of the chapter 11 reorganization process, the Debtors have taken certain actions projected to improve financial performance. Specifically, the Debtors' have successfully implemented various profit-maximizing initiatives, including (i) streamlining their businesses and operations, (ii) discontinuing unprofitable game title marketing and maintenance, (iii) successfully selling a number of their franchises and refocusing their efforts on maximizing revenue from the remaining game titles, (iv) analyzing hundreds of executory contracts and the Debtors' leases to identify those that are beneficial to the Debtors' estates and seeking to reject those that are not and (v) engaging in numerous other cost-reduction initiatives to materially improve their cost structure. With these financial improvements accomplished, the Debtors anticipate that their cash on hand upon emergence, the amounts to be contributed by the Sponsor and the Reorganized Debtors' cash flow after the Effective Date will provide sufficient liquidity to meet all required obligations under the Plan.

22. Moreover, the Debtors' financial projections (the "Financial Projections") attached as Exhibit D to the Disclosure Statement forecast the Reorganized Debtors' ability to meet all future obligations relating to the operations of their businesses on a go-forward basis. I have been briefed on the contents and the development of the Financial Projections and believe them to be reasonable.

23. Based on the foregoing, I believe the Reorganized Debtors will have the ability to sustain viable operations and that confirmation of the Plan is not likely to be followed by liquidation or the need for further reorganization, thus satisfying the requirements of Bankruptcy Code section 1129(a)(11).

L. The Plan Complies with Bankruptcy Code Section 1129(a)(12)

24. Bankruptcy Code section 1129(a)(12) requires that the Debtors pay all fees owed pursuant to 28 U.S.C. § 1930. The Plan provides that the Debtors shall pay all fees due and owing to the U.S. Trustee, including quarterly fees payable under 28 U.S.C. § 1930(a)(6), plus interest due and payable under 31 U.S.C. § 3717 (if any) on all disbursements as of the Effective Date.

M. Compliance with Bankruptcy Code Section 1129(a)(13)

25. Because the Debtors have no retiree benefits obligations, it is my understanding that this section of the Bankruptcy Code is inapplicable.

N. Compliance with Bankruptcy Code section 1129(a)(14)

26. The Debtors are not obligated to pay any domestic support obligations, and therefore, this section of the Bankruptcy Code is inapplicable.

O. Compliance with Bankruptcy Code section 1129(a)(15)

27. The Debtors are not individuals, and therefore, this section of the Bankruptcy Code is inapplicable.

P. Compliance with Bankruptcy Code section 1129(a)(16)

28. The Debtors are not corporations or trusts that are not moneyed, business or commercial corporations or trusts, and therefore this section of the Bankruptcy Code is inapplicable.

Q. The Plan Complies with Bankruptcy Code Section 1129(c)

29. Other than the Plan, no other plan has been filed in the Cases. Accordingly, the requirements of Bankruptcy Code section 1129(c) have been satisfied.

R. The Plan Complies with Bankruptcy Code section 1129(d)

30. Bankruptcy Code section 1129(d) states “the court may not confirm a plan if the principal purpose of the plan is the avoidance of taxes or the avoidance of the application of section 5 of the Securities Act of 1933.” I believe that the Plan satisfies this provision. Significantly, no governmental or any other entity has raised any objection to the Plan on these grounds; indeed, all Priority Tax Claims will be paid in full pursuant to the Plan. As such, I submit that the Plan satisfies the requirements of Bankruptcy Code section 1129(d), as that section has been explained to me.

Request for a Waiver of Bankruptcy Rule 3020(e), 6004(h) and/or 7062

31. It is my understanding that the Debtors respectfully request that the Bankruptcy Court direct that the order confirming the Plan become effective immediately upon its entry notwithstanding the 14-day stay imposed by Bankruptcy Rule 3020(e), 6004(h) and/or 7062. Under the circumstances of the Cases, as I understand them, and given the overwhelming support of the Plan by affected creditors and the fact that no objections to confirmation of the Plan have been filed, I believe the request for waiver of the stay is reasonable.

Conclusion

32. Based on the foregoing, I respectfully submit that the Plan is reasonable, has been proposed in good faith and for proper purposes and is in the best interests of the Debtors, their Estates and creditors, and therefore, should be approved.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed this 4 day of December 2013.

/s/ Kristen J. Keller _____

Kristen J. Keller