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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	}	Chapter 11
ATARI, INC., <i>et al.</i> ,	}	Case No. 13-_____ (___)
Debtors. ¹	}	Joint Administration Requested

MOTION OF THE DEBTORS AND DEBTORS-IN-POSSESSION FOR ENTRY OF AN ORDER ESTABLISHING NOTICE AND SERVICE PROCEDURES

The above-captioned debtors and debtors-in-possession (collectively, the “Debtors”), by and through their proposed undersigned counsel, hereby move (the “Motion”) for entry of an order substantially in the form attached hereto as **Exhibit A** (the “Proposed Order”), pursuant to sections 102(1) and 105 of Title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (as amended, the “Bankruptcy Code”), Rules 2002(m), 9007 and 9036 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rule 2002-2 of the Local Bankruptcy Rules for the United States Bankruptcy Court for the Southern District of New York (the “Local Rules”), establishing certain notice and service procedures in connection with the administration of these chapter 11 cases. In support of this Motion, the Debtors submit the *Declaration of Robert A. Mattes (I) In Support of Chapter 11 Petitions and First Day Motions and (II) Pursuant*

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

to *Local Bankruptcy Rule 1007-2* (the "First Day Declaration"). In further support of the Motion, the Debtors respectfully represent as follows:

I. 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 commencing the above-captioned chapter 11 cases. The Debtors continue to operate their businesses and manage their properties as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. The Debtors have, pursuant to a separate motion, moved the Court for entry of an order authorizing joint administration of these chapter 11 cases.

2. No request for the appointment of a trustee or an examiner has been made in these cases and no statutory committees have been appointed or designated.

3. A description of the Debtors' businesses, the reasons for filing these chapter 11 cases and the relief sought from this Court to allow for a smooth transition into operations under chapter 11 is set forth in the First Day Declaration, which is being filed contemporaneously with this Motion.

II. Jurisdiction, Venue and Predicates for Relief Requested

4. The Court has jurisdiction over this Motion pursuant to 28 U.S.C. § 1334 and the *Amended Standing Order of Reference M-431*, dated January 31, 2012 (Preska, C.J.). Venue in this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

5. The predicates for the relief requested herein are sections 102(1) and 105 of the Bankruptcy Code, Bankruptcy Rules 2002(m), 9007 and 9036, and Local Rule 2002-2.

III. Relief Requested

6. By this Motion, the Debtors request that the Court approve certain notice and service procedures in connection with the administration of these chapter 11 cases. The Debtors request that, to the extent that any of the procedures conflict with the provisions of the Bankruptcy Code, the Bankruptcy Rules, or the Local Rules of this Court, the procedures shall govern.

IV. Basis for Relief Requested

7. Given the size and scope of these chapter 11 cases, manual service of all pleadings and other papers filed in these cases on each creditor and party-in-interest is unnecessary, and would be extremely burdensome and costly to the Debtors' estates as a result of photocopying and postage expenses as well as other expenses associated with such large mailings. Accordingly, the proposed procedures will maximize the efficiency and orderly administration of these chapter 11 cases, while at the same time ensuring that appropriate notice is provided, particularly to parties that have expressed an interest in these cases and those directly affected by any requested relief.

A. The Procedures

8. The proposed procedures include the following:

(i) Notice and Filing Procedures

The Debtors propose to establish a core service list (the "Core Service List"), which would include: (i) the Office of the United States Trustee for the Southern District of New York (the "U.S. Trustee"); (ii) the Debtors; (iii) counsel to the Debtors; (iv) counsel to any official committee of unsecured creditors appointed in these chapter 11 cases (the "Committee"), or the creditors holding the thirty (30) largest unsecured claims against the Debtors' estates on a consolidated basis; (v) counsel for any other official committee appointed or designated in these

chapter 11 cases; (vi) counsel to proposed DIP lender; (vii) the Internal Revenue Service; and (viii) the New York State Attorney General.

9. The Debtors also propose to establish a master service list (the “Master Service List”), which shall include (i) the Core Service List, and (ii) those persons or entities who have formally appeared and requested service in these cases pursuant to Bankruptcy Rule 2002. Any party whose interests are directly affected by a specific pleading shall be served with only that pleading.

10. With respect to the initial proposed Core Service List, the Debtors propose to include the creditors holding the thirty (30) largest unsecured claims against the Debtors’ estates on a consolidated basis as identified in the Debtors’ chapter 11 petitions. At such time that a Committee is appointed, the Debtors will add counsel to the Committee to the Core Service List and remove the thirty (30) largest unsecured creditors.

11. The Debtors propose that the proceedings with respect to which notice would be limited to persons and entities listed on the Master Service List would include all matters covered by Bankruptcy Rule 2002 and the Local Rules, with the express exception of the following: (i) notice of the first meeting of creditors pursuant to section 341 of the Bankruptcy Code, (ii) notice of the time fixed for filing proofs of claim pursuant to Bankruptcy Rule 3003(c), (iii) notice of the time fixed for filing objections and the hearing to consider approval of a disclosure statement or confirmation of a plan of reorganization, and (iv) notice of and transmittal of ballots for accepting or rejecting a plan of reorganization. The foregoing matters would be noticed to all parties in interest in accordance with Bankruptcy Rule 2002, at their last known address as provided to the Debtors, unless otherwise ordered by the Court or otherwise prescribed by the Bankruptcy Code and the Bankruptcy Rules.

12. Upon the completion of noticing of any particular matter, the Debtors shall file electronically with the Court either an affidavit of service or certificate of service, annexing thereto the list of those parties to whom notice was provided.

(ii) Electronic Service

13. The Debtors propose that service by electronic mail ("e-mail") may be made on any person who has requested, or is deemed to have requested, electronic notice in accordance with Bankruptcy Rule 9036 or the Court's General Order on Electronic Means for Filing, Signing and Verification of Documents (the "Revised Electronic Filing Procedures"), M-399, dated May 17, 2010, provided; however, that hard copies of documents or notices shall be served in the following circumstances: (a) service of a complaint and summons in an adversary proceeding under Bankruptcy Rule 7004, service of a motion commencing a contested matter under Bankruptcy Rule 9014(b), or a subpoena issued under Bankruptcy Rule 9016; (b) notice of the meeting of creditors required under Bankruptcy Rule 2002(a)(1); and (c) where service upon an agency of the United States, including the United States Attorney and the U.S. Trustee, or chambers is required by the Bankruptcy Rules, the Local Rules, or order of this Court.

14. To facilitate service by e-mail, the Debtors propose that any creditor or party-in-interest that wishes to receive notice, other than as required by Bankruptcy Rule 2002 and Local Rule 2002, must file a notice of appearance and request for service of papers (a "Request") in accordance with Bankruptcy Rules 2002 and 9010(b) that must include such party's: (a) name, (b) address, (c) client's name, if applicable, (d) telephone number, (e) facsimile number, and (f) e-mail address, unless such party files a request to be exempted from providing an e-mail address as described in paragraph 15 herein.

15. The Debtors further propose that any individual or entity filing a notice of appearance who (a) does not maintain and cannot practicably obtain an e-mail address, or (b) is not represented in these cases by an attorney must include in its Request a certification stating the same, and notice will be provided to these individuals or entities by U.S. mail, overnight delivery or facsimile in the Debtors' sole discretion.

16. If notice is served by e-mail, service of a paper copy of documents on interested parties by any other means is not necessary and e-mail service shall satisfy the Court's rules for service. Service by e-mail shall be effective as of the date the document is sent to the e-mail address provided by a party.

17. The Debtors propose that all documents served electronically pursuant to the procedures set forth herein shall include a link or access to an attached file containing the entire document, including the proposed form(s) of order and any exhibits, attachments, and other relevant material, in “.pdf” format, readable by Adobe Acrobat or an equivalent program.

18. Notwithstanding the foregoing, the Debtors propose that if a document cannot be annexed to an e-mail (because of its size, technical difficulties, or other concerns), the Debtors may in their discretion (i) serve the entire document by U.S. mail or overnight mail, including the proposed form(s) of order and any exhibits, attachments, and other relevant materials, or (ii) e-mail the party being served and include a notation that the document has not been annexed and will be mailed if requested, or (iii) email the party being served and include a notation that the document has not been annexed but is available on the Debtors' Agent's website at www.bmcgroup.com/atari.

B. Applicable Authority

19. The Bankruptcy Code, the Bankruptcy Rules and the Local Rules authorize this Court to regulate notice requirements. Specifically, Bankruptcy Rule 2002(m) states that “[t]he court may from time to time enter orders designating the matters in respect to which, the entity to whom, and the form and manner in which notices shall be sent except as otherwise provided by these rules.” Fed. R. Bankr. P. 2002(m); see also Fed. R. Bankr. P. 9007 (“When notice is to be given under these rules, the court shall designate, if not otherwise specified herein, the time within which, the entities to whom, and the form and manner in which the notice shall be given.”). In addition, Bankruptcy Rule 9036 authorizes parties in interest to request that “all or part of the information required to be contained in the notice be sent by a specified type of electronic transmission” Fed. R. Bankr. P. 9036.

20. Section 102(1)(A) of the Bankruptcy Code provides that, where the Bankruptcy Code provides for an action to occur “after notice and a hearing”, such action may occur “after such notice as is appropriate in the particular circumstances, and such opportunity for a hearing as is appropriate in the particular circumstances.” 11 U.S.C. § 102(1)(A). Local Rule 2002-2 also allows the Court to set notice requirements that are appropriate under the facts and circumstances of these chapter 11 cases. See Local Rule 2002-2.

21. Further, pursuant to the Revised Electronic Filing Procedures, the Court’s issuance of an account to a user of the Court’s electronic filing system “constitutes a waiver of conventional service with respect to that user.” General Order M-399 at § II.B.1.² Hence, any

² Section II(B)(1) of the Revised Electronic Filing Procedures specifically provides that “[w]hen service is required to be made on a person who has requested, or is deemed to have requested, electronic notice in accordance with Federal Rule of Bankruptcy Procedure 9036 or the annexed order, the service may be made by serving the “Notice of Electronic Filing” generated by the [ECF] System by e-mail, facsimile or hand delivery in the first instance, or by overnight mail if service by e-mail, facsimile or hand delivery is impracticable. The Court’s issuance of an account to a System user constitutes a waiver of conventional

party submitting a document pursuant to the Court's electronic filing system already has consented to electronic service, and no such party will be prejudiced by electronic notice. Such registered participants also will receive a "Notice of Electronic Filing" via e-mail whenever a filing is effected, which will provide additional notice to such parties. If a party does not have access to e-mail, then such party will be served by U.S. mail, overnight delivery, facsimile or hand delivery. Therefore, no party will be affected adversely by the proposed electronic service set forth herein.

22. The procedures outlined in this Motion comport with Bankruptcy Rule 2002(i), which specifically provides that notices of all matters should be provided to official committees.

23. In sum, the Debtors believe that administration of these cases would be more efficient and cost effective if the relief requested herein is granted.

24. Similar procedures, including service by e-mail, have been approved in other cases in this district. See, e.g., In re Residential Capital, LLC, Case No. 12-12020 (Bankr. S.D.N.Y. May 23, 2012); In re Grubb & Ellis Co., Case No. 12-10685 (Bankr. S.D.N.Y. Feb. 23, 2012); In re Eastman Kodak Company, Case No. 12-10202 (Bankr. S.D.N.Y. Feb. 15, 2012); In re Credit-Based Asset Servicing and Securitization LLC, 10-16040 (Bankr. S.D.N.Y. Nov. 16, 2010); In re BearingPoint, Inc., Case No. 09-10692 (Bankr. S.D.N.Y. March 5, 2009); and In re Lehman Brothers Holdings, Inc., Case No. 08-13555 (Bankr. S.D.N.Y. Sept. 22, 2008). The Debtors submit that their circumstances warrant similar relief.

V. Notice

25. Notice of this Motion has been provided to: (a) the U.S. Trustee; (b) counsel to the proposed DIP lender; (c) the creditors holding the thirty (30) largest unsecured claims against

service with respect to that user, who agrees to accept service in the manner described in the previous sentence."

the Debtors' estates on a consolidated basis, as identified in the Debtors' chapter 11 petitions; and (d) all parties that have filed a notice of appearance or have requested service in these chapter 11 cases. In light of the nature of the relief requested herein and the potential harm to the Debtors' estates if the relief requested herein is not granted, the Debtors respectfully submit that no other or further notice need be provided.

VI. No Prior Request

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

WHEREFORE, the Debtors respectfully request that the Court (a) enter an order, substantially in the form of the Proposed Order, granting the relief requested herein, and (b) grant to the Debtors such other and further relief as the Court may deem just and proper.

Dated: New York, New York
January 21, 2013

Respectfully submitted,

/s/ Peter S. Partee, Sr.

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