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

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In re	: Chapter 11
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ATARI, INC., <i>et al.</i> ,	: Case No. 13-10176 (RG)
	::
Reorganized Debtors. <sup>1</sup>	: (Jointly Administered)
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**RESPONSE OF WAL-MART STORES, INC. TO REORGANIZED DEBTORS’ SECOND OMNIBUS OBJECTION TO CERTAIN CLAIMS (CLAIMS THAT CONTRADICT THE DEBTORS’ BOOKS AND RECORDS, IMPROPERLY CLASSIFIED CLAIMS AND LATE FILED CLAIM)**

Wal-Mart Stores, Inc., together with its affiliates and subsidiaries (collectively, “Wal-Mart”), by and through its counsel, Chadbourne & Parke LLP, hereby files this response (the “Response”) to the Reorganized Debtors’ Second Omnibus Objection to Certain Claims (Claims that Contradict the Debtors’ Books and Records, Improperly Classified Claims, and Late Filed Claim) [D.E. 529] (the “Omnibus Objection”). In support of its Response, Wal-Mart respectfully states as follows:

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

## **BACKGROUND**

1. On January 21, 2013 (the “Petition Date”), each of the Reorganized Debtors filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”).

2. On March 21, 2013, this Court entered an order [D.E. 157] (the “Bar Date Order”) that established April 30, 2013 as the last day for non-governmental creditors to file proofs of claim asserting claims against any of the (now) Reorganized Debtors on account of debts that arose prior to the Petition Date.

3. In compliance with the Bar Date Order, on April 26, 2013, Wal-Mart filed proof of claim number 175 (the “Claim”) against Atari, Inc. (“Atari”), asserting a general unsecured claim in the amount \$163,782.86. In support of its Claim, Wal-Mart attached in excess of two-hundred and fifty pages of supporting documents.

4. On January 17, 2014, the Reorganized Debtors filed the Omnibus Objection, asking this Court to reduce the Claim to \$58,204.92 on the sole grounds that the Claim “do[es] not correspond with the amount set forth in the Debtors’ Books and Records.” Omnibus Objection ¶ 4.

## **RESPONSE**

5. The Omnibus Objection should be overruled with respect to Wal-Mart’s Claim, and the Claim should be allowed in the full asserted amount of \$163,782.86, because the Claim is well-supported by evidence that has not been meaningfully rebutted by the Reorganized Debtors.

6. “[A] proof of claim executed and filed in accordance with [the Bankruptcy Rules] constitutes *prima facie* evidence of the validity and amount of the claim.” Fed. R. Bankr. P. 3001(f). “Thus, when a claim is properly filed, the objecting party bears the initial burden of

persuasion, and must produce ‘evidence equal in force to the *prima facie* case . . . which, if believed, would refute at least one of the allegations that is essential to the claim’s legal sufficiency.’” In re Arcapita Bank B.S.C., No. 12–11076, 2013 WL 6141616, at \*1 (Bankr. S.D.N.Y. Nov. 21, 2013) (quoting In re Oneida, Ltd., 400 B.R. 384, 389 (Bankr. S.D.N.Y. 2009) (internal citations and quotations omitted)).

7. The Omnibus Objection, as it pertains to the Claim, must be denied because the Reorganized Debtors have not supported it with evidence “equal in force” to the *prima facie* case established by the Claim. The \$163,782.86 value of the Claim is well-supported by more than two-hundred and fifty pages of specific and detailed documentation. In contrast, the Omnibus Objection is supported only by a bare assertion regarding a purported conflict between the Reorganized Debtors’ books and records and the amount of the Claim.

8. The documentary support for the Claim established that Atari and Wal-Mart were party to certain supplier and cooperative agreements (the “Agreements”), pursuant to which Atari agreed to supply Wal-Mart with certain Merchandise (as defined in the Agreements) on the terms and conditions set forth therein. The Agreements provided that (a) Atari was permitted to invoice Wal-Mart on account of all Merchandise shipped to Wal-Mart and (b) Wal-Mart was entitled to credits against such invoices for Merchandise that (i) was not received by Wal-Mart, (ii) was damaged or (iii) Wal-Mart was unable to sell. Additionally, the Agreements contained guarantees that Atari would provide all Merchandise to Wal-Mart at the best price available, and required Atari to reimburse Wal-Mart when Atari invoiced Wal-Mart for shipped Merchandise and subsequently reduced the price of such Merchandise (an arrangement known as “price protection”).

9. The documentary support for the Claim contained a comprehensive statement of amounts due and owing under the Agreements as of the Petition Date, including amounts owed by Wal-Mart for Merchandise shipped by Atari and amounts owed by Atari on account of both (a) unreceived, damaged or unsold Merchandise and (b) price protection reimbursements. This support established that, in aggregate, Atari was indebted to Wal-Mart for not less than \$59,939 under the Agreements as of the Petition Date.

10. In addition, as set forth in the addendum to the Claim and as provided for by the terms of the Agreements, shortly before filing the Claim, Wal-Mart performed an audit of payments previously made by and to Atari. That audit revealed an additional shortfall in Atari's required payments to Wal-Mart under the Agreements in the aggregate amount of \$103,844.00. Full supporting documentation for this additional amount, including related correspondence between Wal-Mart and Atari personnel, was likewise annexed to the Claim.

11. In the face of voluminous and detailed evidence that Atari owed Wal-Mart \$163,782.86 as of the Petition Date, the Reorganized Debtors have asked this Court to reduce Wal-Mart's Claim to \$58,204.92 on the sole basis that the Claim apparently does not match the Reorganized Debtors' books and records. See Objection at ¶ 4, Objection Schedule 1. Given that the majority of Wal-Mart's Claim arose as a result of audit-related items that would likely not have been reflected in the Reorganized Debtors' books and records, this discrepancy is not surprising. Indeed, almost the entirety of the difference between the correct asserted amount of the Claim and the smaller figure purportedly reflected in the Reorganized Debtors' books and records can be traced to these audit-related items. Moreover, a bare assertion of a discrepancy between the Reorganized Debtors' books and records and the Claim is not a proper basis for

reducing the Claim.<sup>2</sup> As the objecting parties, the Reorganized Debtors bear the burden of producing “evidence equal in force to the *prima facie* case” set forth in support of the Claim. A bare statement regarding the content of the Reorganized Debtors’ books and records, weighed against over two-hundred and fifty pages of documentary support for the Claim, cannot meet that burden. Accordingly, the Omnibus Objection should be overruled insofar as it relates to Wal-Mart’s Claim.

### **RESERVATION OF RIGHTS**

12. In the Omnibus Objection, the Reorganized Debtors purport to reserve their rights to assert further objections to the allowance of the Claim, stating that “the [Omnibus] Objection is without prejudice to the rights of the Reorganized Debtors or any other party in interest to object to any of the Disputed Claims on any grounds whatsoever . . . .” Omnibus Objection ¶ 25. While Wal-Mart views such a cumulative process as improper and unfair to claimants and reserves all rights related thereto, to the extent that the Court permits the Reorganized Debtors to raise further objections to the Claim, Wal-Mart hereby reserves all of its rights to address those objections in due course and to respond in any appropriate manner.

### **CONCLUSION**

WHEREFOR, Wal-Mart requests that this Court enter an Order (a) overruling the Omnibus Objection insofar as it relates to the Claim, (b) allowing the Claim in the amount of \$163,782.86 and (c) granting such other and further relief as is appropriate.

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<sup>2</sup> Indeed, given that debtors in bankruptcy are required to schedule debts reflected on their books and records, and creditors are generally not required to file proofs of claim on account of correctly scheduled debts, it is all but inevitable that filed proofs of claim will disagree with a debtor’s books and records.

Dated: New York, New York  
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