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

In re:

ATARI, INC. *et al.*,
Debtors.¹

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 and stipulate (this “*Stipulation*”) to the disallowance and expunging of certain proofs of claim

¹ The Debtors are Atari, Inc., Atari Interactive, Humongous, Inc., and California U.S. Holdings, Inc.

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

SO ORDERED:

Dated: New York, New York
December 5, 2013



/s/ James M. Peck

Honorable James M. Peck
United States Bankruptcy Judge