

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

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In re: : Chapter 11
  
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THQ INC., *et al.*, : Case No. 12-13398 (MFW)
  
:
  
Debtors.<sup>1</sup> : Jointly Administered
  
:
  
: Proposed Hearing Date: February 19, 2013 at 9:30 a.m. (ET)
  
: Proposed Objection Deadline: February 14, 2013 at 4:00 p.m. (ET)
  
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**DEBTORS’ MOTION, PURSUANT TO SECTIONS 105(a) AND 363(b)  
OF THE BANKRUPTCY CODE AND BANKRUPTCY  
RULE 9019, FOR AN ORDER AUTHORIZING DEBTORS TO ENTER INTO  
A SETTLEMENT AGREEMENT WITH CERTAIN TERMINATED EMPLOYEES**

THQ Inc. (“**THQI**”) and its above-captioned affiliated debtors, as debtors and debtors in possession (collectively, the “**Debtors**”), hereby submit this motion (the “**Motion**”) for entry of an order, substantially in the form annexed hereto as **Exhibit A**, authorizing the Debtors to enter into that certain Settlement Agreement and Release of Claims with certain terminated employees, substantially in the form attached hereto as **Exhibit B** or **Exhibit C** (the “**Agreement**”).<sup>2</sup> In support of this Motion, the Debtors respectfully state as follows:

**JURISDICTION**

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated as of February 29, 2012. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and

<sup>1</sup> The Debtors in these chapter 11 cases and the last four digits of each Debtor’s taxpayer identification number are as follows: THQ Inc. (1686); THQ Digital Studios Phoenix, Inc. (1056); THQ Wireless, Inc. (7991); Volition, Inc. (4944); and Vigil Games, Inc. (8651). The Debtors’ principal offices are located at 29903 Agoura Road, Agoura Hills, CA 91301.

<sup>2</sup> The form of agreement will be slightly different for employees who reside in California and employees who reside in Texas, to address differences in applicable state law. The California form of agreement is Exhibit B and the Texas form of agreement is Exhibit C.

1409. The statutory predicates for the relief requested herein are section 105(a) of title 11 of the United States Code (the “**Bankruptcy Code**”) and Rule 9019 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”).

### **BACKGROUND**

2. On December 19, 2012 (the “**Petition Date**”), each of the Debtors commenced a voluntary case under chapter 11 of Bankruptcy Code. Pursuant to sections 1107(a) and 1108 of the Bankruptcy Code, the Debtors continue to operate their businesses and manage their properties as debtors in possession.

3. The Debtors’ chapter 11 cases (the “**Chapter 11 Cases**”) are consolidated for procedural purposes only and are jointly administered pursuant to Rule 1015(b) of the Bankruptcy Rules and Rule 1015-1 of the Local Rules. No trustee or examiner has been appointed in the Chapter 11 Cases.

4. On January 3, 2013, the Office of the United States Trustee for the District of Delaware (the “**U.S. Trustee**”) appointed an official committee of unsecured creditors (the “**Creditors’ Committee**”) [Docket No. 80]. No trustee or examiner has been appointed in these cases.

5. Information regarding the Debtors’ history and business operations, capital structure and primary secured indebtedness, and the events leading up to the commencement of these Chapter 11 Cases can be found in the *Declaration of Brian Farrell in Support of the Debtors’ Chapter 11 Petitions and Requests for First Day Relief* filed on the Petition Date [Docket No. 2].

### **THE TERMINATED EMPLOYEES AND THE POTENTIAL DISPUTES**

6. On the Petition Date, the Debtors filed a motion seeking this Court’s approval of a sale of substantially all of the Debtors’ operating assets to the proposed stalking

horse bidder, Clearlake Capital Group, L.P (“**Clearlake**”), or to a higher bidder. Clearlake indicated to the Debtors that it would employ the majority of the Debtors’ employees if it was the successful purchaser of the Debtors’ assets.

7. On January 22 and January 23, 2013, the Debtors conducted a series of auctions for some or substantially all of their operating assets. Qualified bidders could submit a bid for either (i) all or substantially all of the Debtors’ assets, or (ii) any part of the Debtors’ assets. On January 24, 2013, this Court entered orders approving the sale of the majority of the Debtors’ operating assets, excluding all accounts receivable, to five separate bidders (collectively, the “**Successful Bidders**”). Clearlake was not one of the Successful Bidders.

8. None of the Successful Bidders acquired the studio operated by Vigil Games, Inc. (“**Vigil**”) in Austin, Texas or the Debtors’ corporate headquarters in Agoura Hills, California (“**Agoura Hills**”). The Successful Bidders were determined on the afternoon of January 23, 2013. Thus, it was not until the afternoon of January 23, 2013 that the Debtors realized employees at Vigil and Agoura Hills would need to be terminated. As a result, on January 25, 2013, the Debtors laid off approximately one-hundred-twenty (120) employees located at Agoura Hills and eighty-eight (88) employees at Vigil.<sup>3</sup>

9. The federal Worker Adjustment and Retraining Notification (“**WARN**”) Act requires that covered employers provide sixty (60) days’ advance notice of “mass layoffs” and “plant closures” affecting fifty (50) or more employees during any thirty (30)-day period. 21

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<sup>3</sup> Thirty-four (34) of such Vigil employees have since been hired by Crytek GmbH (“**Crytek**”, the successful purchaser of the assets owned or held primarily by, required primarily for, or used, intended for use, leased, licensed, accrued, reserved or incurred primarily in connection with, the business of developing, licensing, marketing and selling *Homefront* and *Homefront 2*. These thirty-four (34) employees were unemployed for one-week between when they were terminated by THQ and when they were hired by Crytek. The Debtors seek authority to pay them one week of compensation and benefits if they will release all claims other than Prepetition PTO Claims, to make them “whole” for this lost week.

U.S.C. §§ 2101–2109. The Debtors believe, however, that under 29 U.S.C. § 2102(b)(1),<sup>4</sup> they were exempt from the sixty (60) days’ notice requirement with respect to the employees at Vigil and Agoura Hills. The Debtors did not know that such employees would be terminated until the Successful Bidders were identified on January 23, 2013. Prior to that time, the Debtors were proceeding under the stalking horse bid from Clearlake under which the Debtors believed that there would be no “mass layoffs” or “plant closures” affecting fifty (50) or more employees. Clearlake, the stalking horse bidder, had indicated that it intended to employ the majority of the Debtors’ employees at each of the Debtors’ locations. The Debtors believed that if they notified their employees that some or all employees might be terminated if Clearlake was not the successful bidder, employees would likely have resigned during the marketing process leading up to the auction sale. This could have caused a material adverse change within the meaning of the asset purchase agreement with Clearlake, and, as a result, the Debtors could have found themselves with no buyer committed to acquire their operations. This could have required the Debtors to cease all operations and terminate all of their employees. Thus, giving a notice that layoffs might occur depending on the outcome of the auction sale would have jeopardized all jobs at all of the Debtors’ locations.

10. The Debtors did not provide any notice under the WARN Act because they reasonably believed that the only bid then in their possession was by a bidder (Clearlake) that intended to employ enough of the Debtors’ employees at each location that there would be no mass layoff or plant closures affecting fifty (50) or more employees. Thus, the Debtors

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<sup>4</sup> 29 U.S.C § 2102(b)(1) provides:

(b) Reduction of notification period

(1) An employer may order the shutdown of a single site of employment before the conclusion of the 60-day period if as of the time that notice would have been required the employer was actively seeking capital or business which, if obtained, would have enabled the employer to avoid or postpone the shutdown and the employer reasonably and in good faith believed that giving the notice required would have precluded the employer from obtaining the needed capital or business.

believe that they are not liable for any damages under the WARN Act, the California WARN Act, or other similar state and/or federal statutes arising from the termination of any Vigil employee or Agoura Hills employee. The Debtors recognize, however, that they did not provide sixty (60) days' notice of the termination, and that employees might contend that notice was required. If the Debtors were not exempt from providing notice, employees would be entitled to sixty (60) days of compensation and benefits. While the Debtors deny that they should have any liability under the WARN Act, there may be a litigable issue as to whether such liability exists.

11. In addition to any potential liability under the WARN Act, the Debtors may have liability to terminated employees under the Debtors' severance policies. The Debtors did not have severance agreements with the majority of the terminated employees, but the Debtors did have a policy in place under which every employee below the Vice President level received a minimum of two weeks of severance, regardless of the length of their employment. Such employees earned additional weeks of severance after a year of service based on length of employment.

12. There is a potential dispute as to whether any employee's claim for such severance would be entitled to priority as an expense of administration. If the severance liability arises in lieu of notice, the claim for that severance might be entitled to priority as an expense of administration. *See Former Empls. of Builders Square Retail Stores v. Hechinger Inv. Co. (In re Hechinger Inv. Co.)*, 298 F.3d 219, 227 (3d Cir. 2002) (finding that pay at termination in lieu of notice is allowed administrative expense priority because the payments are made in consideration of quick departure from employment after the petition date -- consideration given after the petition); *see also In re M Group*, 268 B.R. 896, 899 (Bankr. D. Del. 2001) (noting that the Third Circuit has held that severance pay claims based on contracts that contain termination

in lieu of notice clauses are entitled to administrative status). On the other hand, severance pay based on length of employment is given in consideration of work performed both pre- and post-petition, and thus not all such pay is entitled to treatment as an administrative expense. *In re Hechinger Inv. Co.*, 298 F.3d at 227; *see also In re Roth Am., Inc.*, 975 F.2d 949, 957 (3d Cir. 1992) (noting that the Third Circuit has distinguished between “(i) pay at termination in lieu of notice and (ii) pay at termination based on length of employment,” with the prior receiving administrative expense priority and the latter receiving no additional priority other than that allowed under § 507(a)(3)).

13. Therefore, because the amount of severance pay increased based on length of employment, only the portion of severance earned postpetition might qualify for administrative expense status, while the portion earned prepetition would not. *See In re Roth Am., Inc.*, 975 F.2d at 957 (holding that vacation and severance benefits that were based on the length of employment “only have administrative priority to the extent that they are based on services provided to the bankruptcy estate post-petition”); *see also In re Marcal Paper Mills, Inc.*, 650 F.3d 311, 320 (3d Cir. 2011) (holding that “many situations can arise whereby the promised employee benefit is in consideration for work that occurred both pre- and post-petition” and, thus, “the benefit should be and can be apportioned accordingly”). The amount accrued during the six (6) months immediately prior to the Petition Date might be entitled to priority under section 507(a) of the Bankruptcy Code. The balance of any such severance claim would be a general unsecured claim.

#### **RELIEF REQUESTED**

14. Rather than expending time and money litigating the merits of any claims under the WARN Act and any administrative claims asserted for severance, the Debtors, with the

support of the Creditors' Committee, seek entry of an order authorizing, but not directing, the Debtors to enter into the Agreement with each employee at Agoura Hills or Vigil who was terminated following the sale of the Debtors' assets to the Successful Bidders and was not offered employment by any of the bidders (each an "**Employee**" and, collectively, the "**Employees**"). The Agreement consists of two settlements, the Severance Settlement and the Prepetition PTO Settlement (each as defined below and together, the "**Settlements**"). An Employee may accept either or both of the Settlements and accepting the Settlements is entirely voluntary.

15. The material terms of the Agreement are as follows:<sup>5</sup>

- i. Termination of Employment. Employee represents that the Employee's employment with the Debtors has been terminated effective as of a certain date and represents and warrants that the Employee has not been offered permanent employment by any of the Successful Bidders.
- ii. Compensation & Benefits Agreement. If an Employee opts in to the compensation & benefits agreement (the "**Severance Settlement**"), the Employee agrees to the following:
  - a. within one week after the Court enters an order approving the Compensation & Benefits Agreement, THQI shall provide Employee a cash payment in an amount representing thirty (30) days of compensation and either cash payment or actual provision of benefits earned by the Employee for that thirty (30) days;
  - b. Employee forever releases all claims against the Debtors arising from or related to the Employee's termination, including, but not limited to, any liability the Debtors may have otherwise had under the WARN Act or under the Debtors' severance policies; and
  - c. The release also extends to all disputes of every nature and kind by Employee against THQ, except claims for

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<sup>5</sup> To the extent any summaries and/or descriptions of the relationships of the parties and the terms of the Agreement contained in the Motion differ in any way from that contained in the Agreement, the Agreement shall govern.

Prepetition PTO (defined below), whether known or unknown, suspected or unsuspected, past or present. Specifically, Employee hereby expressly waives any and all rights under Section 1542 of the California Civil Code.

- iii. Prepetition PTO Agreement. If an Employee opts in to the Prepetition PTO Agreement (the “**Prepetition PTO Settlement**”), the Employee agrees to the following:
  - a. THQ shall pay Employee a cash payment in an amount equal to ten percent (10%) of all amounts it owes to Employee for unused vacation and paid personal time off accrued prior to the Petition Date (“**Prepetition PTO**”); and
  - b. Employee forever releases all claims against the Debtors arising from or related to claims for Prepetition PTO.
- iv. Effective Date. The Agreement shall be effective upon this Court’s approval of the Agreement.
- v. No Admission of Wrongdoing. Employee understands and agrees that neither the payment or promise of consideration, nor the execution of the Agreement or any part of it, shall constitute or be construed as an admission of any alleged liability or wrongdoing whatsoever by THQ.
- vi. Preservation of Confidentiality of THQ’s Information. Employee agrees to honor any and all obligations Employee has to preserve as confidential any proprietary business information or other information Employee has previously agreed to keep confidential.
- vii. No Disparaging Comments. Employee agrees that Employee will not, orally or in writing, publicly or privately (a) make or express any comment, view or opinion critical or disparaging of THQI, its subsidiaries, donors, members of the Board of Directors, or affiliates, or any of their current or former employees; or (b) authorize any agent or representative to make or express such a comment, view or opinion, except as may be compelled by law.

**BASIS FOR RELIEF REQUESTED**

**I. The Agreement is Fair, Reasonable, and in the Best Interests of the Debtors’ Estates, Satisfying the Requirements of Bankruptcy Rule 9019.**

16. Bankruptcy Rule 9019(a) provides, in relevant part, that “[o]n motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement.”



Fed. R. Bankr. P. 9019(a). Compromises and settlements are “a normal part of the process of reorganization.” *Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424 (1968) (quoting *Case v. Los Angeles Lumber Prods. Co.*, 308 U.S. 106, 130 (1939)). The settlement of time-consuming and burdensome litigation, especially in the bankruptcy context, is encouraged and “generally favored in bankruptcy.” *In re World Health Alternatives, Inc.*, 344 B.R. 291, 296 (Bankr. D. Del. 2006); *see also In re Penn Central Transp. Co.*, 596 F.2d 1102 (3d Cir. 1979).

17. “[T]he decision whether to approve a compromise under Bankruptcy Rule 9019 is committed to the sound discretion of the Court, which must determine if the compromise is fair, reasonable, and in the interest of the estate.” *In re Louise’s, Inc.*, 211 B.R. 798, 801 (D. Del. 1997) (declining to approve settlement found to be *sub rosa* plan). Courts should not, however, substitute their judgment for that of the debtor, but instead canvas the issues to see whether the settlement falls below the lowest point in the range of reasonableness. *See In re Neshaminy Office Building Assoc.*, 62 B.R. 798, 803 (E.D. Pa. 1986); *In re W.T. Grant & Co.*, 699 F.2d 599, 608 (2d Cir. 1983), *cert. denied*, 464 U.S. 22 (1983); *see also In re World Health Alternatives, Inc.*, 344 B.R. at 296 (“The court does not have to be convinced that the settlement is the best possible compromise. Rather, the court must conclude that the settlement is within the reasonable range of litigation possibilities.”) (internal citations and quotations omitted).

18. The Third Circuit Court of Appeals has enumerated four factors that should be considered in determining whether a settlement should be approved. The four enumerated factors are: “(1) the probability of success in litigation; (2) the likely difficulties in collection; (3) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; and (4) the paramount interest of the creditors.” *Meyers v. Martin*

(*In re Martin*), 91 F.3d 389, 393 (3d Cir. 1996); accord *Will v. Northwestern Univ.* (*In re Nutraquest, Inc.*), 434 F.3d 639, 644 (3d Cir. 2006) (finding that the *Martin* factors are useful when analyzing a settlement of a claim against the debtor as well as a claim belonging to the debtor); see also *Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424 (1968); *In re Marvel Entertainment Group, Inc.*, 222 B.R. 243 (D. Del. 1998) (holding proposed settlement in best interest of the estate); *In re Mavrode*, 205 B.R. 716, 721 (Bankr. D.N.J. 1997).

**A. The Probability of Success in Litigation**

19. Each of the Settlements is in the best interests of the Debtors' estates. As set forth above, there is a potential dispute as to whether an Employee's claim for severance would be entitled to priority as an expense of administration. Moreover, while the Debtors deny that they should have any liability under the WARN Act or other federal or state laws arising from the termination of the Employees, there may be a litigable issue as to whether such liability exists. Approval of the Agreement will allow the Debtors to settle such disputes with those Employees who opt in and avoid the risks of litigating such Employees' claims. Accordingly, the Debtors submit that the Agreement meets the first factor of the *Martin* test.

**B. The Complexity of the Litigation Involved, and the Expense, Inconvenience and Delay Necessarily Attending It**

20. The Agreement satisfies the second factor in *Martin*'s four-factor test because a failure to achieve a consensual settlement of the issues between the Debtors and Employees would likely result in costly and time-consuming litigation. The Agreement, on the other hand, permits resolution of these issues without any litigation expenses and a much faster resolution than could be achieved through any potential litigation. Accordingly, this *Martin* factor weighs in favor of approving the Agreement.

**C The Paramount Interests of Creditors**

21. The Severance Settlement serves the paramount interest of the Debtors' creditors as it resolves issues arising from the termination of the Employees that otherwise may require costly and time-consuming litigation with no certainty regarding the outcome. Approval of the Severance Settlement will also enable a participating Employee to receive a prompt cash payment equal to thirty (30) days of compensation and benefits. This provides a safety net for Employees who did not receive any notice prior to their sudden and unexpected termination.

22. In addition to the Severance Settlement, the Creditors' Committee proposed that the Debtors offer the Prepetition PTO Settlement to each of the Employees. Approval of the Prepetition PTO Settlement will also result in an additional cash payment at a time when the Employees need to replace the income they are not receiving from the Debtors. The Debtors believe that the amount of the cash payment under the Prepetition PTO Settlement is fair and reasonable in light of the circumstances of the Chapter 11 Cases. It is not possible at this early stage of the Chapter 11 Cases to assess what claims, if any, will be allowed. It is, therefore, not possible to determine what percentage distribution will be made on account of unsecured claims. The Creditors' Committee and the Debtors believe that any distribution on account of unsecured claims could be substantially greater than the 10% offered under the Prepetition PTO Settlement. Employees would receive the 10% to provide them with cash when they may need it most and certainty as to the amount of their distribution. This will also facilitate ultimate distributions under a plan, by eliminating hundreds of creditors with relatively smaller claims if Employees opt to accept the Prepetition PTO Settlement offer. The Prepetition PTO Settlement is, however, entirely voluntary. Any Employee who would prefer to retain any existing Prepetition PTO claims and receive the distribution to which the Employee will become be entitled is free to do so.

23. Accordingly, the Debtors submit that the third *Martin* factor is met. The Creditors' Committee's support of the Settlements provides further support that the Settlements are fair, reasonable, and in the best interest of the Debtors' estates and creditors.

**D. The Likely Difficulties in Collection**

24. This factor is not relevant under the facts of the Chapter 11 Cases.

**E. Summary**

25. Each of the Settlements embodied in the Agreement: (i) is fair and equitable; (ii) represents a settlement that is in the reasonable range of potential litigation outcomes; and (iii) obviates the expense, delay, inconvenience and uncertainty that would attend any litigation of such an issue. Therefore, the Agreement satisfies Bankruptcy Rule 9019 and should be approved by the Court.

26. To the extent that section 363 of the Bankruptcy Code is implicated in connection with the settlement embodied in the Agreement, the Debtors seek authority thereunder to execute and perform their obligations under the Agreement. The Debtors submit that the terms of the Agreement have a sound business purpose and represent the exercise of their sound business judgment and, accordingly, any actions required to effectuate the terms of the Agreement should be authorized and approved pursuant to section 363(b). *See In re Lionel Corp.*, 722 F. 2d 1063, 1071 (2d Cir. 1983) ("The rule we adopt requires that a judge determining a 363(b) application expressly find from the evidence presented before him a good business reason to grant the application."); *In re Delaware Hudson Ry. Co.*, 124 B.R. 169, 179 (Bankr. Del. 1991). The foregoing reasons also establish that "cause" exists for the court to modify the automatic stay, to the extent that it applies, pursuant to section 362(d)(1), to effectuate the terms of the Agreement. *See* 11 U.S.C. § 362(d)(1) ("[T]he court shall grant relief from the stay provided under subsection (a) of this section . . . for cause[.]").

27. Finally, authorizing the Debtors to enter into and effectuate the terms of the Agreement is well within the equitable powers of this court. *See* 11 U.S.C. § 105(a) (“The court may issue any order, process, or judgment that is necessary to carry out the provisions of [the Bankruptcy Code].”); *see also Chinichian v. Campolongo (In re Chinichian)*, 784 F.2d 1440, 1443 (9th Cir. 1986) (“Section 105 sets out the power of the bankruptcy court to fashion orders as necessary pursuant to the purposes of the Bankruptcy Code.”); *In re Cooper Props. Liquidating Trust, Inc.*, 61 B.R. 531, 537 (Bankr. W.D. Tenn. 1986) (noting that bankruptcy court is “one of equity and as such it has a duty to protect whatever equities a debtor may have in property for the benefit of its creditors as long as that protection is implemented in a manner consistent with the bankruptcy laws”).

**SATISFACTION OF BANKRUPTCY RULES 6004(a) AND 6004(h)**

28. To implement the foregoing successfully, the Debtors request that the Court enter an order providing that notice of the relief requested herein satisfies Bankruptcy Rule 6004(a) and that the Debtors have established cause to exclude such relief from the 14-day stay period under Bankruptcy Rule 6004(h).

**NOTICE**

29. Notice of this Motion has been provided to (a) the U.S. Trustee; (b) proposed counsel to the Creditors’ Committee; and (c) those parties who have formally filed a request for notice in these Chapter 11 Cases pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested herein, the Debtors submit that no other or further notice is necessary.

WHEREFORE, the Debtors respectfully request that the Court grant the relief requested herein and such other and further relief as the Court may deem just and proper.

Dated: January 31, 2013  
Wilmington, Delaware

/s/ Jaime Luton Chapman  
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*Counsel to the Debtors and Debtors in Possession*

**EXHIBIT A**

**PROPOSED ORDER**

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

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 In re: : Chapter 11  
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 THQ INC., *et al.*, : Case No. 12-13398 (MFW)  
 :  
 Debtors.<sup>1</sup> : Jointly Administered  
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 : Re: Docket No. \_\_  
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**ORDER AUTHORIZING DEBTORS TO ENTER INTO  
A SETTLEMENT AGREEMENT WITH CERTAIN TERMINATED EMPLOYEES**

Upon the Motion<sup>2</sup> of THQ Inc. and its affiliated debtors and debtors in possession in the above-captioned cases (collectively, the “**Debtors**”), seeking entry of an order, pursuant to section 105(a) of the Bankruptcy Code and Bankruptcy Rule 9019, authorizing the Debtors to enter into that certain Settlement Agreement and Release of Claims (the “**Agreement**”) with certain Employees, all as more fully set forth in the Motion; and the Court having found that the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated as of February 29, 2012; and the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and the Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and the Court having found that the Agreement and the relief requested in the Motion are in the best interests of the Debtors, their creditors and estates, and other parties in interest; and the Court having found that the Debtors provided appropriate notice of the Motion and the opportunity for a hearing on the

<sup>1</sup> The Debtors in these chapter 11 cases and the last four digits of each Debtor’s taxpayer identification number are as follows: THQ Inc. (1686); THQ Digital Studios Phoenix, Inc. (1056); THQ Wireless, Inc. (7991); Volition, Inc. (4944); and Vigil Games, Inc. (8651). The Debtors’ principal offices are located at 29903 Agoura Road, Agoura Hills, CA 91301.

<sup>2</sup> All capitalized terms used and not defined herein shall have the meanings ascribed to them in the Motion.



Motion under the circumstances; and the Court having reviewed the Motion and having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor,

**IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:**

1. The Motion is GRANTED in its entirety.
2. The Agreement, attached as **Exhibit B** (for California employees) and **Exhibit C** (for Texas employees) to the Motion, is approved pursuant to sections 105(a) and, to the extent applicable, 363(b) of the Bankruptcy Code and Bankruptcy Rule 9019(a), and, to the extent required by the Agreement, the Debtors are authorized to execute, deliver, implement and fully perform any and all obligations, instruments, documents and papers and to take any and all actions reasonably necessary or appropriate to consummate the Agreement and perform any and all obligations contemplated therein.
3. The automatic stay of section 362(a)(7) of the Bankruptcy Code in these Chapter 11 Cases is hereby modified to the extent necessary to permit the implementation of the terms of the Agreement.
4. This Order and the Agreement shall be binding upon the Debtors, each Employee who signs the Agreement, any trustees appointed in these proceedings, any trustees appointed in any subsequent proceedings under the Bankruptcy Code relating to the Debtors, and all other parties-in-interest.
5. Nothing in the Motion or the requested relief (including any actions taken or payments made by the Debtors pursuant to the requested relief) shall (a) be construed as a request for authority to assume or reject any executory contract under section 365 of the Bankruptcy Code; (b) waive, affect, or impair any of the Debtors' rights, claims, or defenses

including, but not limited to, any defense to any claim submitted by any Employee that does not accept the Settlements and claims and defenses arising from sections 365, 113 and 114 of the Bankruptcy Code, among others, other applicable law, and any agreement; (c) grant any additional rights to any third party; or (d) be enforceable by any third party.

6. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion.

7. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

8. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: \_\_\_\_\_, 2013  
Wilmington, Delaware

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Mary F. Walrath  
United States Bankruptcy Judge

**EXHIBIT B**

**CALIFORNIA EMPLOYEE AGREEMENT**

## SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS

This Settlement Agreement and Release of Claims ("Agreement"), is entered into by \_\_\_\_\_ ("Employee") and THQ Inc. ("THQ"). It is entered into to resolve amicably matters between Employee and the Debtors (as defined below) relating to and arising from THQ's termination of Employee.

### RECITALS

- A. On December 19, 2012 (the "Petition Date"), THQ, THQ Digital Studios Phoenix, Inc. ("Phoenix"), THQ Wireless Inc. ("Wireless"), Volition, Inc. ("Volition"), and Vigil Games, Inc., as debtors and debtors in possession (together with THQ, Phoenix, Wireless and Volition, collectively, the "Debtors"), commenced chapter 11 cases by filing voluntary petitions under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"), jointly administered under Case No. 12-13398 (MFW) (the "Bankruptcy Case").
- B. On January 23, 2013, the Debtors conducted a series of auctions of their assets. Prior to the completion of those auctions the Debtors had accepted a proposal to sell their operating assets to a buyer that had indicate that it intended to employ the majority of the Debtors' employees, but that bidder was not the winning bidder at the auction sale. As a result, on January 24, 2013, the Bankruptcy Court entered orders approving the sale of the majority of the Debtors' assets to five separate bidders and it is the Debtors' understanding that none of those bidders offered employment to you.
- C. The Debtors believe that they did everything possible to find a buyer that would be able to employ the Debtors' employees and that there is no liability arising from the termination of Employee pursuant to the federal Worker Adjustment and Retraining Notification ("WARN") Act, the California WARN Act or other similar state and/or federal statutes.
- D. The Debtors shall seek Bankruptcy Court authority to allow the Debtors to make the following settlement offer to each Employee: (i) Debtors shall provide to Employee thirty (30) days of compensation and benefits if Employee agrees to release voluntarily all termination related claims (except claims for Prepetition PTO (defined below)) (the "Compensation & Benefits Agreement"); and (ii) Debtors shall pay to Employee ten percent (10%) of all amounts due for unused vacation and paid personal time off accrued prior to the Petition Date ("Prepetition PTO") in exchange for a release of all claims for Prepetition PTO (the "Prepetition PTO Agreement"). Employee may accept either or both of two agreements or may decline to accept either offer of settlement. Accepting such settlements is entirely voluntary.
- E. The Debtors will seek Bankruptcy Court authority to proceed with both settlements. The Official Committee of Unsecured Creditors appointed in the Bankruptcy Case (the "Committee") has agreed to support the Debtors' request for such authority on the terms set forth in this Agreement. These agreements will be effective only when the Bankruptcy Court approves this Agreement.**

### AGREEMENT

1. Termination of Employment. Employee's employment with THQ will be or has been terminated effective \_\_\_\_\_, 2013 (the "Termination Date"). Employee represents and warrants that Employee has not be extended an offer of permanent employment by any of the successful bidders that acquired any portion of the Debtors' assets.

2. Compensation & Benefits Agreement. Employee opts in to the following agreement between THQ and Employee by signing immediately below this section 2:

- a. THQ shall provide Employee with a cash payment in an amount equal to [ \_\_\_ ], representing thirty (30) days of compensation and benefits earned by Employee, within one week after the Bankruptcy Court enters an order approving the Compensation & Benefits Agreement; and
  
- b. Employee, on behalf of Employee and Employee’s executors, legatees, devisees, administrators, successors and assigns, hereby and forever releases and discharges the Debtors and their past and present successors, parents, subsidiaries, sisters and affiliated corporations, divisions or other related entities, employee benefit plans and fiduciaries thereof, as well as the successors, predecessors, shareholders, officers, directors, including all members of the boards of directors of each of the Debtors, partners, heirs, assigns, agents, employees, attorneys and representatives of each of them, past or present, from any and all causes of action, judgments, liens, indebtedness, costs, damages, obligations, attorneys’ fees, losses, claims, liabilities and demands of whatever kind and character (“disputes”) arising out of or in any way related to Employee’s employment or business relationship with any of the Debtors except claims for Prepetition PTO. Employee specifically releases all disputes relating to or arising out of any California, municipal, or federal statute, ordinance, regulation, order, or common law, including, but not limited to, Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000(e), *et seq.*; the Civil Rights Act of 1866, as amended, 42 U.S.C. Sections 1981, *et seq.*; the Equal Pay Act, as amended, 29 U.S.C. § 206(d); the Fair Labor Standards Act of 1939, as amended, 29 U.S.C. § 201, *et seq.*; the Worker Adjustment and Retraining Notification (WARN) Act, 29 U.S.C. § 2101, *et seq.*; the California Worker Adjustment and Retraining Notification Act, California Labor Code § 1400, *et seq.*; the Orders of the California Industrial Welfare Commission regulating wages, hours and working conditions; the California Fair Employment & Housing Act, as amended, Cal. Govt. Code § 12900, *et seq.*; the California Family Rights Act of 1991, as amended; California Government Code § 12945.2; the California Unfair Competition Law, California Business and Professions Code § 17200, *et seq.*, as amended; the California Unruh Civil Rights Act, as amended, Cal. Civ. Code § 51, *et seq.*; each and every provision of the California Labor Code; Article 1 of the California Constitution; the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 701, *et seq.*; the Americans with Disabilities Act of 1990, 42 U.S.C. § 12100, *et seq.*, as amended; the Family and Medical Leave Act of 1993, 29 U.S.C. § 2601, *et seq.*; the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001, *et seq.*; the National Labor Relations Act, as amended, 29 U.S.C. § 151, *et seq.*; the Age Discrimination in Employment Act, 29 U.S.C. § 621, *et seq.*; the Genetic Information Nondiscrimination Act of 2008; and any action based on written or oral contract, quasi-contract, *quantum meruit*, implied contract, tort, wrongful or constructive discharge, breach of the covenant of good faith and fair dealing, defamation, libel, slander, fraud, misrepresentation, immigration issues, infliction of emotional distress, assault, battery, conspiracy, discrimination on any basis prohibited by statute or public policy, negligence, claims for vacation (except claims for Prepetition PTO) or severance pay, any interference with business opportunity or with contract, etc.
  
- c. EMPLOYEE further understands and acknowledges that:
  - (i) Employee has been notified that the positions that appear on the attached Exhibit “A” as eligible for separation benefits are also being terminated from THQ.

(ii) This Agreement constitutes a voluntary waiver of any and all rights and claims employee has against the Releasees as of the date of the execution of this Agreement, including rights or claims arising under the Age Discrimination in Employment Act;

(iii) Employee has waived rights or claims pursuant to this Agreement in exchange for consideration, the value of which exceeds the payment or remuneration to which employee was already entitled;

(iv) Employee is hereby advised that the employee may consult with an attorney of employee's choosing concerning this Agreement prior to executing it;

(v) Employee has been afforded a period of at least 45 days to consider the terms of this Agreement, and in the event that the employee should decide to execute this Agreement in fewer than 45 days, the employee has done so with the express understanding that the employee has been given and declined the opportunity to consider this Agreement for a full 45 days; and

(vi) Employee may revoke this Agreement at any time during the seven (7) days following the date of execution of this Agreement, by furnishing written notice of such revocation to THQ Human Resources, 29903 Agoura Road, Agoura Hills, California, 91301, fax: (818) 871-7532, and this Agreement shall not become effective or enforceable until such revocation period has expired.

d. The Release also extends to all disputes of every nature and kind by Employee against THQ, except claims for Prepetition PTO, whether known or unknown, suspected or unsuspected, past or present. Specifically, Employee hereby expressly waives any and all rights under Section 1542 of the California Civil Code, which reads in full as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Employee acknowledges that he or she has separately bargained for the foregoing waiver of Section 1542. Employee and the Debtors intend that the provisions regarding the disputes released herein be construed as broadly as possible, and incorporate herein similar federal, state or other laws, all of which are similarly waived by the Employee.

Employee accepts the foregoing settlement (check box):

Signature: \_\_\_\_\_

3. Prepetition PTO Agreement. Employee opts in to the following agreement between THQ and Employee by signing immediately below this section 3:

a. THQ hereby agrees to pay Employee a cash payment in an amount equal to [ \_\_ ], representing ten percent (10%) of Prepetition PTO earned by Employee; and

- b. Employee, on behalf of Employee and Employee’s executors, legatees, devisees, administrators, successors and assigns, hereby and forever releases and discharges the Debtors and their past and present successors, parents, subsidiaries, sisters and affiliated corporations, divisions or other related entities, employee benefit plans and fiduciaries thereof, as well as the successors, predecessors, shareholders, officers, directors, including all members of the boards of directors of each of the Debtors, partners, heirs, assigns, agents, employees, attorneys and representatives of each of them, past or present, from any and all causes of action, judgments, liens, indebtedness, costs, damages, obligations, attorneys’ fees, losses, claims, liabilities and demands of whatever kind and character arising out of or in any way related to claims for Prepetition PTO.
- c. **Employee is aware that the payment percentage under this Agreement will probably differ from the amount ultimately distributed in the Bankruptcy Case with respect to the claims being settled and released by Employee by this Agreement and that such amount may not be absolutely determined until entry of a final order confirming a plan of reorganization or liquidation, including the possibility that the distribution in the Bankruptcy Case could be payment in full.** The distribution to creditors on account of allowed claims may exceed ten percent (10%) but Employee is agreeing to accept a cash payment in an amount equal to ten percent (10%) of Prepetition PTO earned by Employee now in exchange for greater certainty as to the amount to be received and to receive the payment sooner than other creditors will receive payments on account of their prepetition claims. Employee acknowledges that, except as set forth in this Agreement, Employee does not rely on any representation of the Debtors to enter into this Agreement. Employee represents and warrants that it has satisfactory information to make an informed decision regarding the release of Employee’s claims as described herein (including but not limited to, the business or financial condition of the Debtors and the status of the Bankruptcy Case), independent of the Debtors.

Employee Accepts the foregoing settlement (check box):

Signature: \_\_\_\_\_

- 4. No Admission of Wrongdoing. Employee understands and agrees that neither the payment or promise of consideration, nor the execution of this Agreement or any part of it, shall constitute or be construed as an admission of any alleged liability or wrongdoing whatsoever by THQ.
- 5. Preservation of Confidentiality of THQ’s Information. Employee agrees to honor any and all obligations Employee has to preserve as confidential any proprietary business information or other information Employee has previously agreed to keep confidential.
- 6. Entire Agreement. No promise, inducement or agreement other than that expressed herein has been made by either Party. This Agreement constitutes a single integrated contract expressing the entire agreement of the Parties hereto and supersedes all previous understandings, whether written or oral. There are no other agreements, written or oral, express or implied, between the Parties hereto concerning the subject matter hereof.
- 7. No Disparaging Comments. Employee agrees that Employee will not, orally or in writing, publicly or privately (a) make or express any comment, view or opinion critical or disparaging of THQ, its subsidiaries, donors, members of the Board of Directors, or affiliates, or any of their current or former employees; or (b) authorize any agent or representative to make or express such a comment, view or opinion, except as may be compelled by law.

8. Modification. This Agreement can be amended, modified or terminated only by a writing executed by both the Employee and the Debtors.

9. Waiver. No waiver of any breach of this Agreement shall be a waiver of any preceding or succeeding breach. No waiver of any right under this Agreement shall be construed as a waiver of any other right.

10. Governing Law. This Agreement shall be governed by and construed in accordance with the internal laws of the State of California (excluding application of any choice of law doctrines that would make applicable the law of any other state or jurisdiction) and, where appropriate, applicable federal law.

11. No Assignment. Employee represents and warrants that no other person or entity has or has had any interest in the matters covered or released in this Agreement, that she has the sole right and exclusive authority to execute this Agreement and receive the sum specified in it; and that she has not sold, assigned, transferred, conveyed, or otherwise disposed of any claims, demands, obligations, or causes of action released in this Agreement.

12. Attorney Advice. Employee acknowledges that she has a right and an opportunity to consult with an attorney, if desired, prior to signing this Agreement. Each Party has had a full and complete opportunity to review this Agreement and make suggestions or changes. Accordingly, each Party understands that this Agreement is deemed to have been drafted jointly by the Parties and the Parties agree that the common-law principles of construing ambiguities against the drafter shall have no application hereto. It should be construed fairly and not in favor of or against one Party as the drafter hereof.

13. Enforceability. The Parties agree not to challenge this Agreement as illegal, invalid, or unenforceable. If any provision of this Agreement is determined to be invalid or unenforceable, all of the other provisions shall remain valid and enforceable notwithstanding, unless the provision found to be unenforceable is of such material effect that this Agreement cannot be performed in accordance with the intent of the Parties in the absence thereof.

14. Understanding of Agreement. EMPLOYEE STATES THAT EMPLOYEE IS IN GOOD HEALTH AND FULLY COMPETENT TO MANAGE EMPLOYEE'S BUSINESS AFFAIRS, THAT EMPLOYEE HAS CAREFULLY READ THIS AGREEMENT, THAT EMPLOYEE FULLY UNDERSTANDS ITS FINAL AND BINDING EFFECT, THAT THE ONLY PROMISES MADE TO EMPLOYEE TO SIGN THIS AGREEMENT ARE THOSE STATED AND CONTAINED IN THIS AGREEMENT, AND THAT EMPLOYEE IS SIGNING THIS AGREEMENT KNOWINGLY AND VOLUNTARILY.

AGREED AND ACCEPTED:

Dated: \_\_\_\_\_, 2013

\_\_\_\_\_  
Employee:

Dated: \_\_\_\_\_, 2013

THQ Inc.

By: \_\_\_\_\_  
Name:  
Title:



**EXHIBIT C**

**TEXAS EMPLOYEE AGREEMENT**

## SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS

This Settlement Agreement and Release of Claims ("Agreement"), is entered into by \_\_\_\_\_ ("Employee") and THQ Inc. ("THQ"). It is entered into to resolve amicably matters between Employee and the Debtors (as defined below) relating to and arising from THQ's termination of Employee.

### RECITALS

- A. On December 19, 2012 (the "Petition Date"), THQ, THQ Digital Studios Phoenix, Inc. ("Phoenix"), THQ Wireless Inc. ("Wireless"), Volition, Inc. ("Volition"), and Vigil Games, Inc., as debtors and debtors in possession (together with THQ, Phoenix, Wireless and Volition, collectively, the "Debtors"), commenced chapter 11 cases by filing voluntary petitions under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"), jointly administered under Case No. 12-13398 (MFW) (the "Bankruptcy Case").
- B. On January 23, 2013, the Debtors conducted a series of auctions of their assets. Prior to the completion of those auctions the Debtors had accepted a proposal to sell their operating assets to a buyer that had indicated that it intended to employ the majority of the Debtors' employees, but that bidder was not the winning bidder at the auction sale. As a result, on January 24, 2013, the Bankruptcy Court entered orders approving the sale of the majority of the Debtors' assets to five separate bidders and it is the Debtors' understanding that none of those bidders offered employment to you.
- C. The Debtors believe that they did everything possible to find a buyer that would be able to employ the Debtors' employees and that there is no liability arising from the termination of Employee pursuant to the federal Worker Adjustment and Retraining Notification ("WARN") Act, the California WARN Act or other similar state and/or federal statutes.
- D. The Debtors shall seek Bankruptcy Court authority to allow the Debtors to make the following settlement offer to each Employee: (i) Debtors shall provide to Employee thirty (30) days of compensation and benefits if Employee agrees to release voluntarily all termination related claims (except claims for Prepetition PTO (defined below)) (the "Compensation & Benefits Agreement"); and (ii) Debtors shall pay to Employee ten percent (10%) of all amounts due for unused vacation and paid personal time off accrued prior to the Petition Date ("Prepetition PTO") in exchange for a release of all claims for Prepetition PTO (the "Prepetition PTO Agreement"). Employee may accept either or both of two agreements or may decline to accept either offer of settlement. Accepting such settlements is entirely voluntary.
- E. The Debtors will seek Bankruptcy Court authority to proceed with both settlements. The Official Committee of Unsecured Creditors appointed in the Bankruptcy Case (the "Committee") has agreed to support the Debtors' request for such authority on the terms set forth in this Agreement. These agreements will be effective only when the Bankruptcy Court approves this Agreement.**

### AGREEMENT

1. Termination of Employment. Employee's employment with THQ will be or has been terminated effective \_\_\_\_\_, 2013 (the "Termination Date"). Employee represents and warrants that Employee has not been extended an offer of permanent employment by any of the successful bidders that acquired any portion of the Debtors' assets.
2. Compensation & Benefits Agreement. Employee opts in to the following agreement between THQ and Employee by signing immediately below this section 2:
  - a. THQ shall provide Employee with a cash payment in an amount equal to [ \_\_ ], representing thirty (30) days of compensation and benefits earned by Employee, within one week after the Bankruptcy Court enters an order approving the Compensation & Benefits Agreement; and

- b. Employee, on behalf of Employee and Employee's executors, legatees, devisees, administrators, successors and assigns, hereby and forever releases and discharges the Debtors and their past and present successors, parents, subsidiaries, sisters and affiliated corporations, divisions or other related entities, employee benefit plans and fiduciaries thereof, as well as the successors, predecessors, shareholders, officers, directors, including all members of the boards of directors of each of the Debtors, partners, heirs, assigns, agents, employees, attorneys and representatives of each of them, past or present, from any and all causes of action, judgments, liens, indebtedness, costs, damages, obligations, attorneys' fees, losses, claims, liabilities and demands of whatever kind and character ("disputes") arising out of or in any way related to Employee's employment or business relationship with any of the Debtors except claims for Prepetition PTO. Employee specifically releases all disputes relating to or arising out of any California, municipal, or federal statute, ordinance, regulation, order, or common law, including, but not limited to, Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000(e), *et seq.*; the Civil Rights Act of 1866, as amended, 42 U.S.C. Sections 1981, *et seq.*; the Equal Pay Act, as amended, 29 U.S.C. § 206(d); the Fair Labor Standards Act of 1939, as amended, 29 U.S.C. § 201, *et seq.*; the Worker Adjustment and Retraining Notification (WARN) Act, 29 U.S.C. § 2101, *et seq.*; the California Worker Adjustment and Retraining Notification Act, California Labor Code § 1400, *et seq.*; the Orders of the California Industrial Welfare Commission regulating wages, hours and working conditions; the California Fair Employment & Housing Act, as amended, Cal. Govt. Code § 12900, *et seq.*; the California Family Rights Act of 1991, as amended; California Government Code § 12945.2; the California Unfair Competition Law, California Business and Professions Code § 17200, *et seq.*, as amended; the California Unruh Civil Rights Act, as amended, Cal. Civ. Code § 51, *et seq.*; each and every provision of the California Labor Code; Article 1 of the California Constitution; the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 701, *et seq.*; the constitution and laws of the State of Texas including, without limitation, the Texas Human Rights Act; the Texas Labor Code; the Texas Employment Discrimination Law; the Texas Disability Discrimination Law; the Texas Communicable Disease Law; the Texas Right to Work Law; the Texas Minimum Wage Law; the Texas Workers' Compensation Retaliation Law; and the Texas Payday Law (the "Released Matters"); the Americans with Disabilities Act of 1990, 42 U.S.C. § 12100, *et seq.*, as amended; the Family and Medical Leave Act of 1993, 29 U.S.C. § 2601, *et seq.*; the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001, *et seq.*; the National Labor Relations Act, as amended, 29 U.S.C. § 151, *et seq.*; the Age Discrimination in Employment Act, 29 U.S.C. § 621, *et seq.*; the Genetic Information Nondiscrimination Act of 2008; and any action based on written or oral contract, quasi-contract, *quantum meruit*, implied contract, tort, wrongful or constructive discharge, breach of the covenant of good faith and fair dealing, defamation, libel, slander, fraud, misrepresentation, immigration issues, infliction of emotional distress, assault, battery, conspiracy, discrimination on any basis prohibited by statute or public policy, negligence, claims for vacation (except claims for Prepetition PTO) or severance pay, any interference with business opportunity or with contract, etc.
- c. EMPLOYEE further understands and acknowledges that:
- (i) Employee has been notified that the positions that appear on the attached Exhibit "A" as eligible for separation benefits are also being terminated from THQ.
  - (ii) This Agreement constitutes a voluntary waiver of any and all rights and claims employee has against the Releasees as of the date of the execution of this Agreement, including rights or claims arising under the Age Discrimination in Employment Act;

(iii) Employee has waived rights or claims pursuant to this Agreement in exchange for consideration, the value of which exceeds the payment or remuneration to which employee was already entitled;

(iv) Employee is hereby advised that the employee may consult with an attorney of employee's choosing concerning this Agreement prior to executing it;

(v) Employee has been afforded a period of at least 45 days to consider the terms of this Agreement, and in the event that the employee should decide to execute this Agreement in fewer than 45 days, the employee has done so with the express understanding that the employee has been given and declined the opportunity to consider this Agreement for a full 45 days; and

(vi) Employee may revoke this Agreement at any time during the seven (7) days following the date of execution of this Agreement, by furnishing written notice of such revocation to THQ Human Resources, 29903 Agoura Road, Agoura Hills, California, 91301, fax: (818) 871-7532, and this subparagraph 2(c) of this Agreement shall not become effective or enforceable until such revocation period has expired.

d. The Release also extends to all disputes of every nature and kind by Employee against THQ, *except* claims for Prepetition PTO, whether known or unknown, suspected or unsuspected, past or present. Specifically, Employee hereby expressly waives any and all rights under Section 1542 of the California Civil Code, which reads in full as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Employee acknowledges that he or she has separately bargained for the foregoing waiver of Section 1542. Employee and the Debtors intend that the provisions regarding the disputes released herein be construed as broadly as possible, and incorporate herein similar federal, state or other laws, all of which are similarly waived by the Employee.

Employee accepts the foregoing settlement (check box):

Signature: \_\_\_\_\_

3. Prepetition PTO Agreement. Employee opts in to the following agreement between THQ and Employee by signing immediately below this section 3:

- a. THQ hereby agrees to pay Employee a cash payment in an amount equal to [ \_\_\_ ], representing ten percent (10%) of Prepetition PTO earned by Employee; and
- b. Employee, on behalf of Employee and Employee's executors, legatees, devisees, administrators, successors and assigns, hereby and forever releases and discharges the Debtors and their past and present successors, parents, subsidiaries, sisters and affiliated corporations, divisions or other related entities, employee benefit plans and fiduciaries thereof, as well as the successors, predecessors, shareholders, officers, directors, including all members of the boards of directors of each of the Debtors, partners, heirs, assigns, agents, employees, attorneys and representatives of each of them, past or present, from any and all causes of action, judgments, liens, indebtedness, costs, damages, obligations, attorneys' fees, losses, claims, liabilities and demands

of whatever kind and character arising out of or in any way related to claims for Prepetition PTO.

- c. **Employee is aware that the payment percentage under this Agreement will probably differ from the amount ultimately distributed in the Bankruptcy Case with respect to the claims being settled and released by Employee by this Agreement and that such amount may not be absolutely determined until entry of a final order confirming a plan of reorganization or liquidation, including the possibility that the distribution in the Bankruptcy Case could be payment in full.** The distribution to creditors on account of allowed claims may exceed ten percent (10%) but Employee is agreeing to accept a cash payment in an amount equal to ten percent (10%) of Prepetition PTO earned by Employee now in exchange for greater certainty as to the amount to be received and to receive the payment sooner than other creditors will receive payments on account of their prepetition claims. Employee acknowledges that, except as set forth in this Agreement, Employee does not rely on any representation of the Debtors to enter into this Agreement. Employee represents and warrants that it has satisfactory information to make an informed decision regarding the release of Employee’s claims as described herein (including but not limited to, the business or financial condition of the Debtors and the status of the Bankruptcy Case), independent of the Debtors.

Employee Accepts the foregoing settlement (check box):

Signature: \_\_\_\_\_

- 4. No Admission of Wrongdoing. Employee understands and agrees that neither the payment or promise of consideration, nor the execution of this Agreement or any part of it, shall constitute or be construed as an admission of any alleged liability or wrongdoing whatsoever by THQ.
- 5. Preservation of Confidentiality of THQ’s Information. Employee agrees to honor any and all obligations Employee has to preserve as confidential any proprietary business information or other information Employee has previously agreed to keep confidential.
- 6. Entire Agreement. No promise, inducement or agreement other than that expressed herein has been made by either Party. This Agreement constitutes a single integrated contract expressing the entire agreement of the Parties hereto and supersedes all previous understandings, whether written or oral. There are no other agreements, written or oral, express or implied, between the Parties hereto concerning the subject matter hereof.
- 7. No Disparaging Comments. Employee agrees that Employee will not, orally or in writing, publicly or privately (a) make or express any comment, view or opinion critical or disparaging of THQ, its subsidiaries, donors, members of the Board of Directors, or affiliates, or any of their current or former employees; or (b) authorize any agent or representative to make or express such a comment, view or opinion, except as may be compelled by law.
- 8. Modification. This Agreement can be amended, modified or terminated only by a writing executed by both the Employee and the Debtors.
- 9. Waiver. No waiver of any breach of this Agreement shall be a waiver of any preceding or succeeding breach. No waiver of any right under this Agreement shall be construed as a waiver of any other right.
- 10. Governing Law. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Texas (excluding application of any choice of law doctrines that would make applicable the law of any other state or jurisdiction) and, where appropriate, applicable federal law.
- 11. No Assignment. Employee represents and warrants that no other person or entity has or has had any

interest in the matters covered or released in this Agreement, that she has the sole right and exclusive authority to execute this Agreement and receive the sum specified in it; and that she has not sold, assigned, transferred, conveyed, or otherwise disposed of any claims, demands, obligations, or causes of action released in this Agreement.

12. Attorney Advice. Employee acknowledges that she has a right and an opportunity to consult with an attorney, if desired, prior to signing this Agreement. Each Party has had a full and complete opportunity to review this Agreement and make suggestions or changes. Accordingly, each Party understands that this Agreement is deemed to have been drafted jointly by the Parties and the Parties agree that the common-law principles of construing ambiguities against the drafter shall have no application hereto. It should be construed fairly and not in favor of or against one Party as the drafter hereof.

13. Enforceability. The Parties agree not to challenge this Agreement as illegal, invalid, or unenforceable. If any provision of this Agreement is determined to be invalid or unenforceable, all of the other provisions shall remain valid and enforceable notwithstanding, unless the provision found to be unenforceable is of such material effect that this Agreement cannot be performed in accordance with the intent of the Parties in the absence thereof.

14. Understanding of Agreement. EMPLOYEE STATES THAT EMPLOYEE IS IN GOOD HEALTH AND FULLY COMPETENT TO MANAGE EMPLOYEE'S BUSINESS AFFAIRS, THAT EMPLOYEE HAS CAREFULLY READ THIS AGREEMENT, THAT EMPLOYEE FULLY UNDERSTANDS ITS FINAL AND BINDING EFFECT, THAT THE ONLY PROMISES MADE TO EMPLOYEE TO SIGN THIS AGREEMENT ARE THOSE STATED AND CONTAINED IN THIS AGREEMENT, AND THAT EMPLOYEE IS SIGNING THIS AGREEMENT KNOWINGLY AND VOLUNTARILY.

AGREED AND ACCEPTED:

Dated: \_\_\_\_\_, 2013

\_\_\_\_\_  
Employee:

Dated: \_\_\_\_\_, 2013

THQ Inc.

By: \_\_\_\_\_

Name:

Title: