

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

NEW YORK
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SEP - 3 2009

ATARI, INC. and ATARI INTERACTIVE, INC.,

Date Purchased:

Plaintiffs,

Index No.: 602751/09
NOT COMPARED
WITH COPY FILE

-against-

SUMMONS

TURBINE, INC.,

Defendant.

Plaintiffs designate New York County as the venue of this action. The basis of venue is that at all times relevant hereto, Plaintiffs' principle place of business was and is located in New York County, and the events relevant hereto transpired in New York County.

TO THE ABOVE-NAMED DEFENDANT:

YOU ARE HEREBY SUMMONED to answer the Complaint of the Plaintiffs in this action and serve a copy of your Answer or, if the Complaint is not served with this Summons, to serve a Notice of Appearance, upon the undersigned attorneys for the Plaintiffs within twenty (20) days after service of the above, exclusive of the date of service, or within thirty (30) days after service is complete if service is made by any method other than personal delivery to you within the State of New York.

In the case of your failure to answer the Complaint of the Plaintiffs, judgment will be taken against you by default for the relief sought in the Complaint.

Dated: New York, New York
September 3, 2009

OLSHAN GRUNDMAN FROME
ROSENZWEIG & WOLOSKY LLP

By: _____

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

ATARI, INC. and ATARI INTERACTIVE, INC.,

Index No. 602751/09

Plaintiffs,

-against-

COMPLAINT

TURBINE, INC.,

Defendant.

Atari, Inc. (f/k/a Infogrames Entertainment, SA and Infogrames, Inc.) and Atari Interactive, Inc. (collectively, "Atari"), by their undersigned attorneys, allege on knowledge as to their own acts and otherwise upon information and belief, as follows:

1. This action arises out of Turbine's failure and refusal to fulfill its obligations under several contracts between the parties, by which Atari granted Turbine rights and licenses for intellectual properties known as "Dungeons and Dragons" and "Advanced Dungeons and Dragons" (the "D&D Licensed Property").

2. In exchange for Atari's grant of rights to the D&D Licensed Property, Turbine agreed to develop, host, operate, and maintain an online computer game known as "Dungeons and Dragons Online: Stormreach" ("D&D") which incorporates and exploits the D&D Licensed Property.

3. D&D is a "Massively Multiplayer Online Role-Playing Game" ("MMORPG"), whereby a large number of users or "players" participate and interact in an online virtual world via the Internet. To participate in a MMORPG, a player is required to make use of game software (the "Client") installed on the player's personal computer which connects to a server run by the publisher of the game (in this case, Turbine), which then "hosts" the virtual world for

the player and other players to inhabit. Players of MMORPGs purchase the Client software either by buying a box set at a retailer or downloading the software. The user then pays an additional monthly subscription fee in order to access and play the MMORPG online.

4. As set forth in detail below, Turbine also agreed to pay royalties to Atari based upon Turbine's revenues derived from its operation of D&D.

5. D&D launched in February 2006 and, at its height, supported over 66,000 monthly subscribers.

6. Although Atari (i) has fully performed under the relevant License, Development and Publishing Agreement, executed on or about January 25, 2003 (the "License Agreement"), and all amendments thereto, and the Digital Distribution Agreement executed on or about April 10, 2006 (the "Distribution Agreement"), and (ii) has at all times desired that Turbine would successfully exploit D&D in accordance with the License Agreement and Distribution Agreement, Turbine has continuously and purposely breached such agreements by miscalculating and underreporting royalties due Atari under such contracts. At present, and despite the inability of Atari to complete a full audit, Turbine owes Atari in excess of four million dollars (\$4,000,000) in back royalty payments under the License and Distribution Agreements.

7. In a desperate attempt to conceal its failure to pay royalties, Turbine has intentionally frustrated Atari's contractual rights to audit Turbine's books and records. Turbine has, among other things, failed to provide documents necessary to validate shared infrastructure costs; omitted revenue in order to hide royalties due Atari; obstructed Atari's site visits; and refused to produce multiple categories documents essential for a complete audit, despite

numerous requests by Atari's independent auditor in January, May, June, July and August of 2009.

8. Moreover, by agreement dated May 13, 2009, Turbine agreed to pay Atari \$500,000 consisting of "undisputed amounts" of (i) royalties already found to be due Atari in the course of its incomplete audit; and (ii) an advance against estimated royalties determined to be due Atari as a result of the ongoing audit of Turbine's books and records. In short, the May 13, 2009 agreement constitutes an admission by Turbine that at least one half-million dollars in unpaid royalties were due Atari, even absent Turbine's provision of all relevant books and records, which has necessarily barred completion of the audit commenced by Atari.

9. Atari and Turbine termed this a "Good Faith Payment." Both parties agreed that such \$500,000 was an "interim payment *toward* satisfaction of certain undisputed amounts that the Parties believe will be determined to be payable to Atari upon conclusion of the Audit." (emphasis supplied) In other words, Turbine clearly knew on May 13th that it owed additional royalties to Atari.

10. By letter dated June 26, 2009, and only after Atari was repeatedly frustrated by Turbine's un-ending foot-dragging and failure to cooperate with Atari's royalty audit, Atari provided Turbine with formal notice of Turbine's breaches of the License Agreement and Distribution Agreement, and permitted Turbine sixty days to cure these breaches.

11. Although not obligated to do so, Atari, through outside counsel, again, wrote a detailed letter to Turbine on August 14, 2009 regarding these issues, and even enclosed a draft complaint setting forth Atari's legal position.

12. On August 21, 2009, outside counsel for Atari, again, reached out to discuss where Atari and Turbine "go from here."

13. Turbine never directly responded to either of Atari's attempts to amicably resolve Atari's claims.

14. Instead, Turbine, without warning or prior notice, filed a pretextual and frivolous lawsuit against Atari, all to divert attention from its admitted wrongdoing, impeding Atari's audit, and refusal to pay the balance of monies due.

15. As demonstrated below, Turbine's unwillingness to perform under the License and Distribution Agreements is likely explained by its ongoing financial weakness and instability, culminating in Turbine's inability to raise even one-quarter of the \$30 million in investments it currently seeks in financing.

16. Turbine's lack of resources demonstrates at least one cause of its refusal to fulfill its contractual obligations with Atari. Turbine's behavior also calls into question its ability to support the D&D franchise on a going-forward basis.

17. Meanwhile, Turbine continues to profit from its use of the valuable D&D Licensed Property licensed to it by Atari, even while persisting in its failure to compensate Atari pursuant to the License and Distribution Agreements and, further, refusing to cooperate with Atari's audit.

18. As a result, Atari brings this lawsuit having reached wits end with Turbine after having repeatedly requested Turbine's compliance with its obligations under the parties' agreements, having provided formal written notice of breach and extending sixty (60) days to cure.

19. Even now, although Atari has grounds to immediately terminate Turbine, Atari has not yet exercised such rights in the hopes that Turbine will be made to comply with its

obligations and develop and manage D&D to its full potential. Accordingly, in this action, Atari seeks damages arising out of Turbine's breaches of the agreements at issue.

PARTIES

20. Plaintiff Atari, Inc. is, and at all times relevant to this action has been, a corporation duly organized and existing under the laws of the State of Delaware. Atari, Inc. is authorized to do business in the State of New York and maintains its principal place of business at 417 Fifth Avenue, New York, New York, 10016.

21. Plaintiff Atari Interactive, Inc. is, and at all times relevant to this action has been, a corporation duly organized and existing under the laws of the State of Delaware. Atari Interactive, Inc. is authorized to do business in the State of New York and maintains its principal place of business at 417 Fifth Avenue, New York, New York, 10016.

22. Upon information and belief, defendant Turbine, Inc. is, and at all times relevant to this action has been, a corporation duly organized and existing under the laws of the State of Delaware. Upon information and belief, Turbine maintains its principal place of business at 60 Glacier Drive, Suite 4000, Westwood, Massachusetts, 02090.

JURISDICTION AND VENUE

23. Pursuant to the terms of each of the License Agreement and the Distribution Agreement, the parties hereto have voluntarily consented to and agreed upon the courts of the State of New York, New York County, as having exclusive jurisdiction and venue of the instant causes of action.

24. Furthermore, Turbine is subject to personal jurisdiction in this County pursuant to CPLR 302(a)(1), as Turbine has sufficient minimum contacts with the State of New York and/or

transacts or has transacted business within this State, and/or contracted to supply goods or services in this State, from which transactions or contacts the claims asserted herein arise.

FACTUAL BACKGROUND

25. At all times relevant to this action, Atari has held and holds the exclusive interactive license to the intellectual properties known as “Dungeons & Dragons” and “Advanced Dungeons & Dragons,” as licensed to Atari (the “D&D Licensed Property” or “D&D”) pursuant to an agreement entered into by and between Atari (as successor-in-interest to Infogrames Entertainment, SA) and Hasbro, Inc., dated December 6, 2000.

The License Agreement

26. On or about January 25, 2003, Atari and Turbine entered into the License, Development and Publishing Agreement (the “License Agreement”) whereby, among other things, Atari granted Turbine a limited sublicense to the D&D Licensed Property. The License Agreement was subsequently amended by Amendments One through Five thereto.

27. Specifically, Section 2.1 of the License Agreement grants Turbine, *inter alia*, and subject to the License Agreement’s other terms:

[T]he exclusive worldwide right and license to the D&D Licensed Property to: (i) develop, produce, host, service and operate the Service on the Personal Computer Platforms and Console Platforms; and (ii) reproduce, perform, promote, advertise, export, import, license, sublicense, modify, update, translate, localize, market, distribute (through any online channels), display, and sell the Service (except the client component thereof).

28. The term “Service,” as more specifically defined by the License Agreement, is essentially a multiplayer online computer game entitled “Dungeons & Dragons Online: Stormreach,” which incorporates the D&D Licensed Property and which is maintained and “hosted” on the computer servers of Turbine (or Turbine’s sublicensees or designees), and which

is accessible to players across the world through the use of software installed on a player's personal computer.

29. Pursuant to Section 6.2 of the License Agreement, as amended by Amendment Number Two, Turbine agreed, among other things, to pay royalties to Atari including: (1) a "License Royalty" based upon a specified percentage of "Turbine Net Receipts," as defined in the License Agreement; (2) a "Subscriber Fee Royalty" based upon a specified percentage of "Turbine Net Receipts;" and (3) a "Sublicensing" royalty.

30. Section 1.28 of the License Agreement, as amended by Amendments Two and Four, defines "Turbine Net Receipts"—the basis for calculation of the License Royalty and the Subscriber Fee Royalty—as follows:

[T]he actual amounts and other non-cash consideration received by Turbine and its Affiliates from the subscription sales and/or service sublicensing related in any way to the Service (*e.g.* subscription fees, ad revenues, in-game product placement, etc.) ["Turbine Gross Revenues"] less the following deductions (only and solely as they relate to the Service and are capable of separate accounting and tracking to apportion such costs directly to the Service): technical support and QA costs, credit card charges, bandwidth expenses, build-out, tools, licensed technology, server and hardware costs, service licenses, co-location expenses, labor and overhead expenses associated with personnel charges, fee and/or license, bad debt and chargebacks, and taxes (excluding taxes based on Turbine's net income) and all Marketing costs (defined as documented marketing advertising, and public relations costs, localization costs and cost of grating and reproducing sales and marketing materials), to the extent all such Marketing Costs have been paid to third parties ["Turbine Deductions"].

(defined terms not in original).

31. Precise calculation of Turbine Gross Revenues and Turbine Deductions is critical because, pursuant to Section 6.2 of the License Agreement, it was from these amounts that "Turbine Net Receipts" are calculated. "Turbine Net Receipts," in turn, are used to calculate the amount of royalties due from Turbine to Atari. Under the License Agreement, any increase in the amount of "Turbine Net Receipts" yields a proportionate increase in the royalties due Atari

by Turbine, while any *decrease* in the amount of reported “Turbine Net Receipts” yields a proportionate *decrease* in the royalties due Atari by Turbine.

32. To date, except for the Good Faith Payment, Turbine has paid Atari no “License Royalties” or “Subscriber Fee Royalties” with respect to the Service.

33. As a means of verifying that Turbine’s calculations of royalties due and payable to Atari conform to the terms of the License Agreement, Section 6.7 of the License Agreement permits Atari to review and audit Turbine’s books and records as they pertain to the Service.

34. Section 6.7 of the License Agreement specifically provides, *inter alia*, that:

Each party shall maintain books of account concerning the Service and receipts and expenses related thereto. Each party’s independent public accountants or representatives may, at such party’s sole cost and expense, examine the other party’s books . . . relating to the sale of the Service hereunder or expenses related thereto, solely for the purpose of verifying the accuracy thereof. . . . If any additional monies are shown to be payable by one party to the other party based upon an examination then such amount shall be paid within thirty (30) days of the completion of such evaluation.

The Digital Distribution Agreement

35. On or about April 10, 2006, Atari and Turbine entered into a Digital Distribution Agreement (the “Distribution Agreement”) whereby, among other things, Atari granted Turbine a limited license to “distribute the client software portion of the multiplayer online game entitled ‘Dungeons & Dragons Online: Stormreach.’”

36. Specifically, Section 1 of the Distribution Agreement states that Turbine shall have, *inter alia* and subject to the Distribution Agreement’s other terms:

the sole and exclusive right and license to, in the United States and its territories and possessions, Mexico and Canada, display, promote, advertise and sell the Product . . . solely in digital download form via the Internet.

37. The term “Product” is defined in the Distribution Agreement as “the client software portion of the multiplayer online game entitled ‘Dungeons & Dragons Online:

Stormreach' (including the client software portion of all add-ons, modules, expansion packs and enhancements thereto).”

38. Pursuant to Section 2(iii) of the Distribution Agreement, Turbine agreed, among other things, to pay royalties to Atari consisting of: (1) 60% of the “Digital Receipts,” as defined in the Distribution Agreement, accrued by Turbine during the initial thirty (30) days after the date of the first digital sale of the Product, and (2) 50% of the “Digital Receipts” thereafter.

39. Section 2(iii) of the Distribution Agreement defines “Digital Receipts” as:

(A) Turbine’s gross receipts received from Digital Sales made by Authorized Distributors, or (B) Turbine’s gross receipts received from Digital Sales made directly by Turbine [“Turbine Gross Digital Revenues”], less the following deductions (solely as they relate to the Digital Sales made directly by Turbine): documented third-party technical support costs, credit card company charges, bandwidth expenses, chargebacks, and taxes (excluding taxes based on Turbine’s net income) [“Turbine Digital Deductions”].

(defined terms not in original).

40. Just as for calculation of Turbine Gross Revenues and Turbine Deductions under the License Agreement, precise calculation of Turbine Gross Digital Revenues and Turbine Digital Deductions is critical to determination of royalties due Atari under the Distribution Agreement. Under Section 2(iii) of the Distribution Agreement, it is from these amounts that “Digital Receipts” are calculated, which, in turn, are used to calculate the amount of royalties due from Turbine to Atari. Under the Distribution Agreement, any increase in the amount of “Digital Receipts” would yield a proportionate increase in the royalties due Atari, while any *decrease* in the amount of reported “Digital Receipts” would yield a proportionate *decrease* in the royalties due Atari.

41. As under the License Agreement, Section 6 of the Distribution Agreement also permits Atari to review and audit Turbine’s books and records pertinent to the “Product.”

42. The Distribution Agreement expired on or about April 10, 2009. Atari, however, retained the right to audit Turbine's books and records pursuant to Section 6 of the Distribution Agreement and to seek payment for any royalties earned thereunder.

43. Certain digital distribution rights were subsequently incorporated into the License Agreement under Amendment Number Five, made effective on May 13, 2009.

Atari's Independent Audit of Turbine

44. In the latter part of 2008, Turbine restated certain of its royalty statements for 2006, 2007 and 2008 to show a combined negative \$4,549,375.15 in "Turbine Net Receipts."

45. Suspicious of Turbine's "restatement," Atari exercised its rights under Section 6.7 of the License Agreement and Section 6 of the Distribution Agreement and retained a third-party independent accountant to review Turbine's books of account in order to confirm the accuracy of Turbine's reported receipts and corresponding royalty payments to Atari with respect to the "Service" and the "Product" between the second quarter of 2006 through the fourth quarter of 2008 (the "Audit").

46. Instead of cooperating with the Audit, Turbine embarked upon a desperate attempt to conceal its wrongful underreported royalties under the License Agreement. Among other things, Turbine has refused to allow Atari access to certain records maintained by Turbine which are necessary for Atari to verify Turbine's calculation of the "Turbine Net Receipts" and "Digital Receipts" for the 2006-2008 audit period, despite numerous demands by Atari.

47. The documentation specifically requested by Atari is directly pertinent and necessary to the calculation of "Turbine Net Receipts" and "Digital Receipts" and, consequently, the corresponding royalties due Atari under the License and Distribution Agreements. Without this information, it is impossible for Atari to conduct a complete and accurate audit of Turbine's

books and records. Nevertheless, Turbine—in blatant bad faith and in flagrant breach of Section 6.7 of the License Agreement and Section 6 of the Distribution Agreement—has persistently refused to provide such documentation.

Preliminary Results of the Audit

48. Notwithstanding Turbine’s wrongful refusal to provide information necessary to fully, properly and accurately verify Turbine’s royalty calculations, the limited information revealed thus far in the course of the Audit demonstrates that, despite Turbine’s attempts to conceal its wrongdoing, Turbine has failed to pay Atari millions of dollars in royalties due under the License and Distribution Agreements for the years 2006 through 2008.

49. Turbine’s intentional understatement of royalties due Atari was accomplished in two ways. First, in blatant disregard of the terms of the License Agreement, Turbine wrongfully omitted at least \$14 million in revenue attributable to *inter alia*, certain sublicensing and digital download revenue sources from its calculation of “Turbine Net Receipts.” Turbine’s underreporting of “Turbine Net Receipts” resulted in at least \$1.4 million shortfall in Turbine’s calculation and payment of royalties to Atari.

50. Second, in further disregard of the License Agreement terms, Turbine wrongfully deducted at least \$18 million in unsubstantiated and/or unauthorized deductions from its calculation of “Turbine Net Receipts.” Many of these deductions related to other online games unrelated to D&D which are also hosted and operated by Turbine, such as “Lord of the Rings” and “Asheron’s Call,” a disproportionate amount of which Turbine improperly allocated to D&D. Turbine, of course, has refused to provide, among other things, substantiated subscriber counts so Atari can confirm the activity for each game and, upon information and belief, could

be deducting the same expenses against each and every franchise in order to evade payment of the royalties due under each.

51. Turbine's overstatement of deductions from "Turbine Net Receipts" results in at least a \$4.1 million shortfall in the calculation and payment of royalties due Atari.

52. Thus, Turbine has, in breach of the License Agreement, underreported its Turbine Gross Revenues while simultaneously inflating its reported Turbine Deductions. The result is a vast underreporting of the "Turbine Net Receipts" for the period in question and underpayment of corresponding royalties to Atari.

53. Likewise, Turbine has similarly breached the Distribution Agreement's royalty calculation and payment provisions by failing to remit any royalties for digital revenues from the "Product." Upon information and belief, Turbine failed to pay over \$200,000 in such royalties due Atari.

54. Turbine's failure to pay millions of dollars in royalties due Atari under the License and Distribution Agreements is likely due to Turbine's overall financial weakness and instability, and, more specifically, Turbine's inability to raise needed capital to sustain its business. According to publicly-available records, Turbine is currently seeking to raise \$30 million in financing, but has only been able to raise \$6 million of that amount. Turbine's inability to raise funds not only demonstrates one potential cause of its failure to pay Atari pursuant to the License and Distribution Agreements, but also illustrates a lack of confidence by the market at large in Turbine's ability to profitably operate its business, including with respect to D&D, in the future.

55. Precise calculation of the royalty shortfall under the License Agreement and Distribution Agreement is not currently possible due to Turbine's breach of its contractual

obligation to permit Atari to examine all of the books and records necessary to verify Turbine's calculation of the royalties due Atari. It is believed, however, that Turbine has underpaid royalties for the years 2006 through 2008 in an amount in excess of four million dollars (\$4,000,000), which monies are properly due Atari under the License Agreement and Distribution Agreement.

FIRST CAUSE OF ACTION
(Breach of License Agreement)

56. Atari realleges every allegation set forth in paragraphs 1 through 55.

57. The License Agreement is a valid and binding contract.

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

59. Turbine, in breach of the License Agreement, has failed to pay royalties properly due and payable to Atari by, *inter alia*, omitting to account for at least \$14 million in revenue attributable to certain sublicensing and digital download revenue sources in calculation of its "Turbine Net Receipts."

60. Turbine's failure to properly account for and remit to Atari the full amount of royalties due Atari is a material breach and default of Turbine's obligations under the License Agreement.

61. In compliance with the License Agreement, Atari has provided notice of Turbine's default to Turbine, and provided it with the required opportunity to cure its default. Notwithstanding, Turbine has failed to cure its default within the time permitted by the License Agreement and remains in material breach thereof.

62. By reason of the foregoing, Atari has suffered damages in an amount currently incapable of precise calculation, but believed to be in excess of \$1.4 million.

SECOND CAUSE OF ACTION
(Breach of License Agreement)

63. Atari realleges every allegation set forth in paragraphs 1 through 62.

64. The License Agreement is a valid and binding contract.

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

66. Turbine, in breach of the License Agreement, has failed to pay royalties properly due and payable to Atari by, *inter alia*, deducting from its “Turbine Net Receipts” at least \$18 million in unsubstantiated and/or unauthorized deductions, resulting in at least a \$4.1 million royalty shortfall due Atari.

67. Turbine’s failure to properly account for and remit to Atari the full amount of royalties due Atari is a material breach and default with respect to Turbine’s obligations under the License Agreement.

68. In compliance with the License Agreement, Atari has provided notice of Turbine’s default to Turbine, and provided it with the required opportunity to cure its default. Notwithstanding, Turbine has failed to cure its default within the time permitted by the License Agreement, and remains in material breach thereof.

69. By reason of the foregoing, Atari has suffered damages in an amount currently incapable of precise calculation, but believed to be in excess of \$4.1 million.

THIRD CAUSE OF ACTION
(Breach of License Agreement)

70. Atari realleges each and every allegation set forth in paragraphs 1 through 69.

71. Section 6.7 of the License Agreement permits Atari to conduct an independent audit of the books and records of Turbine in order to confirm Turbine’s reported Turbine Net Receipts and corresponding royalty payments due Atari with respect to the “Service.”

72. Atari exercised its rights under Section 6.7 of the License Agreement, initiating an audit of Turbine's books and records for the second quarter of 2006 through the fourth quarter of 2008.

73. Despite Atari's numerous specific requests for documents and information, Turbine has refused to provide necessary books and records of Turbine, which are required to confirm Turbine's calculations of royalties due Atari under the License Agreement.

74. Turbine's repeated refusals to provide necessary books, records and information to Atari and/or its representative(s) in connection with the Audit is a clear and material breach and default of Turbine's obligations under the License Agreement.

75. In compliance with the License Agreement, Atari has provided notice of Turbine's default to Turbine, and provided it with the required opportunity to cure its default. Notwithstanding, Turbine has failed to cure its default within the time permitted by the License Agreement, and remains in material breach thereof.

76. By reason of the foregoing, Atari has suffered damages in an amount to be determined at trial of this action.

FOURTH CAUSE OF ACTION
(Breach of License Agreement)

77. Atari realleges each and every allegation set forth in paragraphs 1 through 76.

78. Section 6.7 of the License Agreement provides that if an audit of Turbine's books and records reveals underpayment of royalties by Turbine in excess of ten percent (10%) over the entire period of the audit, Turbine shall reimburse Atari its reasonable costs associated with conducting the audit.

79. As set forth above, the Audit has revealed underpayment of royalties by Turbine in excess of ten percent over the period of the Audit, thereby triggering Turbine's obligation to reimburse Atari for its reasonable expenses associated with conducting the Audit.

80. In breach of the License Agreement, Turbine has failed to reimburse Atari its expenses associated with conducting the Audit.

81. By reason of the foregoing, Atari has suffered damages in an amount currently incapable of calculation, but believed to be in excess of \$60,000.

FIFTH CAUSE OF ACTION
(Breach of Distribution Agreement)

82. Atari realleges each and every allegation set forth in paragraphs 1 through 81.

83. The Distribution Agreement is a valid and binding contract.

84. Atari has fully performed its obligations under the Distribution Agreement.

85. Turbine, in breach of the Distribution Agreement, has failed to pay royalties properly due and payable to Atari.

86. Turbine's failure to properly account for and remit to Atari the full amount of the royalties due Atari is a material breach and default of Turbine's obligations under the Distribution Agreement.

87. In compliance with the Distribution Agreement, Atari has provided notice to Turbine of its breach and default in this regard and provided Turbine with the required opportunity to cure. Notwithstanding, Turbine has failed to cure its default within the time permitted by the Distribution Agreement and remains in material breach thereof.

88. By reason of the foregoing, Atari has suffered damages in an amount currently incapable of precise calculation, but believed to be in excess of \$200,000.

SIXTH CAUSE OF ACTION
(Breach of Distribution Agreement)

89. Atari realleges each and every allegation set forth in paragraphs 1 through 88.

90. Section 6 of the Distribution Agreement permits Atari to conduct an independent audit of the books and records of Turbine in order to confirm Turbine's reported "Turbine Gross Digital Revenues" and corresponding royalty payments due Atari with respect to the "Product."

91. Atari has exercised its rights under Section 6 of the Distribution Agreement, initiating an audit of Turbine's books and records concerning the "Product."

92. Despite Atari's numerous specific requests, Turbine has refused to provide necessary books and records of Turbine required to confirm Turbine's calculations of royalties due Atari under the Distribution Agreement.

93. Turbine's refusals to provide necessary books and records of Turbine to Atari or Atari's representative(s) in connection with the Audit is a clear and material default and breach of Turbine's obligations under the Distribution Agreement.

94. In compliance with the Distribution Agreement, Atari has provided notice to Turbine of its breach and default in this regard and provided Turbine with the required opportunity to cure. Notwithstanding, Turbine has failed to cure its default within the time permitted by the Distribution Agreement and remains in material breach thereof.

95. By reason of the foregoing, Atari has suffered damages in an amount to be determined at trial of this action.

WHEREFORE, Atari respectfully requests that this Court enter judgment in its favor, and against Turbine, as follows:

- A. On the First Cause of Action, awarding Atari damages in an amount to be determined at trial, but believed to be in excess of \$1,400,000, together with interest thereon;
- B. On the Second Cause of Action, awarding Atari damages in an amount to be determined at trial, but believed to be in excess of \$4,100,000, together with interest thereon;
- C. On the Third Cause of Action, awarding Atari damages in an amount to be determined at trial;
- D. On the Fourth Cause of Action, awarding Atari damages in an amount to be determined at trial, but believed to be in excess of \$60,000, together with interest thereon;
- E. On the Fifth Cause of Action, awarding Atari damages in an amount to be determined at trial, but believed to be in excess of \$200,000, together with interest thereon;
- F. On the Sixth Cause of Action, awarding Atari damages in an amount to be determined at trial;
- G. That Turbine be ordered to pay the costs, charges, disbursements, including attorneys' fees, incurred by Atari in furtherance of this action; and
- H. Such other and further relief as the Court deems appropriate.

Dated: New York, New York
September 3, 2009

OLSHAN GRUNDMAN FROME
ROSENZWEIG & WOLOSKY LLP

By: _____

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