

Robert G. Burns (RB 0970)
Kurt A. Mayr II (KM 5570)
Andrew J. Schouder (AS 2018)
BRACEWELL & GIULIANI LLP
1251 Avenue of the Americas, 49th Fl.
New York, New York 10020
Telephone: (212) 508-6100
Facsimile: (212) 508-6101

Attorneys for Alden Global Value Recovery Master Fund, L.P.

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

In re)	Chapter 11
ATARI, INC. et al., ¹)	Case No. 13-10176 (JMP)
Debtors.)	(Jointly Administered)
)	

**DECLARATION OF MICHAEL ANDERSEN IN SUPPORT OF
ENTRY OF A FINAL ORDER ON DEBTORS’ DIP FINANCING MOTION**

I, Michael Andersen, hereby declare under penalty of perjury pursuant to 28 U.S.C. § 1746:

1. I am the general counsel of Alden Global Capital LLC, (“*Alden*”), the Sub-Adviser to Alden Global Value Recovery Master Fund, L.P., the debtor in possession financing lender (the “*DIP Lender*”) to the Debtors in the above-captioned bankruptcy cases (collectively, the “*Debtors*”). I offer this declaration (this “*Declaration*”) to apprise the Court and parties in interest of a change in the status of the DIP Lender’s relationship with affiliates of the Debtors.

2. On January 23, 2013, the DIP Lender delivered a proposed term sheet to replace the debtor in possession financing proposed to the Debtors by Tenor Capital Management Company, L.P. At the time of the DIP Lender’s proposal neither the DIP Lender nor any of its

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

affiliates were an “insider” of the Debtors, as that term is defined by 11 U.S.C. § 101(31) (an “*Insider*”).

3. On January 24, 2013, after extensive negotiations with the Debtors, the DIP Lender and the Debtors executed a commitment letter and term sheet for debtor in possession financing (the “*DIP Term Sheet*”). At the time the DIP Lender executed the DIP Term Sheet neither the DIP Lender nor any of its affiliates were an Insider of the Debtors.

4. On January 24, 2013, as indicated by counsel to the DIP Lender at the interim hearing (the “*Hearing*”) on the Debtors’ motion to enter into a debtor in possession financing facility with the DIP Lender (the “*DIP Motion*”), the DIP Lender entered into an agreement pursuant to a binding offer letter (the “*Offer Letter*”) with The BlueBay Value Recovery (Master) Fund Ltd and The BlueBay Multi-Strategy (Master) Fund Limited (collectively, “*Blue Bay*”) to purchase certain outstanding debt, in the form of a secured loan (the “*Blue Bay Debt*”), owed to Blue Bay by Atari Europe SAS, the Debtors’ French affiliate together with certain security interests in connection therewith. See Hr’g Tr. 14:3-6 (January 24, 2013) (annexed hereto as Exhibit A).

5. The Offer Letter also provided that the DIP Lender and Ker Ventures, LLC, a third party having no affiliation with the DIP Lender or any of its affiliates, agreed to purchase equity interests and certain convertible debt in Atari S.A., the ultimate parent of each of the Debtors, representing 29% of the shares and voting rights in Atari S.A. on a non-diluted basis and approximately 64% on a fully-diluted basis from Blue Bay (such equity interests and convertible debt, the “*Blue Bay Equity*,” and the sale of the Blue Bay Equity and the Blue Bay Debt, the “*Blue Bay Transactions*”).

6. The Offer Letter was subject to a number of conditions to effectiveness, including the negotiation and execution of definitive agreements acceptable to all parties. Thus, as of the Hearing, neither the DIP Lender nor any of its affiliates was an Insider of the Debtors.

7. Following the Hearing, on January 25, 2013, the Court entered an order approving the DIP Motion on an interim basis [Dkt. No. 40] (the “*Interim Order*”). On that date, the DIP Lender funded \$2 million on an interim basis of the DIP Lenders’ \$5 million DIP commitment pursuant to the DIP Term Sheet. At the time that the Interim Order was entered and when the DIP Lenders funded the interim DIP commitment on an interim basis, neither the DIP Lender nor any of its affiliates were an Insider of the Debtors.


8. On February 5, 2013, the parties to the Offer Letter consummated the Blue Bay Transactions. See Press Release, dated February 5, 2013, annexed hereto as Exhibit B (the “*Press Release*”). It was not until this time that the DIP Lender may arguably have been rendered an Insider of the Debtors as that term is defined by the Bankruptcy Code.

9. While the consummation of the acquisition of the Blue Bay Equity provides the DIP Lender with certain fundamental shareholder rights, the DIP Lender currently has no intention of exercising such rights with respect to Atari, S.A. See Press Release. Moreover, as of the date of this Declaration, the DIP Lender has not exercised any of its rights as a shareholder of Atari, S.A. Despite the changed relationship between the DIP Lender and the Debtors and its affiliates, this development will not impact the nature of the relationship between the DIP Lender and the Debtors, namely, that of an arm’s length, third-party lender to its borrowers.

[Signature page follows]

Dated: February 5, 2013

Respectfully Submitted,

By: 

Michael Andersen
General Counsel, Alden Global Capital, LLC