

**OLSHAN FROME WOLOSKY LLP**

Park Avenue Tower  
65 East 55<sup>th</sup> Street  
New York, New York 10022  
Michael S. Fox, Esq.  
Jordanna L. Nadritch, Esq.  
212.451.2300

*Counsel for the Reorganized Debtors*

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

In re:

ATARI, INC., et al.,

Reorganized Debtors.<sup>1</sup>

Chapter 11

Case No. 13-10176 (REG)

(Jointly Administered)

**NOTICE OF PRESENTMENT OF FINAL DECREE  
CLOSING CASES OF THE REORGANIZED DEBTORS**

PLEASE TAKE NOTICE that upon the motion, dated June 16, 2014 (the “Motion”) of the Reorganized Debtors in the above-captioned cases (the “Reorganized Debtors”) for entry of a final decree closing the chapter 11 cases of the Reorganized Debtors, Case No. 10-13779, the proposed Final Decree Closing Case of the Reorganized Debtors annexed to the Motion as Exhibit C (the “Proposed Final Decree”) will be presented to the Honorable Robert E. Grossman, United States Bankruptcy Judge, at the United States Bankruptcy Court, One Bowling Green, New York, New York on the **27<sup>th</sup> of June, 2014 at 12:00 noon**, unless a party in interest objects and requests a hearing.

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

PLEASE TAKE FURTHER NOTICE that unless a written objection to the Proposed Final Decree, with proof of service, is filed with the Clerk of the Court and a courtesy copy is delivered to the Bankruptcy Judge's chambers by the Objection Deadline, there will not be a hearing and the Proposed Final Decree may be signed.

PLEASE TAKE FURTHER NOTICE, that any responses or objections to the Proposed Final Decree must be in writing, conform to the Bankruptcy Rules and the Local Rules of the Bankruptcy Court, and be filed with the Bankruptcy Court electronically in accordance with General Order M-242 (General Order M-242 and the User's Manual for the Electronic Case Filing System ("ECF") can be found at [www.nyscb.uscourts.gov](http://www.nyscb.uscourts.gov), the official website for the Bankruptcy Court), by registered users of the Bankruptcy Court's filing system and, by other parties in interest, on a 3.5 inch disk, preferably in Portable Document Format (PDF), WordPerfect or any other Windows-based word processing format (with a hard copy delivered directly to Chambers of Judge Grossman) and shall be served in accordance with General Order M-242 so that they are received no later than **4:00 p.m.** (prevailing Eastern Time) on **June 24, 2014** by: (i) Olshan Frome Wolosky LLP, Park Avenue Tower, 65 East 55<sup>th</sup> Street, New York, New York 10022, Attention: Michael S. Fox, Esq. and/or Jordanna L. Nadritch, Esq.; and (ii) the United States Trustee for the Southern District of New York, U.S. Federal Office Building, 201 Varick Street, Suite 1006, New York, NY 10014, Attention: Richard C. Morrissey, Esq.

PLEASE TAKE FURTHER NOTICE that if no objection is timely filed, served and received in accordance with this notice, the Court may enter the Proposed Final Decree. If an objection is timely filed, served and received, a hearing will be held before the Honorable Judge Grossman, United States Bankruptcy Judge, at the United States Bankruptcy Court,

Southern District of New York, located at One Bowling Green, Courtroom 601, New York, New York 10004, at a date and time to be established by the Court.

Dated: New York, New York  
June 16, 2014

**OLSHAN FROME WOLOSKY LLP**

By: /s/ Michael S. Fox  
Michael S. Fox  
Jordanna L. Nadritch  
Park Avenue Tower  
65 East 55<sup>th</sup> Street  
New York, NY 10022

*Counsel for the Reorganized Debtors*

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New York, New York 10022  
Michael S. Fox, Esq.  
Jordanna L. Nadritch, Esq.  
212.451.2300

*Counsel for the Reorganized Debtors*

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

In re:

ATARI, INC., et al.,

Reorganized Debtors.<sup>1</sup>

Chapter 11

Case No. 13-10176 (JMP)

(Jointly Administered)

**REORGANIZED DEBTORS' MOTION FOR FINAL DECREE  
CLOSING CASES OF THE REORGANIZED DEBTORS**

Atari, Inc. and its affiliated debtors, as debtors and debtors in possession (together, the “Debtors”, now known as the “Reorganized Debtors”), by and through their undersigned counsel, respectfully submits this motion (the “Motion”) for entry of an order pursuant to section 350(a) of title 11 of the United States Code (the “Bankruptcy Code”) and Rule 3022 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) granting the final decree in, and closing, the above-captioned cases. In support of this Motion, the Reorganized Debtors respectfully represent as follows:

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<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 Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors continue to operate their businesses and manage their properties as debtors-in-possession pursuant to Bankruptcy Code sections 1107(a) and 1108. No request for the appointment of a trustee or an examiner has been made in these cases.

2. By an order 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) [Docket No. 27] under Case Number 13-10176 (the “Lead Case”). On February 6, 2013, the United States Trustee for the Southern District of New York (the “U.S. Trustee”) appointed the Official Committee of Unsecured Creditors (the “Committee”) [Docket No. 64].

3. On December 5, 2013, the Court entered the Findings of Fact, Conclusions of Law and Order Confirming the Debtors’ Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code [Docket No. 497] (the “Confirmation Order”). Among other things, the Confirmation Order confirmed the Debtors’ Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code [Docket No. 379] (the “Plan”), thereby authorizing the Debtors to implement the Plan in accordance with its terms.

4. On December 24, 2013, the Plan became effective (the “Effective Date”) and the Debtors filed the *Notice of (I) Entry of Confirmation Order, (II) Occurrence of the Effective Date and (III) Bar Dates for Filing Certain Claims* [ECF No. 523].

5. To date, the Plan has been substantially consummated and as contemplated and required by the Plan and the Confirmation Order, all documents and agreements necessary to implement and consummate the Plan were executed in accordance with the terms thereunder.

6. In accordance with the Plan, the Reorganized Debtors have made distributions as required with respect to all claims that have been allowed and have been filing all post-confirmation operating reports.

7. All expenses arising from the administration of the Debtor's estate, including court fees, 28 U.S.C. § 1930(a)(6) fees, professional fees, and expenses have been paid or will be paid<sup>2</sup> prior to the hearing date set for this Motion.

8. No other motions, contested matters, adversary proceedings, or other proceedings with respect to the Chapter 11 Case are pending before this Court. Accordingly, the Debtor submits that the Chapter 11 Case has been "fully administered" as required under section 350(a) of the Bankruptcy Code.

### **JURISDICTION**

9. This Court has jurisdiction to consider this motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

10. The statutory predicates for the relief requested herein are sections 350 and 105(a) of the Bankruptcy Code, as supplemented by Bankruptcy Rule 3022.

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<sup>2</sup> The Reorganized Debtors entered into a Deferred Payment Agreement with various professionals retained in the Cases, pursuant to which the Reorganized Debtors may defer payment of a portion of certain fees and expenses incurred during the course of Cases and such compensation shall be paid in accordance with the terms of the agreement and this Court's order approving final compensation and reimbursement of fees [Docket No. 559].

**RELIEF REQUESTED**

11. By this Motion, the Reorganized Debtors seek entry of a final decree (the “Final Decree”), pursuant to sections 350 and 105(a) of the Bankruptcy Code and Rule 3022 of the Bankruptcy Rules, closing the cases identified on **Exhibit A** hereto (the “Cases to be Closed”).

12. In addition, all applicable fees and disbursements made in connection with the Reorganized Debtors’ cases were made under the Lead Case, the Reorganized Debtors request that the requirement of Rule 3022-1 of the Local Bankruptcy Rules for the Southern District of New York (the “Local Rules”) that a consolidated closing report under the Lead Case be filed contemporaneously with the entry of a closing decree in the Lead Case or shortly thereafter.

13. The entry of a final decree in the Cases to be Closed will not prejudice any party’s rights and comports with the terms of the Confirmation Order. It is no longer necessary to keep the Reorganized Debtors Cases open as all matters have been resolved.

14. Significantly, the Debtors have shared this request and the proposed order with the United States Trustee and the United States Trustee supports the relief requested herein and the proposed final decree order reflects the United States Trustee’s comments.

15. Thus, the Reorganized Debtors respectfully submits that it is appropriate at this time to close the Cases to be Closed and enter a final decree.

**BASIS FOR RELIEF REQUESTED**

16. Section 350(a) of the Bankruptcy Code provides that “[a]fter an estate is fully administered and the court has discharged the trustee, the court shall close the case.” 11 U.S.C. § 350(a). Bankruptcy Rule 3022 further provides that “[a]fter an estate is fully administered in a chapter 11 reorganization case, the court, on its own motion or on motion of a party in interest, shall enter a final decree closing the case.” Fed. R. Bankr. P. 3022. Section 105(a) of the

Bankruptcy Code provides 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).

17. Although neither the Bankruptcy Code nor the Bankruptcy Rules define “fully administered,” the Advisory Committee’s Note to Bankruptcy Rule 3022 states that:

Factors that the court should consider in determining whether the estate has been fully administered include [:] (1) whether the order confirming the plan has become final, (2) whether deposits required by the plan have been distributed, (3) whether the property proposed by the plan to be transferred has been transferred, (4) whether the debtor or the successor of the debtor under the plan has assumed the business or management of the property under the plan, (5) whether payments under the plan have commenced, and (6) whether all motions, contested matters, and adversary proceedings have been finally resolved.

Fed. R. Bankr. P. 3022, Advisory Committee’s Notes (1991). The foregoing factors are meant as a guide for determining whether a case should be closed; not all factors must be satisfied. See, e.g., In re Gates Community Chapel of Rochester, Inc., 212 B.R. 220, 223-24 (Bankr. W.D.N.Y. 1997) (noting that list of factors in Advisory Committee’s Note to Bankruptcy Rule 3022 is non-exclusive and such factors need only be considered by court when deciding whether to close case); In re Mold Makers, Inc., 124 B.R. 766, 768-69 (Bankr. N.D. Ill. 1990) (finding that all factors in Advisory Committee’s Note to Bankruptcy Rule 3022 need not be present before entering final decree).

18. When deciding whether entry of a final decree is appropriate, courts also consider whether the plan of reorganization has been substantially consummated. See Walnut Assocs. v. Sidel, 164 B.R. 487, 493 (Bankr. E.D. Pa. 1994) (substantial consummation is one factor to be considered); Gates Community Chapel, 212 B.R. at 224 (same). Similar to the factors described above, substantial consummation is deemed to occur upon the following:

- A. transfer of all or substantially all of the property proposed by the plan to be transferred;

- B. assumption by the debtor or by the successor to the debtor under the plan of the business or of the management of all or substantially all of the property dealt with by the plan; and
- C. commencement of distribution under the plan.

11 U.S.C. § 1101(2).

19. Moreover, a bankruptcy court may issue a final decree closing a case and specifically except from such decree any matters pending before the court. *See, e.g., In re JMP Newcor Int'l, Inc.*, 225 B.R. 462 (Bankr. N.D. Ill. 1998) (case closed despite pending adversary proceeding); *In re Jr. Food Mart of Arkansas, Inc.*, 201 B.R. 522, 525 (Bankr. E.D. Ark. 1996) (same); *see also Jay Bee Enters.*, 207 B.R. at 538 (Bankruptcy Rule 3022 allows the court flexibility – it does not require a chapter 11 case be kept open until all allowed claims or statutory fees have been paid). Accordingly, this Court may, in its discretion, enter a final decree closing these Cases and retaining jurisdiction over any issues that may arise in connection with the Plan or the Debtors' Cases.

20. In these Cases, consistent with section 350 of the Bankruptcy Code, the Debtors' chapter 11 cases have been "fully administered", making it appropriate for the Court to enter a final decree closing these Cases. Specifically,

- the Confirmation Order is final and nonappealable;
- the Plan has gone effective;
- all property required to be transferred pursuant to the Plan has been transferred;
- the distributions and payments required to be made pursuant to the Plan have been made in accordance with the terms of the Plan; and
- the docket for these chapter 11 cases reflects that there are no adversary proceedings or contested matters pending before the Court.

21. The Reorganized Debtors anticipate no further administration of these estates. It remains possible, however, that the Creditors' Committee designee will perform various serviced

in connection with the terms of the Plan and monitoring and enforcing the obligations under the Secured GUC Note.

22. Finally, the Reorganized Debtors requests that this Court retain jurisdiction with respect to any disputes that arise in connection with the Plan or the Debtors' cases. Such retention is appropriate under 28 U.S.C. §1334 and accords with Article XIII of the Plan.

23. Based on the foregoing, the Reorganized Debtors submit that entry of a Final Decree closing the Cases to be Closed is warranted under the circumstances, without prejudice to the rights of the Reorganized Debtors to seek to reopen the Cases for good cause shown.

#### **The Closing Report**

24. In accordance with the requirements of Local Bankruptcy Rule 3022-1 (Closing Reports in Chapter 11 Cases), annexed hereto as **Exhibit "B"** is a copy of the Bankruptcy Closing Report which describes, among other things, (i) the fees and expenses awarded to the Debtors' attorneys retained by the Debtors in their chapter 11 cases and (ii) the distributions made under the Plan. The Bankruptcy Closing Report has also been filed with the Clerk of the Court contemporaneously herewith.

#### **NOTICE**

25. Notice of this Motion will be provided to: (a) the U. S. Trustee; (b) Bracewell & Giuliani LLP, counsel to Alden Global Value Recovery Master Fund, L.P.; (c) Allen & Overy, counsel to Atari, S.A.; (d) the Internal Revenue Service; (e) the New York State Attorney General; and (f) all other parties that have filed notices of appearance in these chapter 11 cases. The Reorganized Debtors submits that, under the circumstances, no other or further notice is required.

26. No previous motion for the relief sought herein has been made to this or any other court.

27. Because the authorities relied upon herein are set forth above, the Reorganized Debtors respectfully submit that the motion itself satisfies the requirements of Local Rule 9013-1(b) regarding the submission of a memorandum of law.

**CONCLUSION**

WHEREFORE, the Reorganized Debtors respectfully requests that the Court enter a Final Decree, substantially in the form annexed hereto as **Exhibit C**, granting the Motion and such other and further relief as may be just and proper.

Dated: New York, New York  
June 16, 2014

**OLSHAN FROME WOLOSKY LLP**

By: /s/ Michael S. Fox

Michael S. Fox  
Jordanna L. Nadritch  
Park Avenue Tower  
65 East 55<sup>th</sup> Street  
New York, New York 10022  
(212) 451-2300

*Counsel for the Reorganized Debtors  
(Successors to the Debtors and Debtors  
in Possession)*

**EXHIBIT A**

<b><u>Case Number</u></b>	<b><u>Name of Debtor</u></b>
13-10176	Atari, Inc.
13-10177	Atari Interactive, Inc.
13-10178	California U.S. Holdings, Inc.
13-10179	Humongous, Inc.

**EXHIBIT B**

Case Closing Report

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

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

**CLOSING REPORT IN CHAPTER 11 CASE**

To the best of my knowledge and belief, the following is a breakdown in this case:

FEES AND EXPENSES (from case inception):

\$3,610,047.04 FEE for ATTORNEY for DEBTOR

\$3,938,089.65 OTHER PROFESSIONAL FEES and ALL EXPENSES

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\$65,650.00 TRUSTEE FEE (if applicable)

N/A FEE for ATTORNEY for TRUSTEE (if applicable)

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N/A % DIVIDEND PAID/TO BE PAID

N/A FUTURE DIVIDENDS (check if % of future dividend under plan not yet able to be determined)

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\$895,019.61 INITIAL DISTRIBUTION UNDER THE PLAN COMPLETED (This initial distribution includes payments to General Unsecured Claims under the terms of the Plan, cure payments and priority claim payments).

\$970,477.54 OTHER: (explain) (This amount includes the balance of administrative claim payments and further distributions to General Unsecured Claims).

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

Dated: New York, New York  
June 16, 2014

**OLSHAN FROME WOLOSKY LLP**

By: /s/ Michael S. Fox  
Michael S. Fox  
Jordanna L. Nadritch  
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New York, New York 10022  
(212) 451-2300

*Counsel for the Reorganized Debtors*

**EXHIBIT C**

Proposed Final Decree

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

In re:

ATARI, INC., et al.,

Reorganized Debtors.<sup>1</sup>

Chapter 11

Case No. 13-10176 (JMP)

(Jointly Administered)

**FINAL DECREE CLOSING CASES OF THE REORGANIZED DEBTORS**

Upon the motion (the “Motion”) of the Reorganized Debtors in the above-captioned cases (the “Reorganized Debtors”), seeking entry of a final decree (the “Final Decree”) closing the cases of the Reorganized Debtors pursuant to sections 350(a) and 105(a) of title of the United States Code and Rule 3022 of the Federal Rules of Bankruptcy Procedure; and it appearing that notice was given in accordance with the Motion; and it appearing that no other or further notice is necessary; and the relief requested in the Motion being in the best interest of the Reorganized Debtors and their estates; and the Court having been satisfied that the Debtors have consummated their Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code, confirmed on December 5, 2013 (the “Plan”); and the Court having been satisfied that the docket maintained in the Debtors’ chapter 11 cases reflects the absence of any pending adversary proceedings or contested matters; and the Court having considered the record of the proceedings in the Debtors’ chapter 11 cases; and it being found that the closing of the Case will in no way prejudice the holder of an allowed claim’s rights to receive distributions under the Plan, nor will the closing of the Case otherwise alter or modify the terms of the Plan; and sufficient cause appearing therefore; it is hereby:

ORDERED, ADJUDGED and DECREED that:

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

1. The Motion is granted to the extent provided herein.
2. Capitalized terms that are not otherwise defined herein have the meanings ascribed to such terms in the Motion.
3. The cases of the Reorganized Debtors identified on Appendix 1 hereto (the “Cases”) will be closed effective as of the date of entry of this Final Decree, *provided, however*, that the Court shall retain such jurisdiction as is provided in Article XIII (Retention of Jurisdiction) of the Plan, and the entry of this final decree is without prejudice to the rights of the Reorganized Debtors or any party in interest to seek to reopen the Cases for good cause shown.
4. The Reorganized Debtors shall not be obligated to pay Quarterly Fees to the U.S. Trustee, pursuant to 28 U.S.C. § 1930(a)(6), for any period beyond the date of this Order; provided, however, that, within ten (10) business days of the date of entry of this Order, the Reorganized Debtor shall (i) provide the U.S. Trustee with all relevant disbursement information through the date of entry of this Order, and (ii) pay any Quarterly Fees through the date of entry of this Order.
5. All provisions of the Plan and the Confirmation Order shall remain in full force and effect.
6. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation or interpretation of this Order.

Dated: New York, New York  
June \_\_, 2014

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HONORABLE ROBERT E. GROSSMAN  
UNITED STATES BANKRUPTCY JUDGE

**Appendix 1**

<b><u>Case Number</u></b>	<b><u>Name of Debtor</u></b>
13-10176	Atari, Inc.
13-10177	Atari Interactive, Inc.
13-10178	California U.S. Holdings, Inc.
13-10179	Humongous, Inc.