

**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)

**ORDER ESTABLISHING PROCEDURES FOR INTERIM MONTHLY
COMPENSATION AND REIMBURSEMENT OF EXPENSES OF PROFESSIONALS**

Upon the motion (the "Motion")² of the above-captioned debtors and debtors-in-possession (the "Debtors") for entry of an order establishing procedures for the payment of fees and reimbursement of expenses for professionals (collectively, "Professionals") whose services are authorized by the Court pursuant to sections 327 or 1103 of the Bankruptcy Code and who are required to file applications for allowance of compensation and reimbursement of expenses pursuant to sections 330 and 331 of the Bankruptcy Code, Bankruptcy Rule 2016(a), and Local Rule 2016-1; the Court finds that (a) it has jurisdiction over the matters raised in the Motion pursuant to 28 U.S.C. § 1334 and the *Amended Standing Order of Reference M-431*, dated January 31, 2012 (Preska, C.J.); (b) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); (c) the relief requested in the Motion is in the best interest of the Debtors, their estates and their creditors; (d) proper and adequate notice of the Motion and the hearing thereon has been given and that no other or further notice is necessary; and (e) upon the record herein after due deliberation thereon, good and sufficient cause exists for the granting of the relief as set forth herein. Therefore,

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

² Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Motion.

IT IS HEREBY ORDERED THAT:

1. The Motion is granted to the extent set forth herein.
2. Except as may otherwise be provided in orders of the Court authorizing the retention of specific professionals, all Professionals in these cases may seek monthly compensation in accordance with the following procedure:

- (a) On or before the 20th day of each month following the month for which compensation is sought, each Professional seeking interim compensation will serve a monthly statement (a “Monthly Fee Statement”) by hand or overnight or electronic delivery, on the following parties (collectively, the “Notice Parties”): (i) the Debtors, Atari, Inc., 475 Park Avenue South, Twelfth Floor, New York, New York 10016, Attn: Robert A. Mattes, CFO; (ii) counsel to Debtors, Akin Gump Strauss Hauer & Feld LLP, One Bryant Park, New York, New York 10036, Attn: Ira S. Dizengoff, Esq. and Kristine Manoukian Esq.; Akin Gump Strauss Hauer & Feld LLP, Robert S. Strauss Building, 1333 New Hampshire Avenue, N.W., Washington, District of Columbia 20036, Attn: Scott L. Alberino, Esq.; (iii) counsel to DIP lenders, Bracewell & Giuliani LLP, 1251 Avenue of the Americas, 49th Floor, New York, New York 10020, Attn: Robert G. Burns, Esq.; (vi) counsel to the Official Committee of Unsecured Creditors, Cooley LLP, 1114 Avenue of the Americas, New York, New York 10036, Attn.: Cathy Herschopf and Jeffrey Cohen; and (v) the Office of the United States Trustee for the Southern District of New York, 271 Cadman Plaza East, Suite 4529, Brooklyn, New York 11201, Attn: Richard C. Morrissey, Esq.
- (b) On or before the 20th day of each month following the month for which compensation is sought, each Professional seeking interim compensation will file its Monthly Fee Statement with the Court; however, a courtesy copy need not be delivered to the presiding Judge’s chambers. The order approving the relief requested in this Motion does not alter the fee application requirements outlined in sections 330 and 331 of the Bankruptcy Code. Professionals still are required to serve and file interim and final applications for approval of fees and expenses in accordance with the relevant provisions of the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules.
- (c) Each Monthly Fee Statement must contain a list of the individuals and their respective titles (*e.g.*, attorney, accountant or paralegal) who provided services during the statement period, their respective billing rates, the aggregate hours spent by each individual, a reasonably detailed breakdown of the disbursements incurred (no Professional should seek reimbursement of an expense which would otherwise not be allowed

pursuant to the Court's Administrative Orders or the United States Trustee Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses under 11 U.S.C. § 330 dated January 30, 1996), and contemporaneously maintained time entries for each individual in increments of tenths (1/10) of an hour.

- (d) In the event a Notice Party has an objection to the compensation or reimbursement sought in a particular Monthly Fee Statement, such Notice Party shall, by no later than the 15th day following service of the Monthly Fee Statement (the "Objection Deadline"), serve upon the Professional whose Monthly Fee Statement is objected to, with a copy to the other Notice Parties, a written "Notice of Objection to Fee Statement," setting forth the nature of the objection and the amount of fees or expenses at issue.
- (e) In the event no objection is served by a Notice Party with respect to a Monthly Fee Statement prior to the Objection Deadline, the Debtors promptly shall pay eighty percent (80%) of the fees and one hundred percent (100%) of the expenses identified in such Monthly Fee Statement; provided, however, that any payment of fees or expenses to a Professional shall first be paid in the form of a reduction to any retainer held by such Professional in connection with its engagement by the Debtors.
- (f) If an objection to a Monthly Fee Statement is served in accordance with subparagraph (d) above, the Debtors shall withhold payment of that portion of the fees and expense reimbursements in such Monthly Fee Statement to which the objection is directed and promptly pay the remainder of the fees and disbursements in the percentages and in the form set forth in subparagraph (e) above.
- (g) In the event the objecting parties and the Professional are able to resolve their dispute following the service of an objection to a Monthly Fee Statement, and if the party whose Monthly Fee Statement was the subject of the objection serves on all of the Notice Parties a statement indicating that the objection has been withdrawn and describing in detail the terms of the resolution, then the Debtors shall promptly pay, in accordance with subparagraph (e) above, that portion of the Monthly Fee Statement that is no longer subject to an objection.
- (h) All objections that are not resolved by the parties shall be preserved and scheduled for hearing before the Court at the next interim or final fee application hearing to be heard by the Court in accordance with subparagraph (j) below.
- (i) The service of an objection in accordance with subparagraph (d) above shall not prejudice the objecting party's right to object to any fee application made to the Court in accordance with the Bankruptcy Code on

any ground, whether raised in the objection or not. Furthermore, the decision by any party not to object to a Monthly Fee Statement shall not be a waiver of any kind or prejudice that party's right to object to any fee application subsequently made to the Court in accordance with the Bankruptcy Code.

- (j) Approximately every 120 days, but not more than every 150 days, each Professional shall serve and file with the Court an application for interim or final Court approval and allowance, pursuant to sections 330 and 331 of the Bankruptcy Code (as the case may be), of the compensation and reimbursement of expenses requested.
- (k) Any Professional who fails to file an application seeking approval of compensation and expenses previously paid under the order approving the relief requested in this Motion when due shall (i) be ineligible to receive further monthly payments of fees or reimbursement of expenses as provided for under these procedures until further order of the Court, and (ii) may be required to disgorge any fees paid since retention or the last fee application, whichever is later.
- (l) The pendency of an application alleging or a Court order providing that payment of compensation or reimbursement of expenses was improper as to a particular Monthly Fee Statement shall not disqualify a Professional from the future payment of compensation or reimbursement of expenses as set forth above, unless otherwise ordered by the Court.
- (m) Neither the payment of, nor the failure to pay, in whole or in part, monthly compensation and reimbursement as provided herein shall have any effect on the Court's interim or final allowance of compensation and reimbursement of expenses of any Professional.
- (n) Counsel for any statutory committee may, in accordance with the foregoing procedure for monthly compensation and reimbursement of Professionals, collect and submit statements of expenses, with supporting vouchers, from members of the committee he or she represents; provided, however, that these reimbursement requests comply with the Court's Administrative Orders.

3. All fees and expenses paid to Professionals in accordance with this Order are subject to full disgorgement until final allowance by the Court.

4. Each Professional may seek, in its first request for compensation or reimbursement of expenses pursuant to this Order, compensation for any work performed and

reimbursement for expenses incurred during the period beginning on the Petition Date and ending January 31, 2013.

5. The amount of fees and disbursements sought shall be set out in U.S. dollars, and if the fees and disbursements are to be paid in foreign currency, the amount shall be set out in U.S. dollars and the conversion amount in the foreign currency, calculated at the time of the submission of the application.

6. The Debtors shall include all payments to Professionals on their monthly operating reports, detailed so as to state the amount paid to each Professional.

7. Any party may object to requests for payments made pursuant to this Order on the grounds that the Debtors have not timely filed monthly operating reports, remained current with their administrative expenses and 28 U.S.C. § 1930 fees, or manifest exigency exists by seeking a further order of this Court, otherwise, this Order shall continue and shall remain in effect during the pendency of this case.

8. Service of interim fee applications and final fee applications (collectively, the “Applications”) may be limited to the Notice Parties. All other parties that have filed a notice of appearance with the Clerk of this Court and have requested notice of pleadings in these chapter 11 cases shall be entitled to receive only notices of hearings on the Applications, with a right to receive copies of each Application upon request. Notice of the hearings on the Applications given in accordance with this paragraph shall be, and hereby is, deemed sufficient and adequate and in full compliance with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules and the Local Rules.

9. All time periods set forth in this Order shall be calculated in accordance with the Bankruptcy Rule 9006(a).

10. Any and all further notice of the relief requested in the Motion shall be, and hereby is, dispensed with and waived; provided, however, that the Debtors must serve a copy of this order on the Notice Parties.

11. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.

12. The Court retains exclusive 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