

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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

**ORDER AUTHORIZING THE EMPLOYMENT AND RETENTION OF PERELLA  
WEINBERG PARTNERS LP AS INVESTMENT BANKER 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 Perella Weinberg Partners LP (“Perella”) as their investment banker effective *nunc pro tunc* to January 31, 2013, on the terms and conditions set forth in that certain engagement letter between the Debtors and Perella (the “Engagement Letter”), a copy of which is annexed to the Declaration of Joshua Scherer (the “Scherer Declaration”) as **Exhibit 1**, all as more fully set forth in the Application; and upon consideration of the Scherer Declaration; and the Court having held a hearing (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 pursuant to 28 U.S.C. §§ 1408 and 1409, (iv) the relief requested in the Application is in the best interests of the

<sup>1</sup> The other Debtors are 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.

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 that no other or further notice is necessary, (vi) Perella 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 and the Scherer 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 hereby **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 shall be, and hereby are, authorized to retain and employ Perella as their investment banker effective *nunc pro tunc* to the January 31, 2013 in accordance with the terms and conditions set forth in the Application and in the Engagement Letter.
3. Perella is hereby authorized to render investment banking services to the Debtors as described in the Application and in the Scherer Declaration. Perella will render the following investment banking services:
  - a) become familiar with the business, operations, properties, financial condition and prospects of the Debtors;
  - b) review the Debtors' financial condition and outlook;
  - c) assist in the development of financial data and presentations to the Debtors' Board of Directors, various creditors, and other parties;

- d) analyze the Debtors' financial liquidity and evaluate alternatives to improve such liquidity;
- e) evaluate the Debtors' debt capacity and alternative capital structures;
- f) participate in negotiations among the Debtors and their creditors, suppliers, lessors and other interested parties with respect to any of the transactions contemplated by the Engagement Letter;
- g) advise the Debtors and negotiate with lenders with respect to potential waivers or amendments of various credit facilities;
- h) identify potential purchasers and advise and assist the Debtors in analyzing, structuring, planning, negotiating and effecting any transaction; and
- i) provide such other advisory services as are customarily provided in connection with the analysis and negotiation of any of the transactions contemplated by the Engagement Letter, as requested and mutually agreed.

4. Perella 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. Perella shall apply for compensation for professional services rendered and reimbursement of reasonable and actual expenses incurred in connection with the Chapter 11 Cases in compliance with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Bankruptcy Rules, the guidelines established by the Office of the United States Trustee for the Southern District of New York (the "U.S. Trustee Guidelines"), and such other procedures as may be fixed by Order of this Court.

6. Perella's compensation shall be subject to the standard of review provided in section 328(a) of the Bankruptcy Code and shall not be subject to the standard of review set forth in section 330 of the Bankruptcy Code; provided, however, that the United States Trustee retains all rights to object to Perella's interim and final fee applications (including expense

reimbursements) on all grounds including but not limited to the reasonableness standard provided for in section 330 of the Bankruptcy Code.

7. Perella shall be compensated based on the rates set forth in the Engagement Letter; provided, however, that the Initial Transaction Fee, as such term is defined in the Engagement Letter, shall not be payable to Perella unless the transaction value generated from the sale of the Debtors' assets (in the aggregate) is sufficient to satisfy, in full, all outstanding obligations under the debtor in possession financing facility plus the Initial Transaction Fee.

8. The Debtors hereby are authorized to indemnify and hold harmless each Indemnified Person (as defined in the Engagement Letter) pursuant to the Indemnification Provisions and subject to the following condition:

- a. Subject to the provisions of subparagraphs (b), (c) and (d) below, the Debtors are authorized to indemnify, and shall indemnify, the Indemnified Persons (as defined in the Engagement Letter) in accordance with the Engagement Letter and to the extent permitted by applicable law, for any claim arising from, related to, or in connection with Perella's performance of the services described in the Engagement Letter;
- b. All requests by Indemnified Persons for the payment of indemnification as set forth in the Engagement Letter shall be made by means of an application to the Court and shall be subject to review by the Court to ensure that payment of such indemnity conforms to the terms of the Engagement Letter; provided, however, that in no event shall any Indemnified Person be indemnified in the event that a court determined by final order that such person acted in its own bad-faith, self-dealing or breach of fiduciary duty (if any), gross negligence or willful misconduct;
- a. In no event shall any Indemnified Person be indemnified if the Debtors or a representative of the estate asserts a claim for, and the Court determines by final order that such claim arose out of, such Indemnified Person's own bad faith, self-dealing or breach of fiduciary duty (if any), gross negligence, or willful misconduct; and
- a. If Perella or any Indemnified Person seeks reimbursement from the Debtors for attorneys' fees and expenses in connection with the Engagement Letter, the invoices and supporting time records from such attorneys shall be included in Perella's own applications, both interim and

final, 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 Bankruptcy Court pursuant to sections 330 and 331 of the Bankruptcy Code without regard to whether such attorneys have been retained under section 1103 of the Bankruptcy Code and without regard to whether such attorneys' services satisfy section 330(a)(3)(C) of the Bankruptcy Code.

9. Perella will not seek to use independent contractors or subcontractors to perform services under the Application and/or the Engagement Letter without separate Court approval.

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

11. 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