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

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

**DECLARATION OF FRÉDÉRIC CHESNAIS IN SUPPORT OF
OPPOSITION OF ATARI, S.A., ATARI EUROPE, SAS, AND THE REORGANIZED
DEBTORS TO MOTION OF ALDEN GLOBAL VALUE RECOVERY MASTER FUND,
L.P. TO REOPEN THESE CHAPTER 11 CASES, REQUIRE COMPLIANCE WITH
THE CHAPTER 11 PLAN AND CONFIRMATION ORDER, AND ENJOIN
FURTHER VIOLATIONS BY THE DEBTORS AND AFFILIATES**

¹ The Reorganized Debtors are Atari Inc., Atari Interactive, Inc., Humongous, Inc., and California US Holdings, Inc.

I, Frédéric Chesnais, declare as follows pursuant to 28 U.S.C. § 1746:

1. I am CEO and Chairman of the Board of Atari, S.A., the French parent company that owns, directly or indirectly, Atari Interactive, Inc., California U.S. Holding, Inc., Atari, Inc. and Humongous, Inc. (collectively, the “**Atari U.S. Subsidiaries**”). Atari, S.A. is a publicly traded company on the French stock exchange, and is also the parent of Atari Europe, SAS.

2. I have served as CEO and Chairman of the Board for Atari, S.A. for approximately three years.

3. In my capacities as CEO and Chairman of the Board, I am responsible for and familiar with the business operations of the Atari family of companies, the bankruptcy filings of the Atari U.S. Subsidiaries and proceedings in connection therewith, and the Credit Facility Agreement discussed below. I am familiar with the matters set forth herein, and make this Declaration in support of the Opposition of Atari, S.A., Atari Europe, SAS, and the Reorganized Debtors to the Motion of Alden Global Value Recovery Master Fund, L.P. to Reopen These Chapter 11 Cases, Require Compliance with the Chapter 11 Plan and Confirmation Order, and Enjoin Further Violations by the Debtors and Affiliates (the “**Motion**”).

The Credit Agreement

4. On April 26, 2006, Atari Europe, SAS (“**Atari Europe**”) (along with several co-borrowers later removed from the loan) entered into a €20 million Credit Facility Agreement (the “**Credit Agreement**”) with Banc of America Securities Limited (“**Banc of America**”), with Infogrames Entertainment, SA (renamed “Atari S.A.” in 2009) as guarantor.

5. On December 10, 2009, Banc of America sold its rights as lender under the Credit Agreement to Bluebay Value Recovery (Master) Fund Limited (“**Bluebay**”).

Alden Acquires The Credit Agreement Loan Balance

6. On February 5, 2013, Alden Global Value Recovery Master Fund, L.P. (“**Alden**”), a subsidiary of Alden Global Capital LLC, purchased the loan from Bluebay (the “**Bluebay Transfer Agreement**”) and assumed the lender’s rights under the Credit Agreement. A true and correct copy of the Bluebay Transfer Agreement is attached as Exhibit A hereto.

7. Pursuant to the Bluebay Transfer Agreement, Alden acquired Atari Europe’s loan balance of approximately €22.5 million (approximately \$29.9 million at the 2013 exchange rate) for a substantially discounted price of approximately €3.5 million (approximately \$4.7 million at the 2013 exchange rate).² See Ex. A, § 1.1 (outstanding loan amount was €21,978,966.60 with €504,692.02 in accrued interest as of that date); id., § 2.1 (“transfer price” was €3.5 million).

Alden And Atari Agree To Maturity Date Extensions And Atari Pledges Certain Assets

8. During the bankruptcy proceedings of the Atari U.S. Subsidiaries, between March 29, 2013 and December 4, 2013, Atari Europe and Alden mutually agreed to extend the maturity date of the Credit Agreement on numerous occasions. These binding extensions were entered into outside of the bankruptcy proceedings. See Amendment 16 to Credit Agreement, a true and correct copy of which is attached hereto as Exhibit B, ¶ D.

9. On December 23, 2013, the Atari U.S. Subsidiaries entered into a Security Agreement with Alden (the “**Security Agreement**”), pledging their assets (the “**U.S. Assets**”) as collateral for Atari Europe’s obligations under the Credit Agreement. A true and correct copy of the Security Agreement is attached hereto as Exhibit C.

² For ease of reference, this Declaration applies a notional 1:1.33 EUR:USD exchange rate for all amounts listed in Euros in 2013. Conversions based on this notional exchange rate are provided solely for the convenience of the Court and do not imply any substantive claim or admission about the actual amounts due under any agreement at any time.

10. On or about December 24, 2013, Atari Europe, SAS, Atari, S.A. and Alden executed Amendment No. 16 to the Credit Agreement, in which the parties agreed to postpone the final maturity date of the Credit Agreement until September 30, 2015. Under Amendment No. 16, the first payment of interest was to be made on March 31, 2015. See Ex. B.

11. On December 9, 2014, Alden, Atari, S.A., and Atari Europe entered into an agreement to, among other things, suspend all interest and principal payments under the Credit Agreement until September 30, 2015 (the “**Forbearance Agreement**”).³ A true and correct copy of the Forbearance Agreement is attached as Exhibit D hereto.

12. Concurrently with the Forbearance Agreement, the parties executed Amendment 17 to the Credit Agreement which, among other things, gave Atari Europe the option of making an early €5 million repayment by March 31, 2015 and extending the maturity date for the balance of the loan until April 1, 2017. See Amendment 17 to Credit Agreement, a true and correct copy of which is attached hereto as Exhibit E, §§ 3.1-3.3. Alternatively, if Atari Europe did not exercise the foregoing option, the maturity date of the Credit Agreement would remain unchanged at September 30, 2015. See id., § 3.1.

13. Thus, regardless of whether Atari Europe exercised its early repayment option under Amendment 17, the Forbearance Agreement provides that no interest or principal payments were to be due until, at the earliest, September 30, 2015. See Ex. D.

Atari Discovers TEG Errors

14. In or about March 2015, Atari Europe discovered that the effective global rate (Taux Effectif Global (“**TEG**”)) provided in the Credit Agreement was incorrect. Therefore, on

³ For clarification, Section 3.3 of Amendment 17 to the Credit Agreement, also dated December 9, 2014, is labeled “Standstill Agreement.” That section is entirely separate from the December 9, 2014 letter defined as the “Forbearance Agreement” herein.

March 30, 2015, I sent a letter on behalf of Atari to Alden's general counsel advising Alden, in relevant part, as follows:

We were in the process of reviewing the computation of the interest paid to date when we realized that the effective global rate (*Taux Effectif Global*) ("TEG") provided pursuant to Section 10.5 of the Term Loan was wrong.

Pursuant to articles 1907 of the French Civil Code and L. 313-2 of the French Consumer Code, the interest rate of the Term Loan shall be replaced by the French legal interest rate, as this is published every year by the French state, for any period for which an incorrect TEG has been provided.

The interest rate applied under the Term Loan has always been greater than the French legal interest rate.

We are currently finalizing the calculation of the overpayments. We will provide you, as soon as practicable, with detailed calculations of the amount of interest which should have been paid in applying the French legal interest rate and of the excess interest payments which have been made, and the resulting balance under the Term Loan.

A true and correct copy of the March 30, 2015 letter is attached as Exhibit F hereto.

15. By letter dated April 7, 2015, Alden responded to my March 30, 2015 letter and stated, among other things, that Alden was "not aware of any legal basis for" Atari's assertion that the "effective global rate . . . was wrong." A true and correct copy of the April 7, 2015 letter is attached as Exhibit G hereto.

16. On April 9, 2015, Alden sent a letter to Atari Europe asserting that Atari Europe had failed to make a scheduled interest payment due "on or before March 31, 2015." See April 9, 2015 Letter from Alden to Atari Europe, a true and correct copy of which is attached hereto as Exhibit H, ¶¶ 3, 5. Alden further asserted that Atari Europe's failure to make the March 31, 2015 interest payment without valid cause (such as an administrative or technical error) amounted to an Event of Default under the Credit Agreement. See id., ¶¶ 5-6, 9-11.

17. On April 15, 2015, Atari Europe responded to Alden's accusation of default by reminding Alden that the Forbearance Agreement suspended all interest payments until September 30, 2015 and, thus, no payment was due on March 31, 2015. See April 15, 2015 Letter from Atari Europe to Alden, a true and correct copy of which is attached as Exhibit I hereto.

18. On April 20, 2015, Alden repeated its assertion that Atari Europe's failure to make an interest payment on March 31, 2015 amounted to an Event of Default and disputed that the Forbearance Agreement had suspended any required payments. See April 20, 2015 Letter from Alden to Atari Europe, a true and correct copy of which is attached as Exhibit J hereto.

19. On May 27, 2015, Alden sent a letter to Atari Europe reiterating its position that an Event of Default had occurred on or about March 31, 2015. See May 27, 2015 Letter from Alden to Atari Europe, a true and correct copy of which is attached as Exhibit K hereto. On May 29, 2015, Atari Europe again responded and advised Alden that no Event of Default had occurred.

Atari Initiates French Conciliation Proceedings

20. As a result of the disagreement regarding the applicable interest rate and a purported Event of Default under the Credit Agreement, on April 9, 2015, counsel for Atari Europe and Atari S.A. requested that the President of the Commercial Court of Paris initiate a special commission (*mandat ad hoc*), a non-judicial proceeding, whereby a special commissioner (*mandataire ad hoc*) would be appointed to assist Atari Europe in negotiating with Alden, as detailed in the Declaration of David Malamed submitted contemporaneously herewith (the "**Malamed Declaration**"). On April 29, 2015, the special commissioner held a meeting with

Alden and Atari Europe, in an effort to reach an amicable resolution, but unfortunately, the meeting and the negotiations were unsuccessful.

21. Due to the failure of the special commission, counsel for Atari Europe and Atari S.A. requested that Atari Europe be placed in conciliation proceedings under French law, whereby a conciliator is appointed by the court for four months (which can be extended to five months), for the purpose of negotiating potential settlements with a company's creditors. See Malamed Decl., ¶¶ 8-9. By two orders dated July 2, 2015 and July 3, 2015, the President of the Commercial Court of Paris granted Atari's request for conciliation. See id., ¶ 10.

Alden Attempts To Sell Atari's Assets

22. While the conciliation proceedings were ongoing, on July 7, 2015, Alden sent a Notice of Public Sale of Collateral to Atari stating that Alden would commence with a public auction of the U.S. Assets on July 31, 2015 (the "**Sale Notice**"). See Sale Notice, a true and correct copy of which is attached hereto as Exhibit L. The Sale Notice further stated Alden's intent to sell the U.S. Assets as a block to a single purchaser (though bids for individual components of the U.S. Assets also would be considered) and reserved Alden's right to submit a credit bid to purchase the U.S. Assets itself. See id. And on July 17, 2015, Alden posted a one-page notice of the proposed July 31, 2015 sale in the *Wall Street Journal*. See WSJ Notice of Sale, a true and correct copy of which is attached as Exhibit M hereto.

23. Immediately following the Sale Notice, on July 10, 2015, counsel for Atari Europe and Atari S.A. commenced an action in the Commercial Court of Paris, seeking entry of a two-year, statutory grace period under French law with respect to Atari's obligations under the Credit Agreement (the "**Grace Period Action**"). See Malamed Decl., ¶ 11. The purpose of the Grace Period Action was two-fold: (1) obtain a two-year Grace Period under which payments under the Credit Agreement would be suspended; and (2) adjudicate the disagreement between

Alden and Atari regarding the applicable interest rate and the purported Event of Default under the Credit Agreement. See id., ¶¶ 11-16.

24. Moreover, on July 13, 2015, counsel for the Atari U.S. Subsidiaries sent correspondence to Alden explaining that there was no basis for Alden to claim that an Event of Default had occurred based on the fact that the Forbearance Agreement had frozen all required payments until September 30, 2015. See July 13, 2015 Letter from Brown Rudnick to DLA Piper, a true and correct copy of which is attached as Exhibit N hereto.

25. On July 23, 2015, the Commercial Court of Paris issued a judgment granting the grace period request (the “**Grace Period Order**”), the effect of which is that, for a period of two years after the date on which Alden was officially served with the Order: (1) payment of any sums due to Alden from Atari S.A. and Atari Europe are deferred; (2) all such deferred payments shall accrue interest at a reduced rate (*i.e.*, the French legal rate); (3) all alleged events of default with respect to payments under the Credit Agreement are cured, and (4) any enforcement proceedings by creditors against Atari Europe (the borrower), Atari S.A. (the guarantor) and the U.S. Subsidiaries (which have pledged collateral to secure Atari Europe’s loan) are stayed. The Grace Period does not expire until July 2017. See Malamed Decl., ¶¶ 15-16.

26. Following the entry of the Grace Period Order, Alden decided not to pursue the non-judicial foreclosure sale.

Atari’s Payments To Alden

27. In the Motion, Alden alleges that “neither Atari Europe nor its guarantor, Atari S.A. has made a single payment of interest to Alden under the restructured credit agreement under which they owe Alden more than €12 million in principal and accrued interest,” and that “[i]nstead of making their first post-reorganization interest payment to Alden when it came due on March 31, 2015, the Atari Entities commenced litigation in the Commercial Court of Paris...”

Motion, p. 2-3. These allegations are misleading, as between February 14, 2014 and March 6, 2015, Atari made total payments to Alden in the amount of € 8,444,331.60, as follows:⁴

28. In February 2014, Atari made a payment to Alden in the amount of € 932,472.50 for extension fees by remittance of Atari, S.A. securities.

29. On or about February 14, 2014, Atari made a payment to Alden in the amount of € 1,485,823.05 under the Credit Agreement, by remittance of Atari, S.A. securities.

30. On or about March 3, 2014, Atari made a payment to Alden in the amount of € 5,607,782.48 under the Credit Agreement, corresponding to the net proceeds above €3 million raised by Atari, S.A. through the issuance of securities.

31. On or about September 25, 2014, Atari made a payment to Alden in the amount of € 15.92 under the Credit Agreement.

32. On or about March 6, 2015, Atari made a payment to Alden in the amount of € 418,237.65 under the Credit Agreement, corresponding to 50% of the net proceeds raised by Atari, S.A. through the issuance of securities.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on January 21, 2016

/s/ Frédéric Chesnais
Frédéric Chesnais

⁴ By way of background, on November 30, 2013, outstanding interest in the amount of € 3,884,872.35 was capitalized (*i.e.* the interest was added to the principal outstanding). All subsequent payments made to Alden, therefore, would apply against the principal outstanding, including the foregoing capitalized interest.