

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

09602639

TURBINE, INC.,

Plaintiff,

- against -

ATARI, INC. and ATARI INTERACTIVE, INC.,

Defendants.

Index No. _____

Date Purchased: August 24, 2009

Plaintiff designates New York County as the venue of this action. The basis of the choice of venue is that at all times relevant hereto, Defendants resided and continue to reside in New York County.

SUMMONS

Plaintiff's principal place of business is:
60 Glacier Drive, Suite 4000
Westwood, MA 02090

TO THE ABOVE NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED to answer the Complaint of the Plaintiff 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 Plaintiff 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 Plaintiff, judgment will be taken against you on default for the relief sought in the Complaint.

Dated: August 24, 2009

GOODWIN PROCTER LLP

By: 

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FILED
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COUNTY CLERKS OFFICE
NEW YORK

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COMPLAINT

Jury Trial Demanded

09602639

Plaintiff Turbine, Inc. ("Turbine"), by and through its attorneys Goodwin Procter LLP, hereby allege as and for its Complaint against Defendants Atari, Inc. and Atari Interactive, Inc. (collectively, "Atari") as follows:

INTRODUCTION

1. This lawsuit arises from a business relationship to create and market an online "Dungeons & Dragons[®]" game in which one party—Turbine—has consistently met and exceeded the requirements of the parties' contracts and in which the other—Atari—has consistently breached its obligations, sought to take unfair advantage of Turbine and extract additional benefits, and acted in an unfair and bad faith manner.

2. At the heart of this lawsuit are a License, Development and Publishing Agreement executed by the parties on or about January 25, 2003 and subsequent Amendments One through Five thereto (the "License Agreement"); a Digital Distribution Agreement executed by the parties on or about April 10, 2006 (the "Distribution Agreement"); and a Letter Agreement executed by the parties on or about May 13, 2009 (the "Letter Agreement") (collectively, the "Agreements").

3. Under the Agreements, Turbine developed and operates a subscription-based “massively multiplayer online role-playing game” (“MMORPG” or “MMO”) service based upon the intellectual properties “Dungeons & Dragons®” (“D&D®”) and “Advanced Dungeons & Dragons®” (“Advanced D&D®”), that it licenses from Atari. The game is called “Dungeons & Dragons Online®: Stormreach™” (“DDO: Stormreach”). Under the same Agreements, Atari is obligated to publish and distribute DDO: Stormreach software to end users, called “subscribers” or “players.” Players must purchase the DDO: Stormreach software in order to subscribe to the online service operated by Turbine.

4. On or about January 26, 2006, the parties executed Amendment Number Four to the License Agreement. At that time, the launch date for DDO: Stormreach was approaching, yet Atari had failed to meet its publishing and distribution obligations under the License Agreement to the detriment of the service’s (and thus Turbine’s) revenues. In order to protect its then \$20 million investment in the development of the service, Turbine agreed under Amendment Number Four to step up and assume Atari’s publishing and distribution obligations in North America. However, Atari insisted on retaining sole responsibility for publishing and distributing DDO: Stormreach in Europe.

5. Notwithstanding Turbine’s performance of its newly-assumed publishing and distribution obligations under Amendment Number Four, Atari persisted in failing to meet its remaining obligations under the License Agreement. It defaulted on millions of dollars of royalty payments then owing to Turbine under the Agreement and continued to neglect its publishing and distribution responsibilities in Europe, further hurting revenues. Again, in an effort to protect its massive investment in the DDO franchise against a backdrop of defaults by Atari, Turbine entered into yet another Amendment to the License Agreement with Atari.

6. On or about May 13, 2009, the parties negotiated Amendment Number Five to the License Agreement. This Amendment authorized Turbine to migrate from a subscription-based revenue model to an innovative “free-to-play” revenue model. In its new free-to-play instantiation, the game, built by Turbine through further substantial investment, is called “Dungeons & Dragons Online®: Eberron Unlimited™” (“DDO: Unlimited”). In furtherance of the parties’ agreement under Amendment Number Five, Turbine continued to invest millions of dollars in the development of DDO: Unlimited. The Amendment incorporated a new royalty arrangement with respect to the free-to-play revenue model, and Turbine, in good faith, paid Atari an advance of hundreds of thousands of dollars in future royalties. The Amendment also extended the life of the License Agreement to May 13, 2016.

7. Turbine paid several hundred thousands of dollars to Atari in connection with Amendment Number Five, in part to square up the various royalties the parties owed each other, and in part as a good faith advance toward further royalties. The agreement to make this payment was memorialized in a side Letter Agreement executed on the same day as Amendment Number Five to the License Agreement. Turbine entered into the Letter Agreement and Amendment Number Five based on Atari’s assurances that Atari was ready, willing, and able to perform under the Agreements and move forward with the relationship and support, in good faith, Turbine’s efforts to launch the “free-to-play” model.

8. On information and belief, even as Atari was accepting hundreds of thousands of dollars of payments from Turbine in connection with the May 13 Agreements, Atari unveiled a course of action—started months *earlier* in or about November 2008—to manufacture a trumped up and false basis to threaten to terminate the contractual relationship between Atari and Turbine. On information and belief, Atari knew, even as it extended the parties’ relationship

under Amendment Number Five and took hundreds of thousands of dollars in payments from Turbine, that it planned to immediately threaten to terminate the Agreement in an effort to extort more money from Turbine or, alternately, to free itself from its obligations under the contracts in order to clear the way for the launch of its own competing MMO service based on the D&D[®] and Advanced D&D[®] intellectual properties.

9. Notwithstanding Turbine's consistent good-faith performance of its obligations under the Agreements and willingness to continue to work with Atari despite Atari's repeated defaults under the Agreements, Atari—under the auspices of a royalty audit (the "Audit")—has falsely accused Turbine of withholding information and royalty fees owing to Atari. This is despite the fact that Turbine has: (a) diligently met each and every one of Atari's inquiries with a written response and exhaustive documentary support; (b) opened its books to Atari's auditor during lengthy onsite visits; (c) in good faith shared proprietary information well beyond the bounds of Turbine's obligation to comply under the License Agreement in an effort to resolve allegedly open questions that were patently manufactured; (d) in good faith granted Atari's improper requests for information dating back more than one year despite the License Agreement's clear "one-year-look-back" provision; (e) patiently and repeatedly explained to Atari and its auditor—both verbally and in writing with supporting documentation—exactly how it has calculated royalties consistent with the License Agreement, the Distribution Agreement, and applicable accounting principles; (f) repeatedly offered to meet with Atari executives in person to discuss the matter; and, (g) in good faith paid hundreds of thousands of dollars in advance royalties to Atari pursuant to Amendment Number Five to the License Agreement and the Letter Agreement.

10. On information and belief, Atari executed Amendment Number Five to the Licensing Agreement and the Letter Agreement even though it was *six months* into the Audit simply to obtain a large payment from Turbine and with no intention of supporting the “free-to-play” game launch that it falsely told Turbine it was ready and able to enthusiastically support. On information and belief, Atari knew when it executed the Letter Agreement and Amendment Number Five that it was planning adverse action against Turbine, but it concealed this fact from Turbine in order to induce Turbine to make a large payment to Atari that Turbine would not have made had it known the true facts. On information and belief, Atari intentionally concealed from Turbine its decisions—made *prior* to the May 13, 2009 execution of Amendment Number Five to the Licensing Agreement and the Letter Agreement and with full knowledge that Turbine has invested tens of millions of dollars in the DDO franchise—to use the “Audit” as a pretext to improperly extort money from Turbine and to threaten to terminate its relationship with Turbine in a further effort to extort alleged royalties that Turbine has repeatedly demonstrated are not due under the Agreements.

11. Atari’s conduct as described herein not only constitutes a breach of its obligations under the Agreements, but also constitutes actionable fraud. By this lawsuit, Turbine seeks to recover in excess of \$30 million in losses occasioned by Atari’s breach and wrongful conduct. Turbine also seeks a declaration that Atari’s claim for additional royalty fees and purported grounds for termination of the parties’ Agreements are unfounded and without basis in the Agreements.

PARTIES, JURISDICTION, AND VENUE

12. Plaintiff Turbine, Inc. is a Delaware corporation and maintains its principal place of business at 60 Glacier Drive, Suite 4000, Westwood, Massachusetts 02090.

13. Defendant Atari, Inc. is, on information and belief, a Delaware corporation. Atari 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.

14. Defendant Atari Interactive, Inc. is, on information and belief, a Delaware corporation. Atari 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.

15. At all times relevant to this action, Defendants have been and continues to be a citizen of the State of New York.

16. At all times relevant to this action, Defendants have transacted and continues to transact business in the State of New York.

17. Jurisdiction over Defendants is based upon Defendants' presence and transaction of business in New York and Defendants' express prior written consent to jurisdiction in New York and the jurisdiction of this Court in paragraph 12.5 of the License Agreement; paragraph 11(i) of the Digital Distribution Agreement; and paragraph 5 of the Letter Agreement.

18. Venue for this action is proper in New York County pursuant to CPLR § 503(a) and (c), in that, at all times relevant hereto, Defendants resided and continue to reside in New York County.

FACTUAL ALLEGATIONS

19. Turbine, Inc. is a premier creator and operator of massive, persistent online worlds that foster powerful social gaming communities. These "worlds" are video games deployed via the Internet which have come to be known in the industry as "massively multiplayer online role-playing games," or MMOs. MMOs are able to accommodate thousands of players simultaneously and may be played on personal computers or game consoles, such as

PlayStation® or Xbox®. Unlike traditional computer games, which involve individual or small group game play, thousands of players can participate in an MMO and interact with each other at the same time, offering players a richer gaming experience than many traditional games. Additionally, unlike traditional computer games, MMOs are never “won” or completed, but instead “live and breathe” in that they are ongoing services constantly providing newly-created and refreshed content for subscriber-players.

20. Turbine is one of the world’s leading developers, operators, and publishers of MMOs. It brought one of the first MMOs into existence in the late 1990s and has since launched other successful MMOs, such as Lord of the Rings Online.

21. On information and belief, Atari is a producer, publisher, and distributor of gaming software. On information and belief, Atari has an exclusive interactive license to the D&D® and Advanced D&D® intellectual properties by virtue of a license agreement with Hasbro, Inc., dated December 6, 2000.

22. Turbine and Atari entered into the License Agreement executed by the parties on or about January 25, 2003 which the parties have subsequently amended from time to time. Under this agreement, Atari granted Turbine a sublicense to the D&D® and Advanced D&D® intellectual properties so that Turbine could develop and operate a subscription-based MMO based upon those intellectual properties.

23. Turbine did in fact develop the MMO, entitled “Dungeons and Dragons Online®: Stormreach™” (“DDO: Stormreach”). DDO Stormreach launched on February 28, 2006. Turbine employed dozens upon dozens of people working hundreds of thousands of hours to create the service. To date, Turbine has spent millions of dollars towards the DDO franchise and continues to invest significant capital to operate and maintain the service.

24. Despite Turbine's steady good-faith performance of its obligations under the Agreements and significant financial investment in creating and operating DDO: Stormreach, Atari has consistently failed to perform its obligations under the Agreements, thus forcing Turbine to step forward with the resources necessary to continue the development and promotion of the service.

Atari's Failure to Publish and Distribute

25. Atari has repeatedly failed to meet its publishing and distribution obligations under the Agreements, which has forced Turbine to step in and expend money, time, and effort that it was Atari's responsibility under the Agreement to provide. For example, Atari failed to provide the requisite: (a) marketing and media spending in parity with competitive games; (b) labor and expenses associated with package and logo design, art development, copywriting, print advertisement design, television commercials, and full motion video content; (c) tradeshow support; (d) public relations support; (e) distribution and co-marketing arrangements with hardware manufacturers and other partners; (f) labor and expenses associated with web publishing and media planning; (g) retail distribution and channel promotion; and, (h) cross-promotion with other products within Atari's product line.

26. Atari's promotional efforts on behalf of DDO: Stormreach were wholly inadequate and Atari knew or had to know that this would hurt the launch of the product. Among other things, Atari limited its advertising of DDO: Stormreach on the Atari website to a small page that was difficult to navigate to, never updated, and never featured any promotions to attract new users. On information and belief, Atari failed to allocate the resources, either internally or externally, that were even remotely appropriate for the launch of a game like DDO: Stormreach.

27. As a result of Atari's breaches, and to protect its significant investment in DDO: Stormreach, Turbine has repeatedly filled the gap left by Atari and has had to make publishing and distribution efforts to ensure that DDO: Stormreach is a competitive, viable product.

28. In the wake of Atari's failure to promote DDO: Stormreach, for example, the parties entered into Amendment Number Four to the License Agreement on January 26, 2006 in order to keep the product alive. This Amendment modified the responsibilities of the parties such that, on the eve of the launch date, Atari was effectively relieved of its responsibility to publish and distribute DDO: Stormreach in North America. Turbine, seeking to maintain the viability of DDO: Stormreach, assumed this obligation. Atari insisted upon retaining the exclusive right to distribute the service in Europe despite the fact that it had previously defaulted on its publishing and distribution obligations in that territory. Additionally, Atari retained sole approval rights for any marketing efforts by Turbine, which approvals were frequently withheld or unreasonably delayed.

29. The Distribution Agreement was executed a few months later on April 10, 2006 so that Turbine could be permitted to pursue more of the key publishing and distribution responsibilities that Atari had failed to fully perform. Turbine entered into the Distribution Agreement in order to ensure that customers had a means of obtaining the software required to play DDO: Stormreach. Again, this was necessitated by Atari's failure and refusal to promote additional post-launch sales through retail and online channels as Atari was obliged to as publisher of DDO: Stormreach. Again, Atari refused to include Europe in the Distribution Agreement such that it continued to retain the exclusive right to publish and distribute in that territory.

30. Despite these amendments to the parties' business relationship, Atari persisted in its failure to properly publish, launch, and market DDO: Stormreach in Europe. In fact, many European consumers were unable to locate the DDO: Stormreach software in either retail or online channels. Because players are required to purchase the software in order to play the game, this severely limited the growth of online subscriptions to the service.

31. Although Turbine has repeatedly requested that Atari remedy its breaches, or permit Turbine to distribute the DDO: Stormreach software in Europe, Atari has steadfastly refused, effectively choking off sales in Europe. This breach of Atari's obligations under the License Agreement and the Distribution Agreement has caused an estimated \$13 million in lost franchise revenue, an estimated \$3 million of which was lost revenue to Turbine.

Atari's Failure to Pay Royalties Owing Under the Agreements

32. Atari has also failed to pay Turbine royalties owing under the Agreements. At one point, in or about September 2006, Atari owed Turbine millions of dollars in outstanding royalties which Atari told Turbine's former Chief Financial Officer, Peter Faubert, that Atari simply did not have the money to pay. In an effort to accommodate Atari and Atari's financial distress, Turbine agreed to offset the royalties owed to Turbine by Atari against those owed to Atari by Turbine. The parties concluded from the offset calculation that Atari owed Turbine in excess of \$1 million and agreed that Atari would pay that sum to Turbine under the terms of a \$50K per week "payment plan."

33. Atari began to make \$50K payments in October 2006, but due to its continued financial difficulties, soon defaulted on the payment plan. In good faith and again, with an eye toward protecting its massive investment in the DDO franchise, Turbine continued to meet its obligations under the Agreements.

34. Atari's continued cash flow problems notwithstanding, by May 2009, the parties calculated that the royalties owing to Atari from Turbine had over time come to exceed the shortfall owed to Turbine by Atari. Turbine, pursuant to its obligation under the Agreements, agreed to pay the balance as well as an additional payment as an advance toward further royalties, as described below.

Atari's Fraudulent Inducement of Turbine to Enter Into Further Agreements

35. In addition to repeatedly failing to meet its obligations under the Agreements, Atari fraudulently induced Turbine into entering into Amendment Number Five to the Licensing Agreement and the Letter Agreement. On information and belief, even as Atari accepted hundreds of thousands of dollars from Turbine in connection with these Agreements, Atari unveiled a course of action started months *earlier* in or about November 2008 to manufacture a trumped up and false basis to threaten to terminate the contractual relationship between Atari and Turbine in an effort to extort more money from Turbine or, alternately, to free itself from its obligations under the contracts in order to clear the way for the launch of its own competing MMO service based on the D&D[®] and Advanced D&D[®] intellectual properties.

36. Even though Amendment Number Four involved Turbine assuming responsibilities for publication and distribution due to Atari's breaches, Atari demanded yet additional consideration, namely, that Turbine agree to relinquish its right to exclusivity such that Atari could launch a competing MMO based on the D&D[®] and Advanced D&D[®] intellectual properties. Having already made its vast investment in the development of the service, Turbine's "choice" was to agree to this term of Amendment Number Four or face a loss of its multi-million dollar investment. The result was that Atari not only succeeded—by way of its own default on the Agreements—in evading its North American publishing and distribution

responsibilities, but it also strong-armed Turbine into waiving its exclusivity rights so that Atari could compete with the DDO: Stormreach service. Indeed, starting in or about December 2008, video game industry news sites reported that Atari planned to develop and launch a new MMO based on the D&D[®] and Advanced D&D[®] intellectual properties.

37. Atari, however, assured Turbine—falsely, it turns out—that Atari was fully committed to promoting DDO: Stormreach. The parties amended the License Agreement a fifth time on or about May 13, 2009 in order to extend the term of the Agreement to May 13, 2016, redefine the calculation of royalties under an innovative “free-to-play” revenue model for a new version of the service (DDO: Unlimited) developed by Turbine, and to require that Turbine make the game available for Atari to have downloadable from Atari’s own web sites. For nearly a year prior, Atari executives supported and encouraged Turbine’s free-to-play plans for DDO: Stormreach but dragged their feet, causing delay and lost opportunities for Turbine. Finally, Atari granted Turbine permission to launch the free-to-play service, but as a condition of Amendment Number Five and the Letter Agreement signed the same day, the cash-flow-challenged Atari demanded, and Turbine paid, an advance of hundreds of thousands of dollars against Turbine’s future royalty obligations to Atari.

38. Turbine entered into Amendment Number Five and paid hundreds of thousands of dollars to Atari based on the repeated representations of Atari’s senior executives, including Atari’s Chief Executive Officer James Wilson, that Atari was ready, willing and able to support the launch of the free-to-play service and that it agreed to the continuation and extension of the parties’ business relationship. In various meetings and telephone calls over the period April to May 13, 2009, Turbine’s Chief Executive Officer James Crowley was given express assurances by Atari’s senior executives, including James Wilson, that Atari fully supported the free-to-play

concept, that it would work cooperatively with Turbine to make the launch a success, that it looked forward to continuing relations with Turbine, and that it wished to make the launch of the new free-to-play game a commercial success.

39. In reliance on Atari's assurances, Turbine has made enormous efforts and expended considerable money in preparing for a launch of the free-to-play service. This new service, entitled "Dungeons & Dragons Online[®]: Eberron Unlimited[™]" ("DDO: Unlimited") has completed its beta phase and is scheduled to release on or about September 1, 2009. Turbine has spent considerable time advertising the launch and taking steps to ensure that it will be successful.

40. Turbine would never have entered into Amendment Number Five or the Letter Agreement, nor would it have expended time, money and effort (or staked its reputation) on the launch of DDO: Unlimited had it had any warning that Atari's representations concerning its enthusiastic support for DDO: Unlimited were false.

Atari's Audit

41. On information and belief, Atari's representations were false, as it had previously determined that it would attempt to exploit the parties' relationship and Turbine's investment in the DDO franchise, by using its audit rights under the License Agreement to attempt to extract more consideration from Turbine, or to falsely terminate Turbine in such a way as to benefit Atari's plans for a competing MMO service.

42. Notwithstanding Turbine's steady good-faith performance of its obligations under the Agreements and patience with Atari's consistent default of its obligations under the Agreements, Atari launched an Audit of the royalties paid by Turbine under the Agreements in or about November 2008. It was only *immediately after* the parties signed Amendment Number

Five and the Letter Agreement and Atari accepted hundreds of thousands of dollars in advance royalty payments from Turbine that Atari began to falsely accuse Turbine of withholding information and royalty fees allegedly owing to Atari and now outrageously claims that the Audit found that *millions* of dollars in additional royalty payments are due to Atari. Turbine vigorously disputes this “calculation” and asserts that it has satisfied all outstanding royalty obligations owing to Atari. In fact, Turbine has even pre-paid future royalties to Atari.

43. Primarily interested in resolving the dispute and getting on with the business of operating the DDO: Stormreach and DDO: Unlimited services, Turbine has not only continued to provide Atari with more information than was contemplated by the License Agreement, but Turbine has also honored Atari’s requests for information dating back more than one year despite the License Agreement’s clear “one-year-look-back” provision. Turbine has also patiently and repeatedly explained to Atari and its auditor—both verbally and in writing with exhaustive supporting documentation—exactly how it has calculated royalties consistent with the License Agreement, the Distribution Agreement, and applicable accounting principles.

44. Such good-faith cooperation has been met with nothing short of complete intransigence on the part of Atari. Despite the fact that Turbine opened its books for Atari’s auditor to examine over multiple weeks at Turbine’s offices and readily provided written responses to an onerous number of questions—many irrelevant and exposing a stark lack of knowledge about online games, their cost structure, and the MMO industry—raised by Atari and its auditor, Atari continues to make threats against Turbine based on the false premise that Turbine is withholding information and royalties. Atari has now gone so far as to premise a “notice of breach of contract” against Turbine on this imaginary scenario.

45. On information and belief, Atari knew and intended for the “Audit” to be a pretext to inappropriately and unlawfully wrest more money from Turbine, and Atari knew, at the time it entered into Amendment Number Five to the License Agreement on May 13, 2009, that it would use the Audit to attempt to terminate the parties’ relationship or alternatively, to demand other concessions from Turbine. This is because Atari had the preconceived intention, undisclosed to Turbine, of attempting to use its leverage and the large investment by Turbine to extract further extracontractual gains from Turbine and, as necessary, to trump up a “termination” on false pretenses.

46. Atari also did not disclose that it has and had no intention of performing its obligations under the License Agreement as amended by Amendment Number Five, but, instead, was diverting its energies to its competing product.

47. On information and belief, Atari’s purported “termination” was part of a strategy it conceived prior to the May 13, 2009 agreements that it would either “terminate” Turbine as part of a shake down, or proceed with termination in bad faith to unfairly benefit its own competing product at Turbine’s expense. On information and belief, Atari intends to use the fact that Turbine has invested millions of dollars in the development and promotion of the DDO franchise to improperly demand more consideration from Turbine than what the parties agreed to.

48. Atari’s purported termination of the License Agreement, in addition to threatening Turbine’s past investment, represents a threat to the goodwill that Turbine has developed with the many thousands of players who regularly use the DDO: Stormreach service and are expected to use the DDO: Unlimited service. Atari’s actions, on information and belief, were intended to

disrupt those actual and prospective contractual relationships for the purpose of forcing Turbine to pay millions of dollars to Atari to protect Turbine's goodwill and investment.

COUNT I
(Breach of Contract)

49. Turbine realleges and incorporates herein the allegations contained in the foregoing paragraphs of this Complaint.

50. The License Agreement, Letter Agreement, and Distribution Agreement are binding and valid contracts, supported by adequate consideration.

51. Atari has also breached the Agreements by failing to discharge its obligations to promote the DDO: Stormreach service, including in Europe.

52. On information and belief, Atari acted commercially unreasonably in its efforts to promote and distribute DDO: Stormreach, has failed to devote the necessary internal and external resources to the success of the service and has failed to discharge its obligations under the Agreements.

53. Atari also breached the Agreements by accepting payments—including future royalty payments—in return for extending the parties' relationship and paving the way for the launch of the free-to-play DDO: Unlimited service, but doing so at a time when Atari knew it would not perform its obligations under those Agreements, knew that it would pretextually and falsely seek to declare Turbine in "breach" of the Agreements, and knew that it would not support the DDO: Unlimited service as promised.

54. Turbine fully performed its obligations under the Agreements by, among other things, developing and operating, and later also marketing and distributing DDO: Stormreach and DDO: Unlimited, as well as paying any and all royalties owing to Atari under the Agreement and even pre-paying future royalties.

55. As a direct and proximate result of Atari's breach of the Agreement, Turbine has been damaged in an amount to be proved at the trial of this action.

COUNT II
(Breach of Contract/Repudiation)

56. Turbine realleges and incorporates herein the allegations contained in the foregoing paragraphs of this Complaint.

57. The License Agreement, Letter Agreement, and Distribution Agreement are binding and valid contracts, supported by adequate consideration.

58. Turbine performed its obligations under the Agreements by among other things developing and operating, and later also marketing and distributing DDO: Stormreach as well as paying royalties owing to Atari under the Agreements.

59. Atari has not performed and has, by its conduct and the statements of its agents, unequivocally indicated that it refuses to perform its obligations under the License Agreement. Its purported termination of the License Agreement unequivocally confirms that Atari has no intention of performing any further obligations under that contract.

60. As a direct and proximate result of Atari's breaches and/or repudiation of the Agreement, Turbine has been damaged in an amount to be proved at the trial of this action.

COUNT III
(Breach of Covenant of Good Faith and Fair Dealing)

61. Turbine realleges and incorporates herein the allegations contained in the foregoing paragraphs of this Complaint.

62. In executing the Agreement, and obtaining Turbine's performance thereunder, Atari entered into an implied covenant of good faith and fair dealing with Turbine.

63. Atari breached this covenant of good faith and fair dealing by, among other things, (a) concealing facts from Turbine about its preconceived decision to threaten to terminate and/or terminate its contractual relationship with Turbine when it entered into the May 13, 2009 Letter Agreement and Amendment Number Five to the License Agreement; (b) improperly using its leverage and Turbine's massive investment in DDO: Stormreach and DDO: Unlimited to extract additional consideration from Turbine; (c) exercising its audit and termination rights in bad faith in a manner intended to force Turbine to pay more money to Atari even though no such monies are due to Atari; and, (d) conducting itself in a manner intended to unfairly advantage its launch of a competing product at the direct expense of Turbine and its efforts on behalf of DDO: Stormreach and DDO: Unlimited.

64. As a result of Atari's misconduct, Turbine has been damaged in an amount to be proved at the trial of this action.

COUNT IV
(Unjust Enrichment—Pled Alternately)

65. Turbine realleges and incorporates herein the allegations contained in the foregoing paragraphs of this Complaint.

66. In connection with the May 13, 2009 execution of the Letter Agreement and Amendment Number Four of the License Agreement, Atari accepted hundreds of thousands of dollars in good-faith advances against future royalty obligations. Immediately after accepting the hundreds of thousands of dollars, Atari wrongfully sought to terminate its relationship with Turbine, causing Turbine to be damaged in an amount to be proved at the trial of this action.

67. Atari has been unjustly enriched by Turbine's payment of hundreds of thousands of dollars in advances against future royalty obligations.

68. It would be inequitable for Atari to retain the benefit of the hundreds of thousands of dollars in advance royalties when it intends to rescind the license that generates those royalties prior to the actual realization of the corresponding net receipts.

69. As a result of its misconduct, Atari has been unjustly enriched in an amount to be proved at the trial of this action, and should be required to refund those monies to Turbine.

COUNT V
(Fraud/Fraudulent Inducement)

70. Turbine realleges and incorporates herein the allegations contained in the foregoing paragraphs of this Complaint.

71. Atari made various false statements and material omissions of fact to Turbine that were intended to and did procure the reliance of Turbine, including:

- a. The false statement that Atari wanted to resume selling the service in retail channels;
- b. The false statement that in addition to Amendment Number Five, the parties would explore taking the DDO: Stormreach game to video game consoles, such as the Xbox 360® and PS3® platforms;
- c. The false statement that Atari would in fact promote the game on its websites (and indeed insisted on that right);
- d. The false statement that the parties would schedule regular review meetings to further plan how to maximize the value of the game;
- e. The false statement that the historical delays and issues were “things of the past” and that this was a “new Atari” that has to be an “online company,” meaning a publisher of online games such as DDO: Stormreach and DDO: Unlimited;
- f. The material omission that notwithstanding its statements and entrance into the Agreements, Atari planned to take unfair advantage of Turbine and extort additional benefits;
- g. The false statement that Atari was ready, willing and able to support and DDO: Unlimited; and

- h. The false statement that Atari welcomed the renewal and extension of the relationship between the parties.

72. These statements and/or omissions were made by senior personnel of Atari, including its principal negotiator, James Wilson, CEO of Atari, Inc., to James Crowley, CEO of Turbine, Inc. during the period from October 2008 through May 13, 2009, when Turbine and Atari were negotiating the terms of the Letter Agreement and Amendment Number Five to the License Agreement.

73. These statements and omissions concerned material information that went directly to whether Atari intended, at the time it entered into the May 13, 2009 Letter Agreement and Amendment Number Five to the License Agreement, to perform the contract, which it did not. Atari, as a video game publisher and distributor, had reason to fully understand the material nature of its preconceived and undisclosed intention, having entered into several previous agreements with Turbine, and being primarily engaged in the business of licensing intellectual properties to Turbine and other entities.

74. On information and belief, Atari either knew of the falsity of each of these statements when made, or concealed facts that it knew to be significant and important in negotiating and executing the Agreements with Turbine.

75. On information and belief, Atari made these statements and omissions for the purpose of inducing Turbine's reliance and continued investment of millions of dollars into the game.

76. Turbine justifiably relied on these false statements and material omissions by, among other things, continuing to invest significant capital in DDO: Stormreach and DDO: Unlimited; entering into the May 13, 2009 Letter Agreement and Amendment Number Five to

the License Agreement; and paying hundreds of thousands of dollars in advances and royalties to Atari.

77. Atari had a duty to reveal the true facts to Turbine because, among other things, it (a) had made false and misleading statements and was under a duty to correct the false and misleading statements it had made; (b) was in a position of special and superior knowledge vis-à-vis Turbine as a result of its preconceived and undisclosed intentions; and (c) had a duty of good faith and fair dealing to Turbine as a result of their contractual relationship as set forth more fully below.

78. As a direct and proximate result of Atari's breach of the Agreements, Turbine has been damaged in an amount to be proved at the trial of this action.

79. Turbine is therefore entitled to recover its damages, including compensatory and/or rescissory damages, as well as punitive damages.

COUNT VI
(Negligent Misrepresentation—Pled Alternatively)

80. Turbine realleges and incorporates herein the allegations contained in the foregoing paragraphs of this Complaint.

81. Turbine alleges in the alternative that to the extent that Atari's misrepresentations and omissions were not the product of intentional fraudulent conduct, such misrepresentations and omissions were at least negligently made, in that Atari knew or should have known the true facts and acted negligently in failing to ascertain or confirm the true facts.

82. As a direct and proximate result of Atari's misrepresentations and omissions, Turbine has been damaged in an amount to be proved at the trial of this action.

COUNT VIII
(Declaratory Judgment)

83. Turbine realleges and incorporates herein the allegations contained in the foregoing paragraphs of this Complaint.

84. Atari falsely asserts that (a) Turbine owes additional royalties to Atari and that (b) Atari has the right to terminate the License Agreement. Turbine disputes these assertions, which are false.

85. An actual controversy has arisen between the parties regarding the obligations of Atari to Turbine concerning the Agreements.

86. Turbine is entitled to a binding and judicial declaration that Turbine has paid Atari all royalty fees owing under the Agreements and that Atari's purported grounds for termination of the parties' Agreements is entirely unfounded.

JURY DEMAND

87. Turbine requests a jury trial for all issues so triable.

WHEREFORE, Plaintiff Turbine, Inc. asks the Court to enter judgment in its favor, and against the Defendants Atari, Inc. and Atari Interactive, Inc., as follows:

(a) On Counts I and II, in favor of Turbine, finding that Atari breached the Agreements and awarding Turbine damages in an amount to be proved at the trial of this action, together with interest accrued and accruing thereon;

(b) On Count III, in favor of Turbine, finding that Atari breached the implied covenant of good faith and fair dealing and awarding Turbine damages in an amount to be proved at the trial of this action, together with interest accrued and accruing thereon;

(c) In the alternative, on Count IV, in favor of Turbine, finding that Atari has been unjustly enriched and awarding Turbine damages in an amount to be proved at the trial of this action, together with interest accrued and accruing thereon;

(d) On Count V, in favor of Turbine, finding that Atari committed fraud and/or fraudulent inducement and awarding Turbine damages in an amount to be proved at the trial of this action, together with interest accrued and accruing thereon;

(e) In the alternative, on Count VI, in favor of Turbine, finding that Atari negligently misrepresented and omitted material facts and awarding Turbine damages in an amount to be proved at the trial of this action, together with interest accrued and accruing thereon;

(f) On Count VII, in favor of Turbine, declaring Turbine has paid Atari all royalty fees owing under the Agreements and that Atari's purported grounds for termination of the parties' Agreements is entirely unfounded;

(g) Awarding Turbine its costs, expenses and attorneys' fees;

(h) Awarding pre-judgment interest to Turbine from the date of the wrongs to the date of the judgment herein; and,

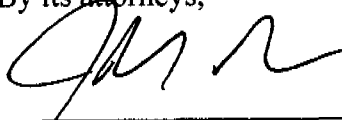
(i) Granting such other and further relief in favor of Turbine as this Court deems just and proper.

Dated: New York, New York
August 24, 2009

Respectfully submitted,

TURBINE, INC.

By its attorneys,



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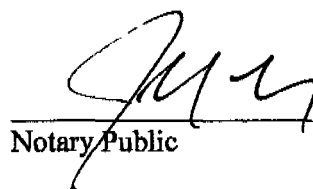
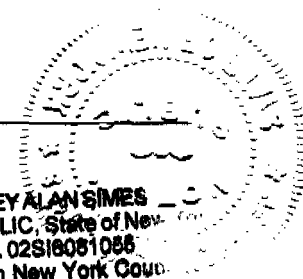
VERIFICATION

I, James J. Crowley, hereby certify that I have the title of Chief Executive Officer at Turbine, Inc., that I have read the foregoing Verified Complaint, and know the contents thereof, and that the allegations contained in the Verified Complaint are true and correct based on my knowledge and information, except as to those allegations alleged upon information and belief, and I believe those allegations to be true.



STATE OF NEW YORK
COUNTY OF NEW YORK

SUBSCRIBED AND SWORN TO before me this ____ day of August, 2009


Notary Public

JEFFREY ALAN SIMES
NOTARY PUBLIC, State of New York
ID No. 02SI6081086
Qualified in New York County
My Commission Expires 8/3/2011

NOTICE OF ENTRY

Sir :—Please take notice that the within is a (certified) true copy of a duly entered in the office of the clerk of the within named court on.

Dated,

Yours, etc.

GOODWIN PROCTER, LLP

Attorneys for

Offices and Post Office Address
The New York Times Building
620 Eighth Avenue
New York, NY 10018

To

Attorney for

—NOTICE OF CHANGE OF ATTORNEYS—

Sir :—Please take notice that an order

Of which the within is a true copy will be presented for settlement to the Hon.

One of the judges of the within named Court, at

on the day of
at M.
Dated,

Yours, etc.

GOODWIN PROCTER, LLP

Attorneys for

Offices and Post Office Address
The New York Times Building
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New York, NY 10018

To

Attorney for

Index No

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

TURBINE, INC.,

Plaintiffs

ATARI, INC. and ATARI INTERACTIVE, INC.,

Defendants.

Summons and Complaint

GOODWIN PROCTER, LLP

Attorneys Plaintiffs

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Tel. (212) 813-8800
Fax: (212) 355-3333

To

Attorney for

Service of a copy of the within

is hereby admitted.

Dated,

Attorney for