UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF RHODE ISLAND

HASBRO, INC., Plaintiff, -against- INFOGRAMES ENTERTAINMENT, S.A. a/k/a ATARI, S.A., Defendant.	C.A. 09-610/ML ANSWER AND COUNTERCLAIMS

Defendant Atari, SA (f/k/a Infogrames Entertainment, SA) ("Atari"), by its attorneys, Pierce & Atwood LLP and Olshan Grundman Frome Rosenzweig & Wolosky LLP, for its Answer and Counterclaims, alleges as follows:

ANSWER TO COMPLAINT

1. Denies the allegations contained in paragraph 1 of the Complaint.

2. Denies the allegations contained in paragraph 2 of the Complaint.

3. Denies having knowledge or information sufficient to form a belief as to the truth of the allegation that Namco Bandai Partners SAS (also known as Namco Bandai Distribution Partners S.A.S.) ("NBP") held itself out as a publisher of Dungeons & Dragons ("D&D") digital games, admits that there is no relationship between Atari and NBP concerning D&D digital games, and denies the other allegations contained in paragraph 3 of the Complaint.

4. Denies the allegations contained in paragraph 4 of the Complaint.

5. Denies the allegations contained in paragraph 5 of the Complaint.

6. Admits the allegations contained in paragraph 6 of the Complaint.

7. Admits the allegations contained in paragraph 7 of the Complaint.

8. The allegations contained in paragraph 8 of the Complaint state legal conclusions to which no response is necessary.

9. Denies the allegations contained in paragraph 9 of the Complaint, except admits that Atari agreed in Section 22.2 of the "Dungeons & Dragons License Agreement" dated as of June 3, 2005 by and between Hasbro, Inc. and Atari (the "License Agreement") that it submits to the personal jurisdiction of the federal or state courts in the State of Rhode Island in "[a]ny suit, action or proceeding between or among any of the parties hereto arising out of or related to this Agreement . . . ."

10. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 10 of the Complaint, except admits that Atari and Hasbro agreed in Section 22.2 of the License Agreement that "[a]ny suit, action or proceeding between or among any of the parties hereto arising out of or related to this Agreement shall be brought solely in the federal or state courts in the State of Rhode Island, and Licensee hereby . . . agrees to such courts as the appropriate venue."

11. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 11 of the Complaint, except admits that the D&D brand is a "worldwide leader in the tabletop role-playing game category."

12. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 12 of the Complaint, except admits that the D&D brand is a "revered fantasy brand."

13. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 13 of the Complaint.

14. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 14 of the Complaint.

15. Denies the allegations contained in paragraph 15 of the Complaint, except admits that, in 2000, Hasbro granted, through a written license agreement, an exclusive license of various rights, including with respect to the D&D brand and games, to Atari and refers the Court to that license agreement for its terms.

16. The allegations regarding "to fulfill its obligations" contained in paragraph 16 of the Complaint state legal conclusions to which no response is necessary, and admits the remaining allegations contained in paragraph 16 of the Complaint.

17. The allegation in paragraph 17 of the Complaint that "Hasbro and Atari terminated Atari's license to the other Hasbro properties" states a legal conclusion to which no response is necessary, the allegations regarding "D&D only" in said paragraph are denied, and admits the remaining allegations contained in paragraph 17 of the Complaint.

18. Denies the allegations contained in paragraph 18 of the Complaint, except admits that Atari has exercised various of its rights under the License Agreement through itself or certain of its subsidiaries.

19. Denies the allegations contained in paragraph 19 of the Complaint, except admits that the License Agreement contains a confidentiality provision, and refers the Court to the License Agreement for its complete terms.

20. Denies the allegations contained in paragraph 20 of the Complaint, and refers the Court to the License Agreement for its complete terms.

21. Denies the allegations contained in paragraph 21 of the Complaint, except admits that Section 4.3 of the License Agreement concerns, *inter alia,* customer support, and refers the Court to the License Agreement for its complete terms.

22. Denies the allegations contained in paragraph 22 of the Complaint, except admits that Section 4.3 of the License Agreement concerns, *inter alia*, customer support, and refers the Court to the License Agreement for its complete terms.

23. Denies the allegations contained in paragraph 23 of the Complaint.

24. Denies the allegations contained in paragraph 24 of the Complaint, except admits that the License Agreement contains a provision concerning promotion, and refers the Court to the License Agreement for its complete terms.

25. Denies the allegations contained in paragraph 25 of the Complaint, and refers the Court to the License Agreement for its complete terms.

26. Denies the allegations contained in paragraph 26 of the Complaint, except admits that the License Agreement contains a provision concerning sublicensing and refers the Court to the License Agreement for its complete terms.

27. Denies having knowledge or information sufficient of form a belief as to the truth of the allegations contained in paragraph 27 of the Complaint, and avers that said paragraph nowhere identifies with any specificity the alleged "sublicensing agreements."

28. Denies the allegations contained in paragraph 28 of the Complaint.

29. Denies having knowledge or information sufficient of form a belief as to the truth of the allegations contained in paragraph 29 of the Complaint.

30. Denies the allegation that NBP is a primary competitor of Hasbro, and otherwise denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 30 of the Complaint.

31. Denies the allegations contained in paragraph 31 of the Complaint, except admits that Deborah Uluer of Hasbro's' Legal Department sent an email dated July 14, 2009 to Kristen Keller, General Counsel of Atari, Inc., and refers the Court to said letter for its contents.

32. Denies the allegations contained in paragraph 32 of the Complaint, except admits that Ms. Keller sent a letter dated July 26, 2009 to Ms. Uluer, and refers the Court to said letter for its contents.

33. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 33 of the Complaint.

34. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 34 of the Complaint.

35. Denies the allegations contained in paragraph 35 of the Complaint, except admits that Mark Blecher, General Manager of Digital Media and Gaming of Hasbro, called James Wilson, President and Chief Executive Officer of Atari, Inc., on or about August 7, 2009.

36. Denies the allegations contained in paragraph 36 of the Complaint, except admits that, on or about August 11, 2009, a legal assistant of Atari, Inc., mistakenly sent a draft agreement to legal staff of Hasbro, and refers the Court to the draft agreement for its complete terms.

37. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 37 of the Complaint, except admits that, on or about August 11, 2009, Ms. Keller advised Ms. Uluer by email that NBP acted as a wholesaler for

Atari, and Atari did not sublicense or assign rights in the D&D brand to NBP, and refers the Court to said email for its contents.

38. Denies the allegations contained in paragraph 38 of the Complaint.

39. Denies the allegations contained in paragraph 39 of the Complaint, except admits that on or about August 14, 2009, Mr. Wilson, Mr. Blecher, Ms. Uluer, Ms. Keller, and an outside counsel for Atari spoke by telephone, and that Mr. Blecher stated that NBP was a competitor of Hasbro.

40. Denies the allegations contained in paragraph 40 of the Complaint, except admits that, in the telephone conversation referred to in paragraph 39 above, Mr. Wilson denied that Atari had sublicensed rights in the D&D brand and in D&D intellectual property to NBP, and stated that the apparent incidents reported by Mr. Blecher appeared to have been transitional, relating to Atari's sale of its interest in Distribution Partners to NBP's parent, that Mr. Blecher asked for a copy of the Distribution Agreement between Atari and Distribution Partners, and that Mr. Wilson declined to provide a copy as that agreement is confidential.

41. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 41 of the Complaint.

42. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 42 of the Complaint.

43. Denies the allegations contained in paragraph 43 of the Complaint, except admits that Mr. Blecher sent a letter dated September 2, 2009 to Mr. Wilson, and refers the Court to said letter for its contents.

44. Denies the allegations contained in paragraph 44 of the Complaint, except admits that Mr. Wilson sent a letter dated September 2, 2009 to Mr. Blecher, and refers the Court to said letter for its contents.

45. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 45 of the Complaint.

46. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 46 of the Complaint, except denies that any such packaging contained or constituted confidential information of Hasbro.

47. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 47 of the Complaint.

48. With respect to the allegations contained in paragraph 48 of the Complaint, Atari denies that Atari engaged in any wrongdoing or breached any obligation, and otherwise denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 48 of the Complaint.

49. Denies the allegations contained in paragraph 49 of the Complaint, except admits that Mr. Blecher sent a letter dated September 29, 2009 addressed to David Gardner, then Chief Executive Officer of Atari, and Frederic Monnereau, the former general counsel of Atari, and that copies thereof were sent to Mr. Wilson and Ms. Keller, and refers the Court to the letter for its contents.

50. Denies the allegations contained in paragraph 50 of the Complaint, and refers the Court to the letter dated September 29, 2009 from Mr. Blecher, addressed to Messrs. Gardner and Monnereau, for its contents.

51. Denies the allegations contained in paragraph 51 of the Complaint, and refers the Court to the letter dated September 29, 2009 from Mr. Blecher, addressed to Messrs. Gardner and Monnereau, for its contents.

52. Denies the allegations contained in paragraph 52 of the Complaint, except admits that Messrs. Blecher and Wilson met on or about October 14, 2009, but that Mr. Blecher refused to discuss Atari's sublicensing proposals in any detail.

53. Denies the allegations contained in paragraph 53 of the Complaint, except admits that Atari responded to the aforesaid letter dated September 29, 2009 from Mr. Blecher by letter dated and sent October 26, 2009 from Mr. Wilson to Mr. Blecher and denied therein that Atari had breached the License Agreement, and refers the Court to that October 26, 2009 letter for its contents.

54. Denies the allegations contained in paragraph 54 of the Complaint, and refers the Court to the aforesaid October 26, 2009 letter for its contents.

55. Denies the allegations contained in paragraph 55 of the Complaint, except admits that Atari denied there was a sublicense of rights in the D&D properties from Atari to Namco Bandai, and refers the Court to the aforesaid October 26, 2009 letter for its contents.

56. Denies the allegations contained in paragraph 56 of the Complaint, except admits that the aforesaid October 26, 2009 letter enclosed a copy of a letter dated October 6, 2009 from Jackie Fromion of NBP to Mr. Wilson, and refers the Court to those letters for their respective contents.

57. Denies the allegations contained in paragraph 57 of the Complaint, except admits that Mr. Blecher sent a letter dated November 24, 2009 to Mr. Wilson, and refers the Court to that letter for its contents.

58. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 58 of the Complaint.

59. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 59 of the Complaint.

60. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 60 of the Complaint.

61. Denies the allegations contained in paragraph 61 of the Complaint.

62. Denies having knowledge or information sufficient to form a belief as to the truth of the allegation as to what the unidentified, alleged German-language game referenced, and denies the remaining allegations contained in paragraph 62 of the Complaint.

63. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 63 of the Complaint.

64. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 64 of the Complaint, except denies that any current subsidiary of Atari ever changed its name to Namco Bandai Partners Germany GmbH.

65. Denies the allegations contained in paragraph 65 of the Complaint.

66. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 66 of the Complaint, except admits that Atari discovered in December 2009, before commencement of this action, that NBP had one or more website pages concerning Germany and possibly other nations, relating to Licensed D&D Products, and that Atari promptly asked NBP to remove any and all such website pages.

67. Denies the allegations contained in paragraph 67 of the Complaint.

68. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 68 of the Complaint.

69. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 69 of the Complaint.

70. Denies the allegations contained in paragraph 70 of the Complaint.

71. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 71 of the Complaint, except denies that any current subsidiary of Atari ever changed its name to Namco Bandai Partners Italia S.p.A.

72. Denies the allegations contained in paragraph 72 of the Complaint.

73. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 73 of the Complaint.

74. Denies the allegations contained in paragraph 74 of the Complaint.

75. Denies the allegations contained in paragraph 75 of the Complaint.

76. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 76 of the Complaint.

77. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 77 of the Complaint, except denies that any current subsidiary of Atari ever changed its name to Namco Bandai Partners France.

78. Denies the allegations contained in paragraph 78 of the Complaint.

79. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 79 of the Complaint.

80. Denies the allegations contained in paragraph 80 of the Complaint.

81. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 81 of the Complaint.

82. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 82 of the Complaint.

83. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 83 of the Complaint.

84. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 84 of the Complaint, except denies that any current subsidiary of Atari ever changed its name to Namco Bandai Iberica SA.

85. Denies the allegations contained in paragraph 85 of the Complaint.

86. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 86 of the Complaint.

87. Denies the allegations contained in paragraph 87 of the Complaint.

88. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 88 of the Complaint.

89. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 89 of the Complaint.

90. Denies the allegations contained in paragraph 90 of the Complaint.

91. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 91 of the Complaint.

92. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 92 of the Complaint.

93. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 93 of the Complaint.

94. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 94 of the Complaint, except denies that any current subsidiary of Atari ever changed its name to Namco Bandai Partners.

95. Denies the allegations contained in paragraph 95 of the Complaint.

96. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 96 of the Complaint.

97. Denies the allegations contained in paragraph 97 of the Complaint.

98. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 98 of the Complaint, except denies that any current subsidiary of Atari ever changed its name to Namco Bandai B.V.

99. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 99 of the Complaint.

100. Denies the allegations contained in paragraph 100 of the Complaint.

101. Denies that any current subsidiary of Atari ever changed its name to either Namco Bandai Partners Asia Holdings PTY Ltd. or Namco Bandai Partners Australia PTY Ltd., and denies having knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 102 in the Complaint, and avers that Hasbro's numbering of the paragraphs in the Complaint skips from 100 to 102.

102. Denies the allegations contained in paragraph 101 of the Complaint, except admits that as of the date of commencement for this action, the URL address www.atari.com.au erroneously redirected to the URL address www.namcobandaipartners.com.au, which redirection

Atari, Inc. has asked NBP to cease, and Atari avers this paragraph 101 appears immediately after paragraph numbered 102 in the Complaint.

103. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in the second paragraph numbered 102 in the Complaint

104. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 103 of the Complaint.

105. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 104 of the Complaint.

106. Denies the allegations contained in paragraph 105 of the Complaint.

107. Denies the allegations contained in paragraph 106 of the Complaint, except admits that the web address www.br.atari.com cannot be located as of the date of this Answer.

108. Denies the allegations contained in paragraph 107 of the Complaint.

109. Denies having knowledge or information sufficient to form a belief as to the truth of the allegation that, "[a]s of mid-December 2009, the web address www.tw.atari.com redirects to www.namcobandaiparterns.com.tw," and denies the remaining allegations contained in paragraph 108 of the Complaint.

110. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 109 of the Complaint.

111. Denies the allegations contained in paragraph 110 of the Complaint.

112. Admits the allegations contained in paragraph 111 of the Complaint.

113. Denies the allegations contained in paragraph 112 of the Complaint, except admits that at the request of Atari, Greg Leeds, President of Wizards of the Coast LLC

("WOTC"), a subsidiary of Hasbro, and Mr. Wilson agreed to meet on December 9, 2009 for a business meeting.

114. Denies the allegations contained in paragraph 113 of the Complaint, except admits that Greg Leeds emailed Mr. Wilson at 10:35 p.m. on December 3, 2009 to delay the meeting for a week.

115. Denies the allegations contained in paragraph 114 of the Complaint, except admits that Kate Ross of WOTC and Deborah Uluer, an attorney at Hasbro, telephoned Ms. Keller on December 4, 2009, Ms. Keller stated in that phone call that Atari did not have a relationship with NBP relating to the D&D products.

116. Denies the allegations contained in paragraph 115 of the Complaint, except admits that Ms. Ross sent a letter on Sunday, December 6, 2009, to Ms. Keller, and refers the Court to the letter for its contents.

117. Denies the allegations contained in paragraph 116 of the Complaint, except admits that Mr. Wilson telephoned Mr. Leeds on or about December 7, 2009 and insisted that the meeting scheduled for December 9, 2009 go forward to discuss Atari's outstanding sublicensing proposals so it could move forward with development.

118. Denies the allegations contained in paragraph 117 of the Complaint, except admits that representatives of WOTC and Atari met on December 9, 2009 and that the purpose of the meeting was to discuss sublicensing proposals that Atari had made to Hasbro, but approval for which Hasbro had unreasonably withheld, and Hasbro and WOTC's plans for the D&D brand.

119. Denies the allegations contained in paragraph 118 of the Complaint, except admits that representatives of Atari discussed its outstanding sublicensing proposals at the December 9, 2009 meeting.

120. Denies the allegations contained in paragraph 119 of the Complaint, except admits that on Friday, December 11, 2009 Mr. Wilson sent a letter to Mr. Blecher, and refers the Court to the letter for its contents.

121. Denies the allegations contained in paragraph 120 of the Complaint, and refers the Court to the aforesaid December 11, 2009 letter for its contents.

122. Denies the allegations contained in paragraph 121 of the Complaint, except admits that, in the December 11, 2009 letter, Mr. Wilson stated, in part, that "Consumer customer service is handled via Atari's local market websites," and refers the Court to the aforesaid December 11, 2009 letter for its contents.

123. Denies the allegations contained in paragraph 122 of the Complaint, and refers the Court to the aforesaid December 11, 2009 letter for its contents.

124. Denies the allegations contained in paragraph 123 of the Complaint, except admits that Ms. Keller sent a letter dated December 14, 2009 to Hasbro, giving notice to Hasbro of breaches by it of the License Agreement and thirty days for Hasbro to cure those breaches as provided under the License Agreement, and refers the Court to said letter for its contents.

125. In response to paragraph 124 of the Complaint, Atari repeats and reiterates its allegations in paragraphs 1 through 124 of this Answer as if set forth at length herein.

126. Denies the allegations contained in paragraph 125 of the Complaint, and refers the Court to the License Agreement for its terms.

127. Denies the allegations contained in paragraph 126 of the Complaint.

128. Denies the allegations contained in paragraph 127 of the Complaint.

129. Denies the allegations contained in paragraph 128 of the Complaint.

130. In response to paragraph 129 of the Complaint, Atari repeats and reiterates its allegations in paragraphs 1 through 129 of this Answer as if set forth at length herein.

131. Denies the allegations contained in paragraph 130 of the Complaint.

132. Denies the allegations contained in paragraph 131 of the Complaint.

133. Denies the allegations contained in paragraph 132 of the Complaint.

134. Denies the allegations contained in paragraph 133 of the Complaint.

135. In response to paragraph 134 of the Complaint, Atari repeats and reiterates its allegations in paragraphs 1 through 133 of this Answer as if set forth at length herein.

136. Denies the allegations contained in paragraph 135 of the Complaint.

137. Denies the allegations contained in paragraph 136 of the Complaint.

138. In response to paragraph 137 of the Complaint, Atari repeats and reiterates its allegations in paragraphs 1 through 137 of this Answer as if set forth at length herein.

139. Denies the allegations contained in paragraph 138 of the Complaint, and refers the Court to the License Agreement for its terms.

140. Denies the allegations contained in paragraph 139 of the Complaint.

141. Denies the allegations contained in paragraph 140 of the Complaint.

142. In response to paragraph 141 of the Complaint, Atari repeats and reiterates its allegations in paragraphs 1 through 141 of this Answer as if set forth at length herein.

143. Admits the allegations contained in paragraph 142 of the Complaint.

144. Denies the allegations contained in paragraph 143 of the Complaint.

145. Denies the allegations contained in paragraph 144 of the Complaint.

146. Denies the allegations contained in paragraph 145 of the Complaint.

147. Denies the allegations contained in paragraph 146 of the Complaint.

148. Denies the allegations contained in paragraph 147 of the Complaint.

149. Denies the allegations contained in paragraph 148 of the Complaint.

150. Denies the allegations contained in paragraph 149 of the Complaint.

151. Denies the allegations contained in paragraph 150 of the Complaint.

152. Denies the allegations contained in paragraph 151 of the Complaint.

153. In response to paragraph 152 of the Complaint, Atari repeats and reiterates its allegations in paragraphs 1 through 152 of this Answer as if set forth at length herein.

154. Denies that Atari had any good faith concern "that Atari had made an unauthorized sublicense to Namco Bandai," and otherwise admits the allegations contained in paragraph 153 of the Complaint.

155. Denies the allegations contained in paragraph 154 of the Complaint, except admits that Mr. Wilson had explained on multiple occasions to Hasbro that Atari had not sublicensed rights in the D&D properties to NBP and that Atari terminated NBP as a wholesaler of D&D products on September 11, 2009, and refers the Court to Mr. Wilson's October 26, 2009 letter for its contents.

156. Denies the allegations contained in paragraph 155 of the Complaint, except admits that, on or about December 4, 2009, Ms. Keller told Ms. Ross and Ms. Uluer that Atari had not sublicensed rights in the D&D properties to NBP and that Atari had terminated NBP as a wholesaler of D&D products.

157. Denies the allegations contained in paragraph 156 of the Complaint, and refers the Court to Mr. Wilson's October 26, 2009 letter for its contents.

158. Denies the allegations contained in paragraph 157 of the Complaint.

159. Denies the allegations contained in paragraph 158 of the Complaint.

160. Denies the allegations contained in paragraph 159 of the Complaint.

161. Denies the allegations contained in paragraph 160 of the Complaint.

162. Denies the allegations contained in paragraph 161 of the Complaint.

163. Denies the allegations contained in paragraph 162 of the Complaint.

164. In response to paragraph 163 of the Complaint, Atari repeats and reiterates its allegations in paragraphs 1 through 163 of this Answer as if set forth at length herein.

165. Denies the allegations contained in paragraph 164 of the Complaint.

166. Denies the allegations contained in paragraph 165 of the Complaint.

167. Denies the allegations contained in paragraph 166 of the Complaint.

168. Denies the allegations contained in paragraph 167 of the Complaint.

169. Denies the allegations contained in paragraph 168 of the Complaint.

170. In response to paragraph 169 of the Complaint, Atari repeats and reiterates its allegations in paragraphs 1 through 169 of this Answer as if set forth at length herein.

171. Denies the allegations contained in paragraph 170 of the Complaint.

172. Denies the allegations contained in paragraph 171, and avers that they state legal conclusions to which no response is necessary.

173. In response to paragraph 172 of the Complaint, Atari repeats and reiterates its allegations in paragraphs 1 through 172 of this Answer as if set forth at length herein.

174. Denies the allegations contained in paragraph 173 of the Complaint.

175. Denies the allegations contained in paragraph 174 of the Complaint.

176. In response to paragraph 175 of the Complaint, Atari repeats and reiterates its allegations in paragraphs 1 through 175 of this Answer as if set forth at length herein.

177. Denies the allegations contained in paragraph 176 of the Complaint.

First Affirmative Defense

177. The Complaint fails to state a claim upon which relief can be granted.

Second Affirmative Defense

178. The claims in the Complaint are barred because Atari did not breach any duty it may have owed to Hasbro.

Third Affirmative Defense

179. The claims in the Complaint are barred, in whole or part, due to the doctrines of waiver, estoppel and unclean hands.

Fourth Affirmative Defense

180. The claims in the Complaint are barred, in whole or part, due to Hasbro's own material breaches of contract.

Fifth Affirmative Defense

181. The claims in the Complaint are barred because Hasbro has not suffered any compensable damages as a result of the alleged actions.

Sixth Affirmative Defense

182. The claims in the Complaint are barred by the License Agreement as premature because the License Agreement provides that the Licensor, Hasbro, may terminate the License Agreement only in the event of a material breach by the Licensee, Atari, of a material provision of the License Agreement and only in the event the breach has not been corrected within thirty days of notice from Hasbro of the breach to Atari, and Hasbro failed to give Atari both notice and thirty days to cure with respect to Hasbro's allegations that Atari has breached the License

Agreement by failing to provide customer service and by improperly permitting NBP to provide such service, assuming, *arguendo*, that such occurred and constitute material breaches of material provisions of the License Agreement.

Seventh Affirmative Defense

183. Atari specifically reserves the right to file and assert any and all additional defenses in response to the Complaint, including any additional affirmative or special defenses, or any such other matters constituting an avoidance, which may subsequently come to the attention of Atari, to the full extent permitted by law, including those that become available or apparent during discovery.

ATARI, SA'S COUNTERCLAIMS AGAINST HASBRO, INC.

Introduction

1. These Counterclaims seek relief for Hasbro, Inc.'s breaches of contract and the covenant of good fair dealing, and tortious interference with contractual and business relationships. Hasbro, Inc., a large and powerful multinational entity, undertook these wrongful acts as part of its plan to bully Atari, SA, a much smaller entity and Hasbro, Inc.'s exclusive worldwide licensee of rights to publish and sell software for Internet and console-based Dungeons & Dragons and derivative role-playing games, into selling back those license rights to Hasbro, Inc. for a small fraction of what they are worth. In fact, Hasbro, Inc., by its own admission, commenced this action to compel Atari, SA to negotiate on Hasbro, Inc.'s terms.

The Parties

2. Defendant Atari, SA ("Atari") (formerly known as Infogrames Entertainment S.A.) is, and at all times relevant to this action has been, a French public company headquartered in Lyon, France. Atari, Inc., an indirect, wholly-owned subsidiary of Atari, is a corporation

organized and existing under the laws of the State of Delaware with its principal offices at 417 Fifth Avenue, New York, New York, 10016.

3. Plaintiff Hasbro, Inc. ("Hasbro") is and at all times relevant to this action has been a corporation duly organized and existing under the laws of the State of Rhode Island. Hasbro maintains its principal offices at 1027 Newport Avenue, Pawtucket, Rhode Island, 02862.

4. Wizards of the Coast LLC ("WOTC") is a limited liability company organized and existing under the laws of the State of Delaware. WOTC maintains its principal offices in Renton, Washington, and is a subsidiary of Hasbro.

Jurisdiction and Venue

5. Subject matter jurisdiction is proper under 28 U.S.C. § 1332 based on diversity of citizenship. The amount in controversy exceeds $75,000.

6. Pursuant to Section 22.2 of the License Agreement described in paragraph 13 in these Counterclaims, Hasbro and Atari have consented to the jurisdiction of the federal and state courts in the State of Rhode Island for "[a]ny suit, action or proceeding between or among any of the parties hereto arising out of or related to this Agreement," and Atari's Counterclaims arise out of relate to the License Agreement. This Court also has personal jurisdiction over Hasbro because it has offices located in the State of Rhode Island, is organized under the laws of and does business in the State of Rhode Island, and commenced this action in this Court.

The Facts

The Parties and Their Businesses

7. As described in Hasbro's Form 10-K for its fiscal year ended December 28, 2008, filed with the United States Securities and Exchange Commission, Hasbro is a large corporation organized in 1926, has worldwide operations, and is engaged in children's and family leisure

time and entertainment products and services, including the design, manufacture and marketing of games and toys.

8. According to that Form 10-K, Hasbro employs approximately 5,900 people and owns such widely-recognized brands as Playskool, Transformers, and Dungeons & Dragons, among many others.

9. In its Form 10-K for the fiscal year ending December 28, 2008, Hasbro reported net revenues of over $4.02 billion and net earnings of $306.8 million for that fiscal year.

10. Atari is a smaller, publicly-traded company with approximately $194 million in revenues in its last fiscal year and approximately 440 employees worldwide. It owns companies which publish, develop and distribute interactive software for games on a worldwide basis, such as Atari, Inc. and Cryptic Studios ("Cryptic"), a massively multiplayer online game ("MMO") development company. The Atari brand and its classic video games have a long and storied history in the software entertainment industry.

11. Atari, Inc. is a small company. It has approximately 50 employees based mainly in the State of New York.

12. Cryptic, a wholly-owned subsidiary of Atari, based in Los Gatos, California, is a leading MMO development company with a history of success with the City of Heroes and City of Villains games. Cryptic recently launched the Champions Online game and will soon release the Star Trek Online game.

The June 3, 2005 Dungeons and Dragons License Agreement Between Hasbro and Atari

13. On or about June 3, 2005, Hasbro, as licensor, and Atari, as licensee, entered into the "Dungeon & Dragons License Agreement" ("License Agreement"). Under the License Agreement, Hasbro licensed to Atari the exclusive, worldwide rights to create, design, develop, manufacture, have manufactured, market, and sell software game products for use in, among

other settings, Internet interactive and television interactive (through consoles) settings based on and employing the Dungeons & Dragons ("D&D") role-playing and derivative role-playing games and associated intellectual property (the licensed intellectual property is referred to hereinafter as "Licensed IP" and the licensed products are hereinafter referred to as the "Licensed D&D Products"). The License Agreement requires Atari to pay a minimum annual royalty guarantee and includes minimum "property development costs" investment requirements, both of which Atari has exceeded. A copy of the License Agreement, as amended, is annexed hereto as Exhibit 1.

14. The License Agreement succeeded a prior license agreement that Hasbro and Atari entered into in and operated under since 2000 by which Hasbro licensed to Atari those rights as well as such rights for other games.

15. The License Agreement was amended four times, on, respectively, June 30, 2006, July 13, 2006, June 3, 2005, and July 18, 2007 ("Amendment No. 4").

16. Pursuant to Section 2.1 of the License Agreement, the term of the License Agreement originally ran from June 3, 2005 to May 31, 2015. By July 2007, the relationship between Atari and Hasbro was sufficiently beneficial and profitable that the parties entered into Amendment No. 4 to the License Agreement, extending its term by an additional two years, to May 31, 2017, the current end of the term.

17. On behalf of Atari, Atari, Inc. is primarily responsible for the day-to-day management and exploitation of the License Agreement.

18. Until recently, Atari and Hasbro have had a long and mutually beneficial business relationship. Through Atari, Inc. and other Atari subsidiaries, Atari has successfully promoted and increased sales of various Licensed D&D Products and has paid Hasbro millions of dollars

under the License Agreement and has exceeded its annual minimum guarantee royalty of $1.5 million to Hasbro each year and in aggregate. Atari has also met, without complaint by Hasbro, the requirement for Atari to invest substantially in marketing and development of the Licensed D&D Products. Atari has paid Hasbro approximately $22 million thus far under the License Agreement and the prior license agreement for Atari's sales of the Licensed D&D Products, and has already exceeded its contractually-required minimum "property development costs" investment of $25 million during the period from June 3, 2005 to May 31, 2010. In 2009, Atari has been challenged in exceeding its minimum guarantees due to Hasbro's unwillingness to approve sublicenses and a European wholesaling arrangement.

19. The License Agreement is a vital and essential part of Atari's business.

20. Based on the extended term of the License Agreement, Atari has made long-term plans for the development, expansion, and growth of the Licensed D&D Products, including, but not limited to, seeking sublicensees. Atari, through Atari, Inc. and Cryptic, has continued to invest substantial amounts of its own capital into marketing and developing the Licensed D&D Products, including the building at great capital expense of a D&D software "MMO" game, and has negotiated and is negotiating sublicenses for the Licensed D&D Products.

21. Atari currently exploits the Licensed IP in many different ways that include but are not limited to: investing in, developing, marketing and selling games for relevant retail and online platforms; sub-licensing the Licensed IP to third parties which provide software to consumers; developing relationships with other third-parties for on-line distribution; and seeking additional wholesale selling relationships, mainly outside of North America for boxed D&D games, which Atari was compelled to stop upon Hasbro's protest early in the Fall of 2009.

22. Atari bought Cryptic in December 2008 for in excess of $26 million in part to develop a D&D MMO. A significant number of Cryptic employees are devoted to developing this D&D MMO. As a result, Atari, through Cryptic, has invested substantial sums in developing an MMO on-line game under the License Agreement, and a large portion of Atari's future business prospects depends on this game.

23. To date, Atari has released more than 25 Licensed D&D Products, investing tens of millions of dollars in developing and marketing the D&D franchise. D&D games released by Atari have been critically acclaimed. For example, D&D Neverwinter Nights currently has a 91 score on Metacritic (www.metacritic.com) and D&D Neverwinter Nights 2 has an 84 Metacritic score, very high scores given by an industry-recognized evaluation website.

24. Atari also has negotiated sublicense proposals for D&D games with Microsoft and Perfect World and other proposals in the works of which Atari has advised Hasbro

25. Atari continues to invest heavily in the D&D brand and expects to continue to produce significant revenue over and above the $1.5 million minimum annual guarantee through both developing and sublicensing, and fully intends to meet its future contractually-required "property development costs" investment through the end of the term of the License Agreement.

26. From the inception of the initial license agreement between Hasbro and Atari in 2000 to date, Atari has made over $187 million in gross sales and paid Hasbro approximately $22 million under the terms of the prior license agreement and the License Agreement. Atari expects to continue to produce significant revenue in the future from the D&D Neverwinter Nights MMO, other development projects and sublicensing deals for both Atari and Hasbro.

Hasbro Commences its Bullying and Obstructionist Campaign to Reacquire the Licensed Rights

27. Since in or about late July or early August 2009, Hasbro has engaged in a pattern of obstruction, hostility, meritless complaints of which the Complaint in this action is only the most recent example, and elevating minor issues into supposedly major issues against Atari to force Atari to sell back licensed rights to Hasbro at a small fraction of their worth. This course of action has harmed Atari's ability to exploit the rights licensed to it and demonstrates that Hasbro has materially breached the License Agreement.

28. On or about June 11, 2009, Hasbro raised the idea of buying back certain licensed rights from Atari, stating that Hasbro would make a more formal proposal to buy back specific rights from Atari. On or about June 30, 2009, Hasbro changed course, stating that it was no longer interested in a buyback of rights but would be interested in a license back from Atari to Hasbro of certain rights, which Atari declined on June 30, stating that it "was happy to continue to manage the license that we have," and again on July 7, stating that "Atari will continue to fulfill its obligations under our contract. We look forward to our continued partnership."

29. On or about July 29, 2009, Mark Blecher, Hasbro's General Manager of Digital Media and Gaming, advised James Wilson, President and Chief Executive Officer of Atari, that based on a conversation with Hasbro's new Chief Executive Officer, Hasbro had re-considered and wanted to make a proposal to buy back licensed rights from Atari. The next day, July 30, another member of Hasbro's management team called Atari, Inc., requesting specific data to help Hasbro evaluate the opportunity that a buyback would represent to Hasbro.

30. At this point, Hasbro commenced its plan to pressure Atari to sell back licensed rights at a steep discount to true value. Hasbro began its campaign of bullying Atari by failing in August and September 2009 to cooperate with Atari, Inc. in providing to it any requested input

for a plan for further business development which was to be discussed at a meeting between Atari, Inc. and Hasbro planned for September 2009. In fact, Hasbro cancelled the September 2009 meeting.

31. At the same time, Hasbro wrongfully began accusing Atari of sublicensing or assigning rights under the License Agreement to Namco Bandai Partners S.A.S. ("NBP") without Hasbro's approval as required under the License Agreement.

The NBP Wholesaling Arrangement

32. In February 2009, Atari and the parent of NBP entered into a contract for ownership of a distribution business named Distribution Partners in Europe. Under the agreement, Atari owned 67% of that entity and NBP's parent owned 33% thereof, and Atari had the option to require NBP's parent to acquire the remaining 67% interest. This transaction was made public and Hasbro never complained or raised it as a concern to Atari. Atari exercised this option and, in July 2009, NBP's parent purchased Atari's 67% interest. Upon information and belief, Distribution Partners was then re-named "Namco Bandai Partners S.A.S."

33. On or about February 18, 2009, Atari entered into a Distribution Agreement ("Distribution Agreement") with Distribution Partners for Europe. The parties agreed to keep the terms confidential.

34. From July 2009, after NBP's parent purchased Atari's 67% remaining interest in Distribution Partners, until September 11, 2009, NBP acted as a wholesaler for Atari of Licensed D&D Products in Europe.

35. By letter dated September 2, 2009, from Mark Blecher of Hasbro to James Wilson of Atari, Inc., Hasbro asserted that Atari had sublicensed or assigned rights under the License Agreement to NBP, demanded a copy of the confidential Distribution Agreement, asserted that

Atari had disclosed confidential information of Hasbro to NBP in violation of the License Agreement, and objected to NBP having anything to do with Licensed D&D Products as it was, according to Hasbro, a direct competitor of Hasbro.

Atari's Termination of NBP as Wholesaler of Licensed D&D Products in Europe

36. On or about September 11, 2009, Atari, in an attempt to be responsive to Hasbro, terminated NBP as a wholesaler of the Licensed D&D Products in Europe even though, under the License Agreement, Hasbro has no right, contractually or otherwise, to dictate to Atari through whom it sells the D&D Products.

37. Atari informed Hasbro of its termination of NBP as European wholesaler of Licensed D&D Products in a September 11, 2009 letter from James Wilson of Atari, Inc. to Mark Blecher of Hasbro, in which Mr. Wilson stated, "[A]s a courtesy and because Atari greatly appreciates and values its relationship with Hasbro, Atari has ended its wholesaling relationship with [NBP] in connection with D&D. Going forward, Atari will no longer provide [NBP] with inventory to allow it to act as Atari's wholesaler in connection with the D&D products."

38. The termination of the wholesaling arrangement with NBP has significantly impaired Atari's ability to realize opportunities and profits under the License Agreement in Europe, but Atari did so, even though not required by the License Agreement, to accommodate and maintain a positive working relationship with Hasbro.

39. In the September 11 letter, Mr. Wilson also explained that Atari had neither sublicensed nor assigned licensed rights to NBP, Atari could not provide to Hasbro a copy of the Distribution Agreement as it was confidential, and Atari had not disclosed confidential information of Hasbro to NBP.

Hasbro's September 29 Notice of Alleged Breach

40. Despite termination of NBP as wholesaler of Licensed D&D Products in Europe, and Mr. Wilson's assurances, Hasbro continued to complain about NBP and demand a copy of the confidential Distribution Agreement in an effort to bully and intimidate Atari.

41. Hasbro sent a notice of alleged breach to Atari, i.e., a letter dated September 29, 2009, from Mark Blecher to James Wilson ("Hasbro's Notice"), falsely stating to Atari that it was in breach of several provisions of the License Agreement and demanding that Atari cure the purported breaches within 30 days. A copy of Hasbro's Notice is annexed hereto as Exhibit 2.

42. Hasbro's Notice falsely claimed that Atari had sublicensed or assigned rights in the Licensed D&D Products to NBP in breach of Section 22.1 of the License Agreement, which requires that all assignments and sublicenses be approved by Hasbro, the licensor. Hasbro also claimed that any such unauthorized assignment or sublicense was in violation of Atari's duty of good faith and fair dealing because NBP is a competitor of Hasbro.

43. Hasbro's Notice also falsely claimed that Atari had disclosed confidential information of Hasbro to NBP in breach of the License Agreement.

44. Finally, Hasbro's Notice falsely claimed that Atari breached the License Agreement by failing to promote the D&D products in Europe, based allegedly on a statement from an employee of NBP that "Atari closed their European marketing and production activities."

45. Additionally, Hasbro's Notice demanded yet again a copy of the confidential Distribution Agreement and demanded written answers to a host of questions about Atari's marketing capacities and plans, particularly in Europe. At the time Hasbro sent this notice and demand to cure, Hasbro did not have a good faith factual basis to support its position and sought to capitalize on minor, immaterial events.

The October 14, 2009 Meeting

46. In early September 2009, Atari requested a meeting to update Hasbro on Atari's progress on certain development projects and sublicensing efforts since the last meeting which took place in April 2009 and, ultimately, to obtain Hasbro's approval to develop the projects.

47. Despite Atari's good faith efforts above and beyond what was required by the License Agreement, Hasbro still sent Hasbro's Notice and the letter dated September 29, 2009 from Mr. Blecher to Mr. Wilson accusing Atari of alleged breaches of the License Agreement.

48. The update meeting was ultimately scheduled, after initial postponement by Mr. Blecher, for October 14, 2009, although Hasbro wanted to postpone yet again the meeting until Atari responded to Hasbro's Notice.

49. The timing of Hasbro's Notice was an attempt by Hasbro to undermine and delay Atari's work and progress.

50. While Atari furnished in advance an agenda for the October 14 meeting to discuss multiple potential sublicenses, Mr. Blecher dismissed the agenda at the meeting. Without warning and instead of discussing and approving various time-sensitive Atari sublicense proposals, Hasbro used the meeting as a business review and, without prior notice, demanded five-year plans for each of the Licensed D&D Products as well as projections. Mr. Blecher harangued Mr. Wilson about not being prepared for the unscheduled business review. Hasbro also objected again to any business relationship between NBP and Atari relating to the Licensed D&D Products.

51. At the October 14 meeting, Atari also requested copies of Hasbro's D&D brand plans. Mr. Blecher stated to Atari that the D&D brand was not a priority for Hasbro and was "neither a first or second tier product" (*viz*., the brand had limited, tertiary importance to Hasbro).

52. At the October 14 meeting, Mr. Blecher also admitted that Hasbro would not meaningfully invest capital in the marketing or development of the D&D brand.

53. In contrast, over the past ten years, Atari has already exceeded its contractually required minimum "property development costs" investment of $25 million for the period from June 3, 2005 through May 31, 2010. Atari's investment efforts have considerably enhanced the value of the D&D brand.

54. Hasbro's conduct during the October 24, 2009 meeting confirmed its lack of cooperation and support for Atari, the License Agreement, and the D&D brand.

Atari's October 26, 2009 Response to Hasbro's Notice

55. Atari responded to Hasbro's Notice by letter dated October 26, 2009, refuting all of Hasbro's claims. A copy of that October 26, 2009 letter, without its enclosures, is annexed hereto as Exhibit 3.

56. Atari again explained that there was no assignment or sublicense of any rights to the D&D Properties to NBP. Atari also enclosed a copy of its September 11, 2009 letter to NBP, terminating it as wholesaler of Licensed D&D Products in Europe. A copy of that September 11, 2009 letter is annexed hereto as Exhibit 4.

57. Atari also confirmed that it had not disclosed any confidential information of Hasbro to NBP, and enclosed a copy of an October 6, 2009 letter from NBP to Mr. Wilson, acknowledging that it was no longer a wholesaler of Licensed D&D Products and confirming that it would promptly deliver to Atari any and all existing files it may have concerning Hasbro. A copy of that October 6, 2009 letter is annexed hereto as Exhibit 5.

58. The October 26, 2006 letter also corrected Hasbro's claim that Atari is not pursuing opportunities for the D&D Properties in the European market and confirmed Atari's capacity to do so.

59. Although Atari had not breached the License Agreement, Mr. Wilson's October 26, 2009 letter to Hasbro demonstrated that any such alleged breach had been cured.

Hasbro's Interference With Sublicensing by Atari

60. The October 26, 2009 letter also reminded Hasbro that it had obstructed Atari's right, subject to Hasbro's approval, to sublicense rights in the Licensed D&D Products.

61. To date, Atari has signed multiple sublicense agreements pursuant to the License Agreement, including one representing an estimated revenue stream of at least $22 million over the next eight years.

62. Since in or about April 2009, Atari is and has been in serious negotiations with at least four potential sub-licensees for additional sublicense agreements concerning the D&D brand, representing additional revenue to Atari in the amount of approximately $26 million.

63. Based on the current term of the License Agreement, Atari has already planned to earn over $99 million in profits from the D&D Properties over the next eight years. Atari continues to develop plans that would result in tens of millions of additional revenue for the D&D brand.

64. Since April 2009, when Atari began discussing the sublicensing opportunities with Hasbro, Hasbro has interfered with and obstructed Atari's ability to effectively negotiate sublicenses. For example, Atari has been negotiating a sublicense with Microsoft. At the same time, Hasbro's subsidiary, WOTC, has communicated directly with Microsoft about, and informed Microsoft that WOTC wants, a sublicensing agreement between Atari and Microsoft. Thus, armed with the knowledge that Hasbro has demanded that Atari reach agreement with Microsoft, Microsoft has been in a stronger position in negotiations than Atari.

65. Another potential sublicensee, EA, advised Atari, Inc. that Hasbro has directly communicated with EA about the D&D brand, and, as a result, EA was confused as to whether Hasbro or Atari had the right to negotiate a sublicense.

66. Such communications impair and have impaired Atari's ability to enter into additional beneficial, revenue-producing and profitable sublicenses.

67. Through the Fall of 2009, Atari presented to Hasbro on multiple occasions sub-licensing opportunities to Hasbro for its approval pursuant to the terms of the License Agreement, including proposed sublicenses by Atari to Microsoft. Although sublicensing opportunities are very time sensitive, Hasbro failed to act on any of the proposed sublicenses.

68. Hasbro failed to approve the opportunities and failed to respond in the timeframe provided under the License Agreement.

69. By refusing to review and respond to Atari on the sublicense opportunities which Atari has presented to Hasbro since the early Fall 2009, Hasbro has breached the License Agreement and specifically Section 22.1(b) which requires Hasbro to "use commercially reasonable efforts to notify [Atari] of its approval or disproval of a submission of a proposed sublicense within 15 business days of the date of submission to [Hasbro]" and, if it disapproves a sublicense, to "provide in writing its reason for doing so," and has breached the implied covenant of good faith and fair dealing inherent in the License Agreement.

Hasbro Prevents Sales in Europe

70. Mr. Wilson's October 26, 2009 letter responding to Hasbro's Notice enclosed a proposed wholesaler agreement between Atari and NBP whereby it would resume wholesaling the Licensed D&D Products in Europe for Atari. Mr. Wilson confirmed in his letter that NBP had performed admirably in that role before Atari terminated NBP as wholesaler at Hasbro's

insistence and sought Hasbro's approval of the agreement so that Atari could resume sales in Europe.

71. As this proposed agreement would neither sublicense nor assign any licensed rights to NBP, Hasbro should have clarified its position promptly. Instead, despite reminders by Atari, Hasbro has made contradictory statements to Atari regarding NBP resuming wholesaling in Europe under the proposed new agreement. Specifically, Hasbro has admitted that it has no right to control Atari's wholesaling relationships but steadfastly objected to Atari's relationship with NBP.

72. By its refusal to act on this proposed wholesaler agreement, and by intentionally obfuscating its position, Hasbro has prevented Atari from making any sales of Licensed D&D Products in Europe since early September 2009 and deprived Atari of the revenues and profits therefrom. In so doing, Hasbro has breached the License Agreement and specifically Section 1.1 which grants Atari the right to sell the Licensed D&D Products.

Hasbro's November 24, 2009 Letter and Continued Campaign of Harassment

73. In furtherance of its campaign of pressure, and constant questioning and harassment of Atari, on or about November 24, 2009, Hasbro sent yet another letter to Atari, Inc., again claiming the same purported breaches as alleged in Hasbro's Notice and demanding information and yet again a copy of the confidential Distribution Agreement even though Atari terminated the wholesaling arrangement between Atari and NBP for Licensed D&D Products in Europe on September 11, 2009, and provided a copy of NBP's acknowledgment of that termination to Hasbro with Mr. Wilson's October 26 letter. A copy of Hasbro's November 24, 2009 letter is annexed hereto as Exhibit 6.

74. Following Atari's receipt of this November 24 letter, NBP confirmed to Atari that NBP had given and renewed instructions to its managers to ensure disassociation between NBP and the Licensed D&D Products.

75. Hasbro's campaign continued with additional harassment of Atari in early December.

76. By phone on December 4, 2009 and then by letter dated December 6, 2009, counsel for WOTC, Kate Ross, stated to Kristen Keller, Vice President and General Counsel of Atari, Inc., that outside counsel for Hasbro and WOTC had conducted an investigation and found "very concerning information" which WOTC's counsel refused to disclose to Atari because Hasbro and WOTC "need the time . . . to assess its business and legal significance."

77. Hasbro intentionally withheld the purported "very concerning information."

78. Atari made multiple inquiries to WOTC in an effort to determine the nature of the "very concerning information" so that Atari could address it.

79. Hasbro and WOTC adamantly refused to disclose the information to Atari.

80. By letter dated December 11, 2009 from James Wilson of Atari, Inc. to Mark Blecher of Hasbro, Atari responded to Hasbro's November 24, 2009 letter and its allegations. Mr. Wilson's December 11 letter denied again that Atari had disclosed confidential information of Hasbro to NBP or sublicensed or assigned rights in the D&D properties to NBP, that even if any breach by Atari had somehow occurred, such was immaterial and had been cured, and answered in detail the questions about marketing plans and capacities of Atari for the D&D brand. A copy of the December 11, 2009 letter is annexed hereto as Exhibit 7.

81. On December 9, 2009, at Atari's insistence, Atari representatives, including Mr. Wilson, met with representatives of WOTC to obtain Hasbro's approval for Atari's sublicensing

plans. Kate Ross, General Counsel of WOTC, attended, but Kristen Keller, General Counsel of Atari, Inc., did not attend because the business people decided in advance that the December 9 meeting was to be a business meeting.

82. At the December 9, 2009 meeting, WOTC advised Mr. Wilson that WOTC and Hasbro would not permit Atari to re-launch and market certain existing Licensed D&D Products, *i.e.*, D&D Eberron and Dragonlance, indicating Hasbro was "placing [those products] in the vault" until at least 2014, despite the fact they had been licensed to Atari.

83. The aforesaid disapproval of Atari's plans to re-launch and market those Licensed D&D Products breached the License Agreement and specifically Section 1.1 which grants Atari "an exclusive and irrevocable . . . worldwide license" to sell the Licensed D&D Products and exploit the Licensed IP which include the D&D Eberron and D&D Dragonlance games.

84. As to the D&D Eberron property, Hasbro was aware that Atari already sublicensed this property to a third-party as part of an MMO that is already in widespread use.

85. On December 14, 2009, through a letter of that date from Ms. Keller of Atari, Inc. to Hasbro, Atari gave Hasbro notice of the aforesaid breaches by Hasbro, described in paragraphs 81 and 82 above, and demanded that Hasbro cure these breaches within thirty days. A copy of the December 14, 2009 letter is annexed hereto as Exhibit 8.

86. On December 14, 2009, before transmission of the December 14 letter to Hasbro, Mr. Wilson gave a courtesy call to Greg Leeds of WOTC to advise him in advance that the letter was about to be sent to Hasbro. Mr. Leeds stated that the dispute could be resolved by Hasbro buying back the rights it licensed to Atari.

87. The next day, on December 15, 2009, Mr. Leeds stated that Hasbro would not pay fair market value for a return of the licensed rights from Atari to Hasbro, and demanded that

Atari give back, for no consideration, the licensed rights to Hasbro and pay to Hasbro the annual minimum guaranteed royalty of $1.5 million for the balance of the term of the License Agreement.

88. When Atari refused to accede to Hasbro's demands on December 16, 2009 and, instead sought to negotiate, Hasbro filed this action the same day.

89. On December 16, 2009, Mr. Leeds called Mr. Wilson and advised him that Hasbro had commenced this action but would not serve the complaint for awhile so that Atari would come to the negotiating table on Hasbro's terms.

90. Hasbro then issued a press release at the market close on December 17, 2009, intending to publicly cast Atari in a negative light, in which Mr. Leeds of WOTC stated publicly, "While unfortunate that we had to take this action, it is crucial for us to protect the Dungeons & Dragons brand. We have been working for several months now to reach resolution with Atari, and they have left us with no other choice than to pursue legal action."

91. Hasbro issued this press release during the course of a public offering made by Atari in France, and the price of the stock of Atari dropped by approximately 13% by the market close on December 18, 2009, the day after the press release was issued.

92. After Atari obtained a copy of the Complaint on its own, Atari saw that Hasbro made the overwhelming majority of its allegations for the first time in the Complaint. In its rush to sue Atari, Hasbro had not even bothered to share with Atari its purported concerns.

93. Hasbro's course of conduct from July 2009 to present has been aimed at forcing Atari to sell some or all of the rights Hasbro granted willingly to Atari in 2005 and extended in 2007 for a small fraction of what they are worth. This course of conduct has included hectoring Atari with repeated, meritless accusations and questions about alleged breaches of confidentiality

obligations and unapproved sublicensing or assignments to NBP, forcing Atari to terminate NBP as wholesaler of Licensed D&D Products in Europe, leaving Atari without a wholesaler and preventing sales there, sitting on Atari's proposal that NBP be re-engaged as wholesaler, sitting on multiple sublicense opportunities presented by Atari, and constant demands for Atari to answer questions about its marketing capacity in Europe.

94. Section 20.2 and Amendment No. 4 of the License Agreement provide that Hasbro may terminate the License Agreement under certain circumstances, such as Atari's material breach of a material provision of the License Agreement and failure to cure within thirty days of Hasbro's notice thereof, failure to make payments, or becoming insolvent or entering into bankruptcy.

95. None of the aforesaid circumstances exist, and there is no basis for Hasbro's attempt at termination.

96. Under the License Agreement, the prevailing party in a dispute is entitled to an award of costs and expenses, including but not limited to attorneys' fees. Section 22.3 of the License Agreement provides:

> In the event of any legal proceeding between the parties arising out of or related to this Agreement, the prevailing party shall be entitled to recover, in addition to any other relief awarded or granted, its costs and expenses (*whether or not in connection with litigation* and including, without limitation, reasonable attorneys' fees and costs) incurred in connection with any such proceeding. (emphasis added)

97. Atari has incurred and will incur significant costs and expenses in responding to Hasbro's unfounded claims, in defending itself in this action, and prosecuting its Counterclaims to protect its rights, and is entitled, by contract, to recover such costs and expenses from Hasbro.

As a First Counterclaim
(Breach of Contract)

98. Atari repeats and reiterates its allegations set forth in paragraphs 1 through 97 of these Counterclaims.

99. Atari has fully performed its obligations under the License Agreement.

100. Hasbro has materially breached the License Agreement by failing to "use commercially reasonable efforts to notify [Atari] of its approval or disapproval of a submission of a proposed sublicense within 15 business days from the date of submission to [Hasbro]."

101. Hasbro has materially breached its obligations to Atari under the License Agreement by (a) forbidding Atari from using NBP as a wholesaler of Licensed D&D Products and thereby preventing Atari from making sales, (b) then later admitting that Hasbro cannot dictate who Atari uses as a wholesaler yet refusing to approve the proposed wholesaling agreement between Atari and NBP, which Atari submitted to Hasbro for approval on October 26, 2009, and (c) preventing Atari from exercising its right to sell Licensed D&D Products during the 2009 Christmas season and thereafter in Europe.

102. Hasbro has also materially breached its obligations to Atari under the License Agreement by forbidding Atari from re-launching the D&D Eberron and D&D Dragonlance games.

103. Any attempt by Hasbro's to cure would be futile, and, by its conduct, Hasbro has demonstrated that it will not cure any such breaches.

104. As a direct, approximate and foreseeable result of each of these material breaches by Hasbro, Atari has suffered and will suffer damages in the form of past and future lost profits and moneys invested in the D&D product line.

105. Accordingly, Atari is entitled to recover from Hasbro damages in an amount to be determined at trial, but in an amount not less than $99 million, together with interest thereon, costs and expenses, including attorneys' fees.

As a Second Counterclaim
(Breach of Contract)

106. Atari repeats and reiterates its allegations set forth in paragraphs 1 through 105 of these Counterclaims.

107. Atari has fully performed its obligations under the License Agreement.

108. Hasbro has by its conduct wrongfully repudiated and improperly terminated the License Agreement.

109. Hasbro has materially breached its obligations to Atari under the License Agreement.

110. As a direct, approximate and foreseeable result of said breach, repudiation, and improper termination of the License Agreement by Hasbro, Atari has suffered and will suffer damages in the form of past and future lost profits and moneys invested in the D&D product line.

111. Accordingly, Atari is entitled to recover from Hasbro damages in an amount to be determined at trial, but in an amount not less than $99 million, together with interest thereon, costs and expenses, including attorneys' fees.

As a Third Counterclaim
(Breach of Implied Covenant of Good Faith and Fair Dealing)

112. Atari repeats and reiterates its allegations set forth in paragraphs 1 through 111 of these Counterclaims.

113. Every contract, including the License Agreement, imposes upon the parties thereto an obligation of good faith and fair dealing. Pursuant to that covenant, Hasbro had an

obligation not to undermine Atari's efforts to operate under the terms of the License Agreement and profit from it.

114. Hasbro breached its duty of good faith and fair dealing under the License Agreement by, *inter alia*, making false allegations of breaches by Atari, interfering with sublicenses proposed by Atari, hindering Atari's ability to fulfill its obligations and preventing Atari's exercise of its rights under the License Agreement, causing Atari to terminate NBP as a wholesaler of Licensed D&D Products, refusing to approve the proposed wholesaler agreement with NBP, preventing Atari from making sales of Licensed D&D Products under the License Agreement, and improperly terminating the License Agreement.

115. Hasbro's breaches of the covenant have been deliberate with the goal, purpose and objective of depriving Atari of the benefit of the License Agreement and, in so doing, harming Atari's business.

116. As a direct and proximate result of Hasbro's breaches of the covenant of good faith and fair dealing, Atari has suffered and will continue to suffer irreparable harm in the form of past and future lost profits and moneys invested in the product line.

117. As a result of Hasbro's aforesaid breaches, Atari has suffered damages to which it is entitled in an amount to be determined at trial, but in an amount not less than $99 million, together with interest, costs and expenses, including attorneys' fees.

As a Fourth Counterclaim
(Tortious Interference with a Contractual Relationship and
Actual and Prospective Business Relations)

118. Atari repeats and reiterates its allegations set forth in paragraphs 1 through 117 of these Counterclaims.

119. Atari has fully performed its obligations under the License Agreement.

120. Pursuant to the License Agreement, Atari maintains and actively pursues numerous contractual and other business relationships with third parties.

121. By virtue of the License Agreement and other information known to Hasbro, Hasbro knew of Atari's pursuit of contractual and other business relationships, and actual contractual or business relationships with third parties, relating to the development and sale of the D&D Products.

122. As set forth above, Hasbro has used unfair, unjustified and/or improper means to intentionally interfere with Atari's actual or prospective contractual and business relationships with third parties, interfere with and prevent the profits that Atari would have earned from its actual or prospective contractual and other business relationships, including its wholesaling relationship with NBP, with the intent to cause termination of or prevent the contractual and other business relationships. Such interference is wrongful, malicious, willful, reckless, egregious and unjustified.

123. As set forth above, Hasbro has intentionally interfered with Atari's actual and prospective contractual and other business relationships with intent to disrupt and harm Atari's business. Such interference is willful, reckless, egregious, unjustified, and was made with malice or in bad faith with the intent to cause harm to Atari.

124. As a direct and proximate result of Hasbro's wrongful conduct, Atari has been harmed in its existing and prospective contractual and business relationships with third parties, relating to the development and sale of the Licensed D&D Products.

125. Pursuant Section 22.3 of the License, Atari is entitled to its costs and expenses in prosecuting this counterclaim, including attorneys' fees.

126. As a result of Hasbro's aforesaid tortious conduct, Atari has suffered damages for which it is entitled to compensatory damages from Hasbro in an amount to be determined at trial, but in an amount not less than $99 million, plus costs and expenses, including attorneys' fees.

127. As a result of Hasbro's aforesaid egregious and tortious conduct, Atari is entitled to recover punitive damages from Hasbro in an amount to be determined at trial, plus costs and expenses, including attorneys' fees.

As a Fifth Counterclaim
(Breach of Contract — Specific Performance — Pleaded in the Alternative)

128. Atari repeats and reiterates its allegations set forth in paragraphs 1 through 127 of these Counterclaims.

129. Hasbro has materially breached the License Agreement.

130. Hasbro's material breaches of the License Agreement have directly and proximately caused damages to Atari.

131. Atari will suffer irreparable harm without a decree of specific performance, ordering Hasbro to perform its obligations under the License Agreement, and Atari does not have an adequate remedy at law.

132. Atari is entitled to a decree of specific performance, ordering Hasbro to perform its obligations under the License Agreement, and Atari is also entitled to an award of all calculable compensatory damages suffered by Atari as a result of Hasbro's breaches of the License Agreement, together with interest thereon.

As a Sixth Counterclaim
(Costs, Expenses, and Attorneys' Fees)

133. Atari repeats and reiterates its allegations set forth in paragraphs 1 through 132 of these Counterclaims.

134. Atari has fully performed its obligations under the License Agreement.

135. Atari has incurred costs and expenses in defending itself against Hasbro's false and meritless accusations, including but not limited to drafting the response to Hasbro's Notice, and responses to other letters from Hasbro, seeking legal advice with regards thereto, and in defending against Hasbro's claims, as well as prosecuting Atari's Counterclaims, in this action.

136. Pursuant to Section 22.3 of the License Agreement, Atari is entitled to its costs and expenses in enforcing its rights under the License Agreement, defending itself in this action, and prosecuting its Counterclaims in this action, including Atari's attorneys' fees.

WHEREFORE, Atari prays that judgment be entered against Hasbro as follows:

A. Dismissing the Complaint;

B. Awarding Atari compensatory damages in an amount to be determined at trial, but in an amount not less than $99 million, together with interest thereon, for Hasbro's breaches of the License Agreement;

C. Awarding Atari compensatory damages in an amount to be determined at trial, but in an amount not less than $99 million, together with interest thereon, for Hasbro's breach of the implied covenant of good faith and fair dealing;

D. Awarding Atari compensatory damages in an amount to be determined at trial, but in an amount not less than $99 million, together with interest thereon, for Hasbro's tortious interference with Atari's actual and prospective contractual relationships and other business relationships;

E. Awarding Atari punitive damages for Hasbro's tortious interference with Atari's actual and prospective contractual relationships and other business relationships;

F. Awarding Atari its costs and expenses, including attorneys' fees;

G. Decreeing and ordering that Hasbro perform its obligations under the License Agreement; and

H. Granting such other and further relief to Atari as the Court deems just and proper.

Dated: Providence, Rhode Island
December 22, 2009

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CERTIFICATE OF SERVICE

This document was electronically filed with the Clerk of the Court on December 22, 2009, and is available for viewing and downloading from the Court's ECF system. Service on all counsel of record has been effectuated by electronic means.

/s/ Michael J. Daly