

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

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

**ORDER AUTHORIZING THE EMPLOYMENT AND RETENTION  
OF PROTIVITI INC. AS FINANCIAL ADVISOR TO THE DEBTORS**

Upon consideration of the application (the "Application")<sup>2</sup> of the debtors and debtors-in-possession (collectively, the "Debtors") in the above-captioned chapter 11 cases (the "Chapter 11 Cases") for entry of an order, *inter alia*, authorizing the Debtors to employ and retain Protiviti Inc. ("Protiviti") as their financial advisor effective *nunc pro tunc* to January 21, 2013 (the "Petition Date"), on the terms and conditions set forth in that certain engagement letter between the Debtors and Protiviti (the "Engagement Letter"), a copy of which is annexed to the Declaration of Guy A. Davis (the "Davis Declaration") as **Exhibit 1**, all as more fully set forth in the Application; and upon consideration of the Davis Declaration; and the Court having held a hearing on February 14, 2013 (the "Hearing") on approval of the relief requested in the Application and having considered the arguments of counsel made, and the evidence submitted, proffered or adduced at the Hearing; and the Court finding that (i) it has jurisdiction over the matters raised in the Application pursuant to 28 U.S.C. § 1334 and the *Amended Standing Order of Reference M-431*, dated January 31, 2012 (Preska, C.J.), (ii) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), (iii) venue of the Chapter 11 Cases and the Application is proper

<sup>1</sup> The Debtors are Atari, Inc., Atari Interactive, Inc., Humongous, Inc., and California U.S. Holdings, Inc.  
<sup>2</sup> Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to such terms in the Application.

pursuant to 28 U.S.C. §§ 1408 and 1409, (iv) the relief requested in the Application is in the best interests of the Debtors, their estates, their creditors and other parties in interest, (v) proper and adequate notice of the Application and the Hearing has been given and no other or further notice is necessary, (vi) Protiviti represents and holds no interest materially adverse to the Debtors or their estates and is disinterested under section 101(14) of the Bankruptcy Code (as modified by section 1107(b) of the Bankruptcy Code) and as required by section 327(a) of the Bankruptcy Code, (vii) any objections to the relief requested in the Application have been withdrawn or overruled on the merits, and (viii) good and sufficient cause exists for the granting of the relief requested in the Application after having given due deliberation upon the Application, the First Day Declaration, and the Davis Declaration, and all of the proceedings had before the Court in connection with the Application. Therefore,

**IT IS HEREBY ORDERED THAT:**

1. The Application is granted to the extent set forth herein.
2. Pursuant to sections 327(a) and 328(a) of the Bankruptcy Code, Bankruptcy Rules 2014(a) and 2016, and Local Bankruptcy Rule 2014-1, the Debtors are authorized to retain and employ Protiviti as their financial advisor effective *nunc pro tunc* to the Petition Date in accordance with the terms and conditions set forth in the Application and in the Engagement Letter, as hereinafter modified.
3. Protiviti is authorized to render financial advisory services to the Debtors as described in the Application and in the Davis Declaration. Protiviti will render the following financial advisory services:
  - a) Assist the Debtors with the administration of their debtor-in-possession financing, including weekly reporting, cash management, and responses to due diligence requests;

- b) provide the Debtors' accounting department with assistance and guidance regarding chapter 11 protocols and policies;
- c) assist with vendor communications and negotiations of post-petition trade terms and utility deposits;
- d) assist with projecting cash flows through a potential sale or plan confirmation;
- e) interface with creditor groups (e.g., respond to document/information and due diligence requests) and prepare any required/agreed upon flash reporting;
- f) assist with/prepare Monthly Operating Reports;
- g) assist counsel in preparing evidence and rendering testimony as needed to address contested motions;
- h) accumulate, reconcile, and adjudicate claims filed;
- i) assist with claims disbursement; and
- j) provide other analytical support and/or testimony, as required, to facilitate the efficient sale of the Debtors' assets, development and execution of a chapter 11 plan, and possible recovery actions against third parties.

4. Protiviti shall use its best efforts to avoid any duplication of services provided by any of the Debtors' other retained professionals in these chapter 11 cases.

5. Protiviti will not seek to use affiliates, independent contractors, subcontractors or subsidiaries of Protiviti to perform services under the Application and/or the Engagement Letter without separate Court approval.

6. Protiviti shall be compensated for fees and reimbursed for reasonable and necessary expenses incurred in connection with the Chapter 11 Cases, and shall file interim and final fee applications for allowance of its compensation and expenses in accordance with sections 330 and 331 of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, the Amended Order Establishing Procedures for Monthly Compensation and Reimbursement of Expenses of Professionals, dated December 21, 2010, the Amended Guidelines for Fees and

Disbursements for Professionals in the Southern District of New York, dated November 25, 2009, the United States Trustee Fee Guidelines, and the monthly compensation order.

7. Protiviti shall apply any remaining amounts of its prepetition retainer as a credit toward postpetition fees and expenses, after such postpetition fees and expenses are approved pursuant to the first Order of the Court awarding fees and expenses to Protiviti.

8. Ten (10) business days' notice must be provided by Protiviti to the Debtors, the United States Trustee and the Official Committee of Unsecured Creditors prior to any increases in the rates set forth in the Application and/or Engagement Letter, and such notice must be filed with the Court.

9. The Debtors are authorized to indemnify and hold harmless the Protiviti Parties (as defined in the Engagement Letter) pursuant to the Indemnification Provisions and subject to the following conditions:

- a. All requests of the Protiviti Parties for payments of indemnity, contribution or otherwise pursuant to the Indemnification Provisions shall be made by means of application to the Court (interim or final, as the case may be) and shall be subject to the approval of, and review by, the Court to ensure that such payment conforms to the terms of the Indemnification Provisions, the Bankruptcy Code, the Bankruptcy Rules, the Local Bankruptcy Rules, and the orders of this Court and is reasonable based upon the circumstances of the litigation or settlement in respect of which indemnification, contribution or other payment is sought; provided, however, that in no event shall a Protiviti Party be indemnified or receive contribution or other payment from the Debtors from and against any actions or claims that a court of competent jurisdiction has determined by final order (that is no longer subject to appeal or review) to have resulted from bad faith, self dealing, breach of fiduciary duty (if any), gross negligence or willful misconduct on the part of that or any other Protiviti Party;
- b. In no event shall a Protiviti Party be indemnified or receive contribution or other payment under the Indemnification Provisions if the Debtors or the representatives of the Debtors' estates assert a claim for, and a court of competent jurisdiction determines by a final order (that is no longer subject to appeal or review) that such claim arose out of the bad faith, self dealing, breach of fiduciary duty (if any), gross negligence or willful misconduct of that or any other Protiviti Party; and

- c. In the event that a Protiviti Party seeks reimbursement of attorneys' fees from the Debtors pursuant to the Indemnification Provisions, the invoices and supporting time records from such attorneys shall be attached to Protiviti's own and final fee applications, and such invoices and time records shall be subject to the United States Trustee's guidelines for compensation and reimbursement of expenses and the approval of the Court under the standards of section 330 of the Bankruptcy Code without regard to whether such attorneys have been retained under section 327 of the Bankruptcy Code and without regard to whether such attorneys' services satisfy section 330(a)(3)(c) of the Bankruptcy Code.

10. The Engagement Letter is hereby amended by deleting the Limitation of Liability clause (Paragraph 8) from the Terms and Conditions Attachment which reads as follows:

Notwithstanding anything to the contrary in this Agreement, Client and Protiviti agree that, regardless of the legal theory asserted (including, but not limited to, breach of contract, warranty, negligence or tort): (i) Protiviti's entire liability to Client or any person asserting claims on behalf of or in the name of Client will not exceed in the aggregate, for all claims, liability, losses, damages or expenses, the total amount of fees paid to Protiviti hereunder with respect to the engagement hereunder provided that this subsection (i) shall not apply to Protiviti's indemnification obligations under this Agreement; and (ii) neither party shall be liable to the other party or any person asserting claims on behalf of or in the name of the other party for consequential, indirect, incidental, punitive or special damages of any nature suffered by Client or Protiviti (including, but not limited to, lost profits or business opportunity costs), provided that this subsection (ii) shall not apply to any indemnification obligations under the Agreement.

11. To the extent that there may be any inconsistency between the terms of the Application, the Engagement Letter, the Davis Declaration, and this Order, the terms of this Order shall govern.

12. The Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: New York, New York  
February 15, 2013

s/ James M. Peck  
HONORABLE JAMES M. PECK  
UNITED STATES BANKRUPTCY JUDGE