

Hearing Date: March 6, 2013 at 10:00 a.m. (ET)
Objection Deadline: February 27, 2013 at 4:00 p.m. (ET)

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

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

**DEBTORS' MOTION PURSUANT TO
11 U.S.C. §§ 105, 327, 328, 330 AND 331 FOR ENTRY OF AN ORDER
NUNC PRO TUNC TO THE PETITION DATE AUTHORIZING RETENTION
OF PROFESSIONALS UTILIZED IN THE ORDINARY COURSE OF BUSINESS**

The above-captioned debtors and debtors-in-possession (collectively, the “Debtors”) seek entry of an order *nunc pro tunc* to January 21, 2013 (the “Petition Date”), the proposed form of which is attached hereto as **Exhibit A** (the “Proposed Order”), pursuant to sections 105, 327, 328, 330 and 331 of Title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (as amended, the

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

“Bankruptcy Code”) authorizing the retention and employment of professionals utilized by the Debtors in the ordinary course of business (the “Motion”). In support of the Motion, the Debtors respectfully state as follows:

Jurisdiction

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334(b) and the *Amended Standing Order of Reference M-431*, dated January 31, 2012 (Preska, C.J.). Venue 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).

2. The statutory predicates for the relief requested herein are Bankruptcy Code sections 105, 327, 328, 330 and 331.

Background

3. On 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. By an order entered on January 24, 2013, the Debtors’ chapter 11 cases have been consolidated for procedural purposes only and are being jointly administered pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure [ECF No. 27].

4. The Debtors continue to operate their businesses and manage their properties as debtors-in-possession pursuant to Bankruptcy Code sections 1107(a) and 1108. No request for the appointment of a trustee or an examiner has been made in these cases. On February 6, 2013, the United States Trustee for the Southern District of New York (the “U.S. Trustee”) appointed the Official Committee of Unsecured Creditors (the “Committee”) in these chapter 11 cases [ECF No. 64].

5. 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 *Declaration of Robert A. Mattes (I) In Support of Chapter 11 Petitions and First Day Motions and (II) Pursuant to Local Bankruptcy Rule 1007-2* [ECF No. 16], which was filed on January 22, 2013.

Background of Ordinary Course Professionals

6. In the ordinary course of their business as a multi-platform, interactive entertainment and licensing company, the Debtors hold numerous intellectual property rights and are involved in licensing contracts and franchise agreements around the world, which extend their brand and franchises into other media, merchandising, and publishing categories. The Debtors, in the ordinary course of their business, retain law firms and various other professionals to advise them with respect to their intellectual property, including advising on infringement, licensing and development matters. In addition, in the day-to-day performance of their duties, the Debtors regularly call upon certain attorneys, accountants, and other professionals and professional firms to assist and advise them with general corporate and tax compliance matters. A non-exhaustive list of these professionals is attached to the Proposed Order as Exhibit 1 (each an “Ordinary Course Professional” and, collectively, the “Ordinary Course Professionals”).

7. In the ordinary course of business, the Debtors also retain 31 foreign trademark agents (each a “Foreign Agent” and, collectively, the “Foreign Agents”) to advise the Debtors with respect to certain trademarks agreements, and to represent them in connection with these licensing and franchise agreements. The Foreign Agents reside in various countries worldwide and perform services on an individual basis. The Debtors anticipate that the Foreign Agents will continue to provide essential trademark-related services to the Debtors over the course of these chapter 11 cases. The Debtors assert that it is incredibly difficult to ascertain the amounts that will be owed to each individual Foreign Agent during the course of these chapter 11 cases, but believe that each payment will be minimal. The Debtors anticipate that, in the aggregate, the

cost of employing the Foreign Agents will equal \$12,000 per month. As such, the Debtors seek to pay the Foreign Agents without the need for each agent to submit an Affidavit (as defined herein).

8. The Debtors seek to continue the employment of such Ordinary Course Professionals and Foreign Agents post-petition without the necessity of filing formal applications for employment and compensation by each professional pursuant to Bankruptcy Code sections 105, 327, 328, 330 and 331. To request each Ordinary Course Professional to apply separately for approval of their employment and compensation would be unduly burdensome on, and represent a significant cost to, both the Debtors and this Court. The Debtors submit that the uninterrupted services of the Ordinary Course Professionals are vital to the Debtors' continuing operations, the Debtors' ability to maintain and monitor certain intellectual property, and their ability to move forward with the chapter 11 cases.

Relief Requested

9. By this Motion, the Debtors seek authorization, but not direction, to (i) retain Ordinary Course Professionals, including the Foreign Agents, *nunc pro tunc* to the Petition Date, pursuant to sections 105, 327, 328, 330 and 331 of the Bankruptcy Code, without the necessity of separate, formal retention applications approved by the Court for each Ordinary Course Professional and (ii) compensate the Ordinary Course Professionals for post-petition services rendered, subject to certain limits set forth below, without the necessity of additional Court approval; and (iii) authorize the payment in the aggregate amount of \$12,000 per month for the duration of the cases on account of services provided by the Foreign Agents without the requirement that each Foreign Agent file an Affidavit.

10. Notwithstanding the Debtors' belief that certain of the Ordinary Course Professionals are not "professional persons" as contemplated by Bankruptcy Code section 327,

out of an abundance of caution, the Debtors hereby move this Court for an order authorizing, but not directing, the retention of all Ordinary Course Professionals.

Basis for Relief Requested

11. The Debtors wish to continue to employ and retain Ordinary Course Professionals and the Foreign Agents to render services similar to those rendered prior to the commencement of these chapter 11 cases. The number of Ordinary Course Professionals and Foreign Agents involved, however, makes it costly and inefficient for the Debtors to submit individual applications and proposed retention orders to this Court for each such Ordinary Course Professional and Foreign Agent. Furthermore, the procedures outlined herein will relieve this Court and the U.S. Trustee of the burden of reviewing numerous fee applications involving relatively small fees and expenses.

12. The Debtors submit that the retention of the Ordinary Course Professionals and the Foreign Agents and the payment of compensation on the basis set forth herein is in the best interests of the Debtors' estates. While generally the Ordinary Course Professionals and the Foreign Agents wish to represent the Debtors on an ongoing basis, many might be unwilling to do so if they were to be paid only through a formal application process.

13. Moreover, if the expertise and background knowledge of certain of the Ordinary Course Professionals and Foreign Agents are lost with respect to the particular matters for which they were responsible prior to the Petition Date, the Debtors' estates undoubtedly will incur additional and unnecessary expense because the Debtors will be forced to retain other professionals unfamiliar with such matters. It is therefore in the best interests of the Debtors' estates to avoid any disruption in the services rendered by the Ordinary Course Professionals and Foreign Agents. Accordingly, the Debtors request that they be permitted to employ and retain

the Ordinary Course Professionals and Foreign Agents on terms substantially similar to those in effect prior to the Petition Date, subject to the limitations and conditions set forth herein.

A. Payment of Fees and Expenses

14. The Debtors propose that they be permitted to pay, without formal application to this Court by any Ordinary Course Professional or Foreign Agent, 100% of the post-petition fees and expenses of each Ordinary Course Professional and Foreign Agent upon the submission to the Debtors of an appropriate invoice setting forth in reasonable detail the nature of the services rendered after the Petition Date (without prejudice to the Debtors' right to dispute any such invoice). The Debtors believe that such fees, excluding expenses and disbursements, will not exceed: (a) \$12,000 per month, in the aggregate, to the Foreign Agents, and (b) either \$12,000 per month or \$150,000 in the aggregate over the course of the chapter 11 cases, respectively, per Ordinary Course Professional (each a "Fee Cap" and, collectively, the "Fee Caps").

15. The Debtors propose that to the extent that fees payable to any Ordinary Course Professional or Foreign Agent exceed either of the Fee Caps, such Ordinary Course Professional or Foreign Agent shall be required to be retained pursuant to a formal application before any further fees, above the Fee Caps, or expenses may be paid; provided, however, the Debtors retain the right to seek the approval of this Court to make specific payments in excess of the applicable Fee Cap on an individual basis.

16. For the avoidance of doubt, the Debtors seek authorization to pay each Foreign Agent post-petition fees and disbursements, in the aggregate amount of up to and including \$12,000, upon the submission to the Debtors of an appropriate invoice, as set forth above, but without the necessity of each Foreign Agent to submit and file an Affidavit.

B. Submission of Bankruptcy Rule 2014 Affidavits

17. The Debtors propose that at least fourteen (14) days prior to submitting its initial post-petition invoice to the Debtors, each Ordinary Course Professional shall file with the Court, and serve on (a) the Debtors, at 475 Park Avenue South, New York, New York 10016 (b) proposed counsel to the Debtors, Akin Gump Strauss Hauer & Feld LLP, One Bryant Park, New York, New York 10036 (Attn.: Ira S. Dizengoff and Kristina G. Manoukian) and 1333 New Hampshire Avenue, N.W., Washington, D.C. 20036 (Attn.: Scott L. Alberino); (c) the U.S. Trustee, 271 Cadman Plaza East, Suite 4529, Brooklyn, New York 11201 (Attn.: Richard C. Morrissey); (d) proposed counsel to the Committee, Cooley LLP, 1114 Avenue of the Americas, New York, New York 10036 (Attn.: Cathy Hershcopf and Jeffrey Cohen); and (e) counsel to Alden Global Distressed Opportunities Master Fund, L.P., Alden Global Value Recovery Master Fund L.P., and Turnpike Limited (the “DIP Lender”), Bracewell & Giuliani, 1251 Avenue of the Americas, 49th Floor, New York, New York 10020 (Attn.: Robert G. Burns and Andrew Schouler); (collectively, (a) – (e), the “Notice Parties”), an Affidavit of Ordinary Course Professional, substantially in the form attached as Exhibit 2 to the Proposed Order (the “Affidavit”).

18. The Debtors further propose that the Notice Parties shall have ten (10) days after receipt of each Ordinary Course Professional’s Affidavit (the “Affidavit Objection Deadline”) to object to the retention of such Ordinary Course Professional. The objecting party shall serve any such objection upon the Notice Parties and the respective Ordinary Course Professional on or before the Affidavit Objection Deadline. If any such objection cannot be resolved within ten (10) days of its receipt, the matter shall be scheduled for hearing before this Court at the next regularly scheduled hearing or at a date otherwise agreeable to the parties thereto. If no

objection is received on or before the Affidavit Objection Deadline with respect to any particular Ordinary Course Professional, or if any objection submitted is timely resolved as set forth above, the Debtors shall be authorized without further order of this Court, to retain such professional as a final matter.

C. Additional Ordinary Course Professionals

19. The Debtors further request that they be authorized, but not directed, to retain and employ additional Ordinary Course Professionals in their sole discretion without the need to file individual retention applications for each such professional by filing with this Court a supplement to Exhibit 1 to the Proposed Order (the "Supplement"). The Supplement will set forth the name and address of the additional Ordinary Course Professional and a brief description of the services to be rendered and will be served upon the Notice Parties.

20. The Debtors propose that each such additional Ordinary Course Professional shall be subject to all of the other requirements set forth herein.

D. Submission of Quarterly Reports

21. The Debtors further propose that, commencing April 17, 2013, and every three months thereafter in which these chapter 11 cases are pending, the Debtors shall file with this Court, and serve on (i) the U.S. Trustee and (ii) proposed counsel to the Committee, a statement of fees and disbursements (a "Quarterly Report") for each Ordinary Course Professional for the three-month period ending on the last day of the preceding month (each, a "Quarter"); provided, however, that the first Quarterly Report shall cover a period from the Petition Date through March 31, 2013; provided further that this requirement to file Quarterly Reports shall be waived upon the confirmation of a plan of liquidation or reorganization in these chapter 11 cases. Each Quarterly Report shall include the following information for each Ordinary Course Professional:

(a) the name of the Ordinary Course Professional, (b) the aggregate amounts paid as compensation for services rendered and reimbursement of expenses incurred by such Ordinary Course Professional during the reported Quarter, and (c) a general description of the services rendered by such Ordinary Course Professional.

E. Subsequent Retention Applications

22. Notwithstanding anything to the contrary herein, the Debtors request that they retain the right to apply to this Court for authorization to employ any Ordinary Course Professional on a *nunc pro tunc* basis should it later be determined, as a result of such Ordinary Course Professional exceeding either of the Fee Caps or for any other reason, that the Debtors are required to file a formal retention application in respect of such Ordinary Course Professional.

Supporting Authority

23. In determining whether an entity is a “professional” within the meaning of Bankruptcy Code section 327 and, therefore, must be retained by express approval of the court, courts generally consider whether such entity is involved in the actual reorganization effort, rather than a debtor’s ongoing business operations. *See, e.g., Comm. of Asbestos-Related Litigants v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 60 B.R. 612, 619 (Bankr. S.D.N.Y. 1986) (“[T]he phrase ‘professional persons,’ as used in § 327(a), is a term of art reserved for those persons who play an intimate role in the reorganization of a debtor’s estate.”); *In re Drexel Burnham Lambert Group Inc.*, 112 B.R. 584, 587 (Bankr. S.D.N.Y. 1990) (same). Courts often consider the following factors in determining whether an entity is a “professional” within the meaning of Bankruptcy Code section 327:

- (i) whether the entity controls, manages, administers, invests, purchases or sells assets that are significant to the debtor’s reorganization;

- (ii) whether the entity is involved in negotiating the terms of a plan of reorganization;
- (iii) whether the entity is directly related to the type of work carried out by the debtor or to the routine maintenance of the debtor's business operations;
- (iv) whether the entity is given discretion or autonomy to exercise his or her own professional judgment in some part of the administration of the debtor's estate;
- (v) the extent of the entity's involvement in the administration of the debtor's estate; and
- (vi) whether the entity's services involve some degree of special knowledge or skill, such that it can be considered a "professional" within the ordinary meaning of the term.

See, e.g., In re First Merchs. Acceptance Corp., No. 97-1500, 1997 WL 873551, at *3 (D. Del. Dec. 15, 1997) (listing factors); *In re Sieling Assocs. Ltd. P'ship*, 128 B.R. 721, 723 (Bankr. E.D. Va. 1991) (authorizing the debtor to retain an environmental consultant in the ordinary course of business); *In re Riker Indus., Inc.*, 122 B.R. 964, 973 (Bankr. N.D. Ohio 1990) (not requiring Bankruptcy Code section 327 approval of the fees of a management and consulting firm that performed only "routine administrative functions" and whose "services were not central to [the] bankruptcy case"); *In re Fretheim*, 102 B.R. 298, 299 (Bankr. D. Conn. 1989) (only those professionals involved in the actual reorganization effort, rather than debtor's ongoing business, require approval under Bankruptcy Code section 327). The foregoing factors must be considered as a whole when determining if an entity is a "professional" within the meaning of Bankruptcy Code section 327. None of the factors alone is dispositive.

24. Considering all of the foregoing factors, the Debtors do not believe that the Ordinary Course Professionals and Foreign Agents are "professionals" requiring a full retention under Bankruptcy Code section 327. Because (i) the nature of the work performed by the Ordinary Course Professionals or Foreign Agents is related only indirectly to the type of work

carried out by the Debtors' restructuring counsel, (ii) the degree of discretion afforded the Ordinary Course Professionals and Foreign Agents in performing such work is marginal and (iii) the Ordinary Course Professionals and Foreign Agents will not be involved in the administration of these chapter 11 cases, the Debtors do not believe the Ordinary Course Professionals and Foreign Agents are "professionals," whose retention must be approved by this Court, within the meaning of Bankruptcy Code section 327.

25. Nevertheless, out of abundance of caution, and to provide clarity and an opportunity for oversight, the Debtors seek the relief requested herein to avoid any subsequent controversy as to the Debtors' employment and payment of the Ordinary Course Professionals and the Foreign Agents during the pendency of these chapter 11 cases. The Debtors shall seek specific Court authority under Bankruptcy Code section 327 to employ any other professionals involved in the actual, direct administration of these chapter 11 cases.

26. Courts have routinely granted to large business debtors the same or substantially similar relief to that requested in this Motion. *See, e.g., In re Metro-Goldwyn-Mayer Studios, Inc.*, No. 10-15774 (Bankr. S.D.N.Y. Nov. 5, 2010) (approving a \$50,000 and \$100,000 monthly cap); *In re ION Media Networks, Inc.*, No. 09-13125 (Bankr. S.D.N.Y. June 26, 2009) (approving \$50,000 monthly cap); *In re DBSD N. Am. Inc.*, No. 09-13061 (Bankr. S.D.N.Y. June 5, 2009) (same); *In re Tronox Inc.*, No. 09-10156 (Bankr. S.D.N.Y. Feb. 6, 2009) (approving a \$50,000 case cap); *In re Lyondell Chem. Co.*, No. 09-10023 (Bankr. S.D.N.Y. Feb. 4, 2009) (same); *In re Wellman, Inc.*, Case No. 08-10595 (Bankr. S.D.N.Y. Apr. 1, 2008) (same); *In re Calpine Corp.*, No. 05-60200 (Bankr. S.D.N.Y. Jan. 25, 2006) (same); *In re NRG Energy, Inc.*, No. 03-13024 (Bankr. S.D.N.Y. May 19, 2003) (same).

27. The Debtors and their estates would be well served by the continued retention of the Ordinary Course Professionals and Foreign Agents because of their established relationships with the Debtors and understanding of the Debtors and their operations. Although certain of the Ordinary Course Professionals and Foreign Agents may hold unsecured claims against the Debtors, the Debtors do not believe that any of the Ordinary Course Professionals or Foreign Agents has an interest materially adverse to the Debtors, their estates and creditors. Accordingly, the relief requested herein is in the best interests of the Debtors, their estates, their creditors and other parties-in-interest and should be approved.

Waiver of Bankruptcy Rules 6004(a) and 6004(h)

28. To implement the foregoing successfully, the Debtors seek a waiver of the notice requirements under Bankruptcy Rule 6004(a) and the 14-day stay of an order authorizing the use, sale or lease of property under Bankruptcy Rule 6004(h). Pursuant to Rule 6004(h), “[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.” As set forth above, the payments proposed herein are essential to prevent potentially irreparable damage to the Debtors’ operations, value, and ability to reorganize. Thus, the Debtors submit that cause exists to justify a waiver of the 14-day stay imposed by Bankruptcy Rule 6004(h), to the extent it applies.

Reservation of Rights

29. Nothing contained herein is intended or should be construed as an admission as to the validity of any claim against the Debtors, a waiver of the Debtors’ rights to dispute any claim, or an approval or assumption of any agreement, contract or lease under Bankruptcy Code section 365. Likewise, if this Court grants the relief sought herein, any payment made pursuant

to the Court's order is not intended and should not be construed as an admission as to the validity of any claim or a waiver of the Debtors' rights to dispute such claim.

Motion Practice

30. This Motion includes citations to the applicable rules and statutory authorities upon which the relief requested herein is predicated, and a discussion of their application to this Motion. Moreover, in addition to all entities otherwise entitled to receive notice, the Debtors have given notice of this Motion to all entities believed to have or be claiming an interest in the subject matter of the proposed order or who, it is believed, otherwise would be affected by the proposed order. Accordingly, the Debtors submit that this Motion satisfies Rule 9013-1 of the Local Bankruptcy Rules for the Southern District of New York (the "Local Rules").

Notice

31. Notice of this Motion has been provided to: (a) the U.S. Trustee; (b) proposed counsel to the Committee; (c) counsel to the DIP Lender; (d) counsel for Atari, S.A., (e) the Internal Revenue Service; (f) the New York State Attorney General; and (g) all parties that have filed a notice of appearance or have requested service in these chapter 11 cases. The Debtors submit that no other or further notice need be provided.

No Prior Request

32. 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 annexed hereto as Exhibit A, granting the relief requested herein, and (b) grant to the Debtors such other and further relief as the Court may deem just and proper.

New York, New York
Dated: February 20, 2013

AKIN GUMP STRAUSS HAUER & FELD LLP

By: /s/ Ira S. Dizengoff

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Proposed Counsel to the Debtors and Debtors in Possession

EXHIBIT A

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

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

**ORDER AUTHORIZING THE *NUNC PRO TUNC* EMPLOYMENT
AND COMPENSATION OF CERTAIN PROFESSIONALS UTILIZED
IN THE ORDINARY COURSE OF THE DEBTORS' BUSINESS**

Upon the motion (the "Motion")² of the above-captioned debtors and debtors-in-possession (collectively, the "Debtors") for entry of an order pursuant to Bankruptcy Code sections 105, 327, 328, 330 and 331 authorizing (a) the retention of Ordinary Course Professionals and Foreign Agents and (b) payment of compensation and reimbursement of expenses in the manner customarily made to such Ordinary Course Professionals and Foreign Agents by the Debtors upon submission to the Debtors of detailed invoices in the ordinary course of business, the Court finds that (i) it has jurisdiction over the matters raised in the Motion pursuant to 28 U.S.C. § 1334(b) 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) the relief requested in the Motion is in the best interests of the Debtors, their estates, and their creditors, (iv) proper and adequate notice of the Motion and the hearing thereon has been given and that no other or further notice is necessary and (v) good and sufficient cause exists for the granting of the relief requested in the Motion after having given due deliberation upon the Motion and all of the proceedings had before the Court in connection with the Motion.

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

² Capitalized terms used and 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. The Debtors are authorized but not directed to employ and retain *nunc pro tunc* to the Petition Date, pursuant to Bankruptcy Code sections 105, 327, 328, 330 and 331, all Ordinary Course Professionals listed on Exhibit 1 hereto, as may be supplemented from time to time in accordance with paragraph 7 hereof, and the Foreign Agents, without the need to file individual retention applications for each Ordinary Course Professional or Foreign Agent.
3. The Debtors are authorized but not directed to make monthly payments for compensation and reimbursement of expenses to each of the Ordinary Course Professionals and Foreign Agents in the manner customarily made by the Debtors in the full amount billed by any such Ordinary Course Professional and Foreign Agent, upon receipt therefrom of reasonably detailed invoices indicating the nature of the services rendered and calculated in accordance with such professional's standard billing practices (without prejudice to the Debtors' normal right to dispute any such invoice); provided, however, that fees paid to an Ordinary Course Professional or Foreign Agent, excluding expenses and disbursements, shall not exceed: (a) \$12,000 per month, in the aggregate, to the Foreign Agents, and (b) either \$12,000 per month or \$150,000 in the aggregate over the course of the chapter 11 cases, respectively, per Ordinary Course Professional (each a "Fee Cap" and, collectively, the "Fee Caps").
4. To the extent that fees payable to any Ordinary Course Professional or Foreign Agent exceed either of the Fee Caps set forth in paragraph 3 hereof, then such Ordinary Course Professional or Foreign Agent shall be required to be retained pursuant to a formal retention application before any amounts in excess of either limit may be paid; provided, however, the

Debtors retain the right to seek the approval of this Court to make specific payments in excess of the applicable limits on an individual basis.

5. At least fourteen (14) days prior to submitting its initial post-petition invoice to the Debtors, each Ordinary Course Professional shall file with this Court, and serve on the Notice Parties an Affidavit, substantially in the form attached hereto as Exhibit 2.

6. Any Notice Party who wishes to object to the retention of an Ordinary Course Professional must file an objection and serve such objection on the other Notice Parties and the affected Ordinary Course Professional on or before the Affidavit Objection Deadline. If any such objection cannot be resolved within ten (10) days of its receipt, the matter shall be scheduled for hearing before this Court at the next regularly scheduled hearing or date otherwise agreeable to the parties thereto. If no objection is received from any of the Notice Parties on or before the Affidavit Objection Deadline with respect to any particular Ordinary Course Professional, or if any objection submitted is timely resolved as set forth above, the Debtors shall be authorized, without further order of this Court, to retain and pay such professional as a final matter.

7. The Debtors are authorized to pay up to \$12,000 in the aggregate to the Foreign Agents on account of services provided to the Debtors during the course of the chapter 11 cases without the need for each Foreign Agent to submit and file an Affidavit; provided, however, that each Foreign Agent submits to the Debtor invoices in accordance with paragraph 3; provided further that each Foreign Agent complies with the Fee Cap.

8. The Debtors are authorized but not directed to employ and retain additional Ordinary Course Professionals or Foreign Agents in their sole discretion without the need to file individual retention applications for such professionals.

9. In the event that the Debtors seek to employ and retain additional Ordinary Course Professionals, the Debtors shall file a Supplement to Exhibit 1 hereto setting forth the name and address of the additional Ordinary Course Professional and a brief description of the services to be rendered by such professional, and shall serve the Supplement upon the Notice Parties.

10. Commencing on April 17, 2013, and every three months thereafter in which these chapter 11 cases are pending, the Debtors shall file with this Court, and serve on (i) the U.S. Trustee, and (ii) counsel to the Committee, a Quarterly Report for each Ordinary Course Professional for each applicable Quarter; provided, however, that the first Quarterly Report shall cover the period from the Petition Date through March 31, 2013; provided further that this requirement to file Quarterly Reports shall be waived upon the confirmation of a plan of liquidation or reorganization in these cases. Each Quarterly Report shall include the following information for each Ordinary Course Professional: (a) the name of the Ordinary Course Professional; (b) the aggregate amounts paid as compensation for services rendered and reimbursement of expenses incurred by such Ordinary Course Professional during the reported Quarter; and (c) a general description of the services rendered by such Ordinary Course Professional.

11. Notwithstanding anything to the contrary set forth herein, the Debtors retain the right to apply to this Court for authorization to employ any Ordinary Course Professional or Foreign Agent on a *nunc pro tunc* basis should it later be determined, as a result of such Ordinary Course Professional or Foreign Agent exceeding either of the Fee Caps or for any other reason, that the Debtors are required to file a formal retention application in respect of such Ordinary Course Professional or Foreign Agent.

12. Within ten (10) business days of the date of entry of this Order, the Debtors shall serve a copy of this Order on each of the Ordinary Course Professionals identified on Exhibit 1 hereto.

13. This Court shall retain jurisdiction to hear and determine all matters arising from the implementation of this Order.

Dated: February ____, 2013
New York, New York

THE HONORABLE JAMES M. PECK
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT 1

Ordinary Course Professionals

Name and Address of Firm	Service Provided to Debtors
Baker & McKenzie 100 New Bridge Street London-EC4V 6JA London, England	Representation and / or legal advice on Trademarks
Dorsey & Whitney LLP P.O. Box 1680 Minneapolis, MN 55480-1680	Trademark Enforcement Matters
Fish & Richardson P.C. P.O. Box 3295 Boston, MA 02241-3295	Representation and / or legal advice on maintaining patents.
Frank Rimmerman & Co. LLP 1 Embarcadero Center, Suite 2410 San Francisco, CA 94111	Tax compliance services
Frankfurt Kurnit Klein & Selz 488 Madison Avenue New York, NY 10022	Game development and privacy advice
Law Office of Chun T. Wright PLLC 1425 K Street, NW, Suite 350 Washington, DC 20005	Advice on brand infringement and monitoring
Nixon Peabody LLP 555 West Fifth Street, 46th Floor Los Angeles, CA 90013	Copyright & Corporate matters
Liner Grode Stein Yankelevitz Sunshine Regenstreif & Taylor LLP 1100 Glendon Avenue Los Angeles, CA 90024	Licensing matters
Olshan Frome Wolosky LLP 65 East 55th Street New York, NY 10022	General corporate matters
Rosenberg, Neuwirth & Kuchner, CPA, PC 2 Penn Plaza, Floor 4 New York, NY 10121	Labor audit matters

EXHIBIT 2

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

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

AFFIDAVIT OF ORDINARY COURSE PROFESSIONAL

STATE OF _____)
) ss:
COUNTY OF _____)

1. [], being duly sworn, deposes and says:
2. I am a principal of [] (“[]”) which firm maintains offices at [].
3. Neither I, “[]”, nor any partner, or other member thereof, insofar as I have been able to ascertain, has any connection with the above-captioned debtors and debtors-in-possession (collectively, the “Debtors”), their creditors or any other party-in-interest, or their attorneys, except as set forth in this affidavit.
4. “[]” has represented and advised the Debtors in [] with respect to a broad range of aspects of the Debtors’ businesses.
5. The Debtors have requested, and “[]” has agreed, to continue to represent and advise the Debtors pursuant to section 327(e) of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (as amended, the “Bankruptcy Code”), with respect to such matters. Additionally, the Debtors have requested, and “[]” proposes, to render the following services to the Debtors: **[INSERT SERVICES]**
6. “[]”’s current fee arrangement is [].
7. Except as set forth herein, no promises have been received by “[]” or any partner, auditor or other member thereof as to compensation in connection with these chapter 11 cases other than in accordance with the provisions of the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, the Local Bankruptcy Rules for the United States Bankruptcy Court for the Southern District of New York, orders of this Court, and the Fee Guidelines promulgated by the Executive Office of the United States Trustee.
8. “[]” has no agreement with any entity to share with such entity any compensation received by “[]”.
9. “[]” and its partners, auditors and other members may have in the past represented, currently represent, and may in the future represent entities

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

that are claimants of the Debtors in matters totally unrelated to these pending chapter 11 cases. “[_]” does not and will not represent any such entity in connection with these chapter 11 cases and does not have any relationship with any such entity, attorneys or accountants that would be adverse to the Debtors or their estates.

10. Neither I, “[_]” nor any partner, auditor or other member thereof insofar as I have been able to ascertain, holds or represents any interest adverse to the Debtors or their estates in the matters upon which “[_]” is to be engaged.
11. The foregoing constitutes the statement of “[_]” pursuant to Bankruptcy Code sections 329 and 504 and Bankruptcy Rules 2014 and 2016(b).

[INSERT NAME]

Subscribed and sworn before me
this [_] day of _____, 2013

Notary Public