

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)
  
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Debtors.<sup>1</sup> : Jointly Administered
  
:
  
: **Hearing Date: February 19, 2013 at 9:30 a.m. (ET)**
  
: **Objection Deadline: February 12, 2013 at 4:00 p.m. (ET)**
  
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**DEBTORS’ MOTION FOR AN ORDER TO ESTABLISH PROCEDURES FOR  
THE SALE OR ABANDONMENT OF CERTAIN MISCELLANEOUS ASSETS  
OUTSIDE THE ORDINARY COURSE OF BUSINESS FREE AND  
CLEAR OF LIENS, CLAIMS, AND ENCUMBRANCES**

The above-captioned debtors and debtors in possession (collectively, the “Debtors”), hereby move this Court (the “Motion”) for entry of an order establishing procedures for the sale of certain of the Debtors’ miscellaneous assets outside the ordinary course of business, free and clear of all liens, claims, and encumbrances pursuant to section 363 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “Bankruptcy Code”), or alternatively, for abandonment of such assets pursuant to section 554 of the Bankruptcy Code. In support of this Motion, the Debtors respectfully represent as follows:

**JURISDICTION**

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334(b) and 157, 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

<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); Volition, Inc. (4944); THQ Digital Studios Phoenix, Inc. (1056); THQ Wireless Inc. (7991); and Vigil Games, Inc. (8651). The Debtors’ principal offices are located at 29903 Agoura Road, Agoura Hills, CA 91301.

proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicates for the relief requested herein are sections 363(b) and 554 of the Bankruptcy Code.

### **GENERAL BACKGROUND**

3. On December 19, 2012 (the "Petition Date"), each of the Debtors commenced a voluntary case under chapter 11 of the Bankruptcy Code. Pursuant to sections 1107(a) and 1108 of the Bankruptcy Code, the Debtors are continuing to manage their financial affairs as debtors in possession.

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") [D.I. 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 J. Farrell in Support of the Debtors' Chapter 11 Petitions and Requests for First Day Relief* [D.I. 2].

### **SALE OF SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS**

6. On December 19, 2013, the Debtors filed the *Motion of Debtors for Entry of (I) an Order (A) Authorizing and Approving Bid Procedures in Connection with the Sale of Substantially All of the Debtors' Assets, (B) Authorizing and Approving Stalking Horse Protections, (C) Authorizing and Approving Procedures Related to the Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection With the Sale,*

*(D) Scheduling Auction and Sale Approval Hearing, (E) Approving the Form and Manner of the Notice of the Sale Hearing, and (F) Granting Certain Related Relief, and (II) an Order (A) Approving the Sale of Substantially All of the Debtors Assets, (B) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases in Connection with the Sale, and (C) Granting Certain Related Relief [D.I. 19] (the “Sale Motion”).<sup>2</sup>*

7. On January 13, 2013, the Court entered the Corrected *Order Approving and Authorizing (A) Bidding Procedures in Connection with the Sale of the Operating Assets of the Debtors, (B) Stalking Horse Bid Protections, (C) Form and Manner of Notice of the Sale Hearing and (d) Related Relief [D.I. 152] (the “Bid Procedures Order”).*

8. In accordance with the Bid Procedures Order, the Debtors held an auction for substantially all of their assets on January 22 and 23, 2013. Subsequent to the conclusion of the auction, the Debtors filed the *Notice of Auction Results [D.I. 230]*, which indicated the various prevailing bids and backup bids for each category of Acquired Assets.

9. On January 23, 2013, the Court held a hearing and approved on the record the sale of each category of Acquired Assets (collectively, the “Sale”). On January 24, 2013, the Court entered orders approving the Sale to the various buyers [D.I. 239, 240, 241, 242, and 243] (collectively, the “Sale Orders”).

10. While substantially all of the Debtors’ assets were sold pursuant to the Sale Orders, certain assets remain with the Debtors’ estates (the “Residual Assets”), including, but not limited to, accounts receivable, physical inventory, cash on hand, and the catalog of historic games. In addition, certain computers, furniture, fixtures, office equipment, and other

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<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Sale Motion.

miscellaneous personal property (the “Miscellaneous Assets”)<sup>3</sup> of the Debtors were not sold pursuant to the Sale Orders.

11. The Debtors currently are working to maximize the value of the Residual Assets and wind-down their business operations. The Miscellaneous Assets are not essential to maximizing the value of the other Residual Assets nor to winding down the Debtors’ business operations.

**RELIEF REQUESTED**

12. By this Motion, the Debtors seek to establish procedures to sell certain Miscellaneous Assets outside of the ordinary course of their business free and clear of all liens, claims and encumbrances pursuant to section 363 of the Bankruptcy Code, or to abandon such Miscellaneous Assets pursuant to section 554 of the Bankruptcy Code, in order to lessen the burdens and costs associated with maintaining or safekeeping any assets that are unnecessary in light of the Debtors’ current situation and obtaining individual Court approval for the sale or abandonment of each of the Miscellaneous Assets.

**BASIS FOR THE RELIEF REQUESTED**

13. During the ordinary course of their business operations, the Debtors have accumulated certain Miscellaneous Assets that are no longer necessary in light of the Debtors’ current situation. In the exercise of their sound business judgment, the Debtors have determined, and may determine in the future, that the prompt sale of Miscellaneous Assets without individual Court approval will be in the best interest of their estates and creditors and will enable the Debtors to maximize the potential recovery for the sale of the Miscellaneous Assets. The

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<sup>3</sup> To the extent the Debtors sell any Miscellaneous Assets containing personally identifiable information, confidential information, or other proprietary information, the Debtor will take steps to ensure such information is removed from the Miscellaneous Assets before it is transferred to the applicable purchaser.

Debtors desire to sell or abandon the Miscellaneous Assets in order to, among other things, eliminate costs associated with maintaining the unnecessary assets, free space in their facilities, avoid the need to procure offsite storage, and raise funds for the estates.

14. The Miscellaneous Assets have a relatively modest aggregate value. The Debtors believe that the procedures set forth below, providing for sales of the Miscellaneous Assets below a certain threshold of value, will conserve the resources of both this Court and the Debtors by avoiding the need for separate motions to approve relatively small sales. The Debtors submit that the entry of an order authorizing the sale or abandonment of the Miscellaneous Assets without further notice or hearing, in accordance with the Sale Procedures and Abandonment Procedures set forth in detail below, is warranted under these circumstances, as the limited value of the Miscellaneous Assets does not justify the cost the Debtors' estates would incur if required to seek further relief with respect to a sale of the Miscellaneous Assets.

**A. Procedures for Sale or Abandonment of Miscellaneous Assets**

15. In connection with the sale of the Miscellaneous Assets, the Debtors seek authorization to sell such assets pursuant to the following procedures (the "Sale Procedures"):

a. If the consideration to be received by the Debtors from a purchaser of Miscellaneous Assets is \$15,000 or less, on a per-transaction basis, the Debtors may sell the assets without further notice to any party, other than the filing of a certification upon closing of the sale transaction, or order of the Court, unless such sale is to an insider, as that term is defined in section 101(31) of the Bankruptcy Code.<sup>4</sup>

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<sup>4</sup> The Debtors may enter into agreements to sell Miscellaneous Assets for \$15,000 or less, on a per-transaction basis, to non-insiders prior to the Court's approval of this Motion, provided, however, that such sales will be expressly contingent upon the Court's approval of this Motion. After entry of an order approving the Motion, the Debtors will file a certification with respect to any such sales.

b. If the consideration to be received by the Debtors from a purchaser for the Miscellaneous Assets, on a per-transaction basis, exceeds \$15,000 but is less than \$100,000,<sup>5</sup> or if the sale is to an insider in an amount less than or equal to \$15,000 (a “Proposed Sale”), the Debtors will file with the Court a notice of such Proposed Sale (a “Sale Notice”) and serve the Sale Notice by overnight, facsimile or hand delivery on the following parties: (i) the Office of the United States Trustee (the “U.S. Trustee”); (ii) all known parties holding or asserting liens, claims, encumbrances or other interests in the Miscellaneous Assets which are the subject of the Proposed Sale and their respective counsel, if known; and (iii) counsel to the Creditors’ Committee and any other statutory committee appointed in the Debtors’ chapter 11 cases (collectively, the “Notice Parties”).

c. The Sale Notice, to the extent that the Debtors have such information, will include: (i) a description of the Miscellaneous Assets which are the subject of the Proposed Sale; (ii) the location of the Miscellaneous Assets; (iii) the economic terms of the Proposed Sale; (iv) the identity of any non-debtor party to the Proposed Sale and specify whether that party is an “affiliate” or “insider” as those terms are defined under section 101 of the Bankruptcy Code; and (v) the identity of the party, if any, holding liens, claims, encumbrances or other interests in the Miscellaneous Assets.

d. The Notice Parties will have five (5) business days after the Sale Notice is filed and served to object to a Proposed Sale and to file such objection with the United States Bankruptcy Court for the District of Delaware, 824 Market Street, 3rd Floor, Wilmington, Delaware 19801 and to serve such objection by overnight or hand delivery on the Notice Parties and counsel to the Debtors (the “Sale Objection Deadline”). In the absence of an objection on or before the Sale Objection Deadline, the Debtors may consummate the Proposed Sale without further notice or hearing and such Proposed Sale will be deemed fully authorized by the Court.

e. If an objection to a Proposed Sale is timely filed and served by the Sale Objection Deadline, the Debtors will not proceed with the Proposed Sale unless (i) the objection is withdrawn or otherwise resolved, or (ii) this Court overrules such objection at the next regularly scheduled omnibus hearing that is at least five (5) business days after service of the objection upon counsel to the Debtors, or at the next omnibus hearing that is agreed to by the objecting party and the Debtors.

f. All buyers will acquire the Miscellaneous Assets sold by the Debtors pursuant to these Sale Procedures on an “AS IS, WHERE IS” basis without any representations or warranties from the Debtors as to the quality or fitness of such assets for either their intended use or any other purposes; provided, however, that buyers will take title to the Miscellaneous Assets free and clear of liens, claims, encumbrances and other interests

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<sup>5</sup> Asset sales where the sale consideration to be received by the Debtors from a purchaser of Miscellaneous Assets, on a per-transaction basis, exceeds \$100,000 are not covered by this Motion. Approval of such sales will be sought by separate motion after notice and a hearing. Alternatively, the Debtors reserve the right to seek, by separate motion, modification of any order authorizing the procedures described herein to increase the amounts authorized or to otherwise modify the authorized procedures.

pursuant to section 363(f) of the Bankruptcy Code, with all such liens, claims, encumbrances and other interests, if any, to attach to the proceeds of the sale of the Miscellaneous Assets.

16. In addition to the Sale Procedures, the Debtors seek this Court's approval and authorization of certain procedures for the abandonment of Miscellaneous Assets (as set forth in greater detail below, the "Abandonment Procedures"). The Debtors seek approval of the Abandonment Procedures because the inability to consummate a sale of the Miscellaneous Assets would indicate that such assets have no meaningful monetary value to the Debtors' estates. Indeed, a failure to sell certain of the Miscellaneous Assets will result only in further obligations accrued by the Debtors on account of storage or removal costs and potential ancillary liabilities. Accordingly, the Debtors have determined that the abandonment of the Miscellaneous Assets, to the extent that a sale thereof cannot be consummated, is in the best interests of the Debtors' estates and creditors since such assets are not of use to the Debtors' businesses, have an inconsequential sale value, and may actually result in future liabilities.

17. Thus, the Debtors submit that they should be authorized to abandon the Miscellaneous Assets (a "Proposed Abandonment") after providing written notice by overnight, facsimile or hand delivery to the Notice Parties, which notice shall include (a) a list of assets being abandoned and (b) a statement of the Debtors' attempts to sell the Miscellaneous Assets. The Notice Parties will have five (5) business days thereafter to object to such Proposed Abandonment by filing an objection with the United States Bankruptcy Court for the District of Delaware, 824 Market Street, 3rd Floor, Wilmington, Delaware 19801 and serving such objection by overnight or hand delivery on the other Notice Parties and counsel to the Debtors (the "Abandonment Objection Deadline").

18. In the absence of an objection on or before the Abandonment Objection Deadline, the Debtors may abandon the Miscellaneous Assets without further notice or hearing

and such abandonment will be deemed fully authorized by the Court. If an objection to a Proposed Abandonment is timely filed and served by the Abandonment Objection Deadline, the Debtors will not proceed with the Proposed Abandonment unless (i) the objection is withdrawn or otherwise resolved or (ii) this Court overrules such objection at the next regularly scheduled omnibus hearing that is at least five (5) business days after service of the objection upon counsel to the Debtors, or at the next omnibus hearing that is agreed to by the objecting party and the Debtors.

**B. Basis for Establishment of Procedures for Sale or Abandonment of Miscellaneous Assets**

19. Section 363(b)(1) of the Bankruptcy Code provides, in relevant part, that a debtor in possession, “after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). Section 363 of the Bankruptcy Code does not set forth a standard for determining when it is appropriate for a court to authorize the sale or disposition of a debtor’s assets prior to confirmation of a plan. However, courts in this Circuit and others have required that the decision to sell assets outside the ordinary course of business be based upon the sound business judgment of the debtors. In re Abbotts Dairies of Pa. Inc., 788 F.2d 143 (3d Cir. 1986); see also Myers v. Martin (In re Martin), 91 F.3d 389, 395 (3d Cir. 1996); Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.), 722 F.2d 1063, 1071 (2d Cir. 1983); Dai-Ichi Kangyo Bank, Ltd. v. Montgomery Ward Holding Corp., (In re Montgomery Ward Holding Corp.), 242 B.R. 147, 153 (D. Del. 1999); In re Delaware & Hudson Ry. Co., 124 B.R. 169, 176 (D.D.C. 1991).

20. The “sound business judgment” test requires a debtor to establish four elements in order to justify the sale or lease of property outside the ordinary course of business, namely, (a) that a “sound business purpose” justifies the sale of assets outside the ordinary



course of business, (b) that adequate and reasonable notice has been provided to interested persons, (c) that the debtors have obtained a fair and reasonable price, and (d) good faith. Abbotts Dairies, 788 F.2d 143; Titusville Country Club v. Pennbank (In re Titusville Country Club), 128 B.R. 396, 399 (Bankr. W.D. Pa. 1991); In re Sovereign Estates, Ltd., 104 B.R. 702, 704 (Bankr. E.D. Pa. 1989). A debtor's showing of a sound business purpose need not be unduly exhaustive; rather, a debtor is "simply required to justify the proposed disposition with sound business reasons." In re Baldwin United Corp., 43 B.R. 888, 906 (Bankr. S.D. Ohio 1984). Whether or not there are sufficient business reasons to justify a transaction depends upon the facts and circumstances of each case. Lionel, 722 F.2d at 1071; Montgomery Ward, 242 B.R. at 155 (approving funding of employee incentive and severance program; business purpose requirement fulfilled because stabilizing turnover rate and increasing morale were necessary to successful reorganization).

21. Additionally, section 105(a) of the Bankruptcy Code provides a bankruptcy court with broad powers in the administration of a bankruptcy case. Section 105(a) provides that "[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code]." 11 U.S.C. § 105(a). Provided that a bankruptcy court does not employ its equitable powers to achieve a result not contemplated by the Bankruptcy Code, the exercise of its section 105(a) power is proper. In re Fesco Plastics Corp., 996 F.2d 152, 154 (7th Cir. 1993); Pincus v. Graduate Loan Ctr. (In re Pincus), 280 B.R. 303, 312 (Bankr. S.D.N.Y. 2002). Pursuant to section 105(a), a court may fashion an order or decree that helps preserve or protect the value of a debtor's assets. See, e.g., 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 the 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.”).

22. As set forth more fully above, there is more than ample business justification for the approval of the Sale Procedures and the sale of the Miscellaneous Assets in accordance with those procedures. The Debtors believe that the sale of the Miscellaneous Assets will inure to the benefit of the Debtors’ estates and creditors and, therefore, represents the exercise of the Debtors’ sound business judgment. Furthermore, the Debtors’ proposed sale of the Assets is in “good faith” within the meaning of the Abbotts Dairies analysis. The Debtors represent that no insider will gain an unfair advantage from the miscellaneous asset sales pursuant to the Sale Procedures.

23. Moreover, as previously set forth, the Debtors will provide the Notice Parties with a reasonable opportunity to review the adequacy of the price received for any sale of Miscellaneous Assets in excess of \$15,000. In light of the foregoing, the Debtors submit that the Sale Procedures are a sound exercise of the Debtors’ business judgment, and are necessary, prudent and in the best interests of the Debtors, their estates and creditors.

24. To the extent a sale is not consummated or a buyer is not found for the Miscellaneous Assets, the Debtors, after determining in their business judgment that it is in the best interests of their estates and creditors, may seek to abandon the Miscellaneous Assets pursuant to section 554(a) of the Bankruptcy Code. Section 554(a) of the Bankruptcy Code provides that “[a]fter notice and a hearing, the trustee may abandon any property of the estate

that is burdensome to the estate or that is of inconsequential value and benefit to the estate.” 11 U.S.C. § 554(a). Because the inability to sell certain Miscellaneous Assets may only result in the unnecessary accrual of further obligations by these estates on account of, among other things, storage or removal costs, the Debtors have determined that the abandonment of the Miscellaneous Assets is in the best interests of the Debtors’ estates and creditors. As such, the Debtors submit that the Abandonment Procedures are an exercise of the Debtors’ sound business judgment and therefore should be authorized and approved by this Court.

25. Bankruptcy Rule 2002(a)(2) generally requires a minimum of twenty-one (21) days’ notice of proposed sales of estate property outside the ordinary course of business to be provided by mail to parties in interest “unless the court for cause shown shortens the time or directs another method of giving notice.” Fed. R. Bankr. P. 2002(a)(2). The Bankruptcy Code defines the notice and hearing requirement to mean such notice and opportunity for hearing “as is appropriate in the particular circumstances” of the case, including court approval of a sale of estate property without a hearing where appropriate notice is given and no party timely requests a hearing. 11 U.S.C. § 102(1). Similarly, the court in In re Lomas Financial Corp. held that notice is appropriate under section 102(1) of the Bankruptcy Code where it is “reasonably calculated, under all circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” 212 B.R. 46, 54 (Bankr. D. Del. 1997) (quoting Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950)).

26. The Debtors believe that the notice and objection procedures contained in the Sale Procedures and the Abandonment Procedures are justified under the circumstances as the Sale Procedures are designed to maximize the value realized from the sales of the Miscellaneous Assets. Because the asset sales are of a relatively small value, the usual process

of obtaining Court approval of each individual sale would impose unnecessary administrative burdens on the Court, be prohibitively expensive to the Debtors' estates, and in some instances hinder the Debtors' ability to take advantage of sale opportunities that are available only for a limited time. To the extent sales of certain Miscellaneous Assets cannot be consummated despite the Debtors' best efforts to do so, the Abandonment Procedures are designed to prevent the Debtors' estates from incurring unnecessary administrative obligations on account of such assets without burdening this Court with serial motions.

27. The Debtors believe that the manner of notice proposed in the Sale Procedures and the Abandonment Procedures is more than appropriate and preserves parties' due process rights. The Debtors will serve notice of each Proposed Sale and Proposed Abandonment on the Notice Parties. As such, all of the key constituencies in these cases and any party whose rights may be effected by a Proposed Sale or Proposed Abandonment will receive adequate notice.

28. Finally, as noted above, the "notice and a hearing" requirement contained in section 363(b)(1) of the Bankruptcy Code is satisfied absent a hearing where there is an opportunity for a hearing and no party in interest timely requests a hearing. 11 U.S.C. § 102(1).

**C. The Sale of the Miscellaneous Assets Should be Approved Under 11 U.S.C. § 363(f)**

29. Pursuant to section 363(f) of the Bankruptcy Code, a debtor in possession may sell all or any part of its property free and clear of any and all liens, claims or interests in such property if (i) such a sale is permitted under applicable non-bankruptcy law, (ii) the party asserting such a lien, claim or interest consents to such sale, (iii) the interest is a lien and the purchase price for the property is greater than the aggregate amount of all liens on the property, (iv) the interest is the subject of a *bona fide* dispute, or (v) the party asserting the lien, claim or

interest could be compelled, in a legal or equitable proceeding, to accept a money satisfaction for such interest. See 11 U.S.C. § 363(f); In re Elliot, 94 B.R. 343, 345 (E.D. Pa. 1988) (stating that because section 363(f) is written in disjunctive, court may approve sale “free and clear” provided at least one of the subsections is met).

30. Miscellaneous Assets that are encumbered by liens, encumbrances, or other interests, if any, will be sold pursuant to the Sale Procedures only to the extent permitted by section 363(f) of the Bankruptcy Code. As such, the requirements of section 363(f) of the Bankruptcy Code will be satisfied for any proposed disposition of Miscellaneous Assets free and clear” of any such liens, claims or interests, with any such liens to attach to the proceeds of the sale.

**D. Bankruptcy Rule 6004(h) Should Be Waived**

31. Bankruptcy Rule 6004(h) provides that an order authorizing the use, sale, or lease of property is stayed until the expiration of fourteen (14) days after entry of the order, unless the court orders otherwise. The Debtors submit that the order approving the Sales Procedures, and any sale consummated pursuant to those procedures, be effective immediately. It is in the best interests of the Debtors’ estates to facilitate the closing of these sale transactions, thereby expediting the flow of related sale proceeds into the estates. Moreover, the often difficult task of securing a buyer will be facilitated by the Debtors’ ability to quickly consummate a sale transaction. Accordingly, the Debtors submit that the fourteen-day stay set forth in Bankruptcy Rule 6004(h) should be waived in connection with all sales of Miscellaneous Assets pursuant to the Sale Procedures.

32. Relief of the type sought herein has been routinely granted in this jurisdiction in other cases under similar circumstances. See, e.g., In re Goody’s, LLC, Case No.

09-10124 (CSS) (Bankr. D. Del. Feb. 5, 2009) (approving sale of miscellaneous assets outside the ordinary course of business); In re Am. Fibers and Yarns, Case No. 08-12175 (PJW) (Bankr. D. Del. Oct. 14, 2008) (same); In re National Dry Cleaners, Case No. 08-11382 (CSS) (Bankr. D. Del. Sept. 17, 2008) (same); In re Powermate Holding Corp., Case No. 08-10498 (KG) (Bankr. D. Del. Apr. 17, 2008) (same); In re Am. Home Mortgage Holdings, Inc., Case No. 07-11047 (CSS) (Bankr. D. Del. Nov. 28, 2007) (same); In re HomeBanc Mortgage Corp., Case No. 07-11079 (KJC) (Bankr. D. Del. Oct. 17, 2007) (same); In re New Century TRS Holdings, Inc., Case No. 07-10416 (KJC) (Bankr. D. Del. May 16, 2007) (same).

33. For all of the reasons set forth above, the Debtors respectfully request that the Court authorize and approve the Sale Procedures and the Abandonment Procedures as an exercise of the Debtors' sound business judgment.

#### **NOTICE**

34. Notice of this Motion has been provided to (a) the U.S. Trustee; (b) proposed counsel for 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.

**CONCLUSION**

WHEREFORE, the Debtors respectfully request that the Court enter an order, substantially in the form attached hereto as Exhibit A, granting the relief requested in the Motion and such other and further relief as is just and proper.

Dated: January 31, 2013  
Wilmington, Delaware

/s/ Jaime Luton Chapman  
Michael R. Nestor (No. 3526)  
M. Blake Cleary (No. 3614)  
Jaime Luton Chapman (No. 4936)  
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-and-

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Facsimile: (213) 229-7520

*Counsel to the Debtors and Debtors in Possession*

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

-----X  
In re: : Chapter 11  
THQ INC., *et al.*, :  
Debtors.<sup>1</sup> : Case No. 12-13398 (MFW)  
: Jointly Administered  
: Hearing Date: February 19, 2013 at 9:30 a.m. (ET)  
: Objection Deadline: February 12, 2013 at 4:00 p.m. (ET)  
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**NOTICE OF MOTION**

TO: (A) THE U.S. TRUSTEE; (B) COUNSEL FOR 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

THQ Inc. ("THQI") and its affiliated debtors and debtors in possession (collectively, the "**Debtors**") in the above-referenced chapter 11 cases, have filed the attached **Debtors' Motion for an Order to Establish Procedures for the Sale or Abandonment of Certain Miscellaneous Assets Outside the Ordinary Course of Business Free and Clear of Liens, Claims, and Encumbrances** (the "**Motion**").

Responses, if any, to the relief requested in the Motion must be filed with the United States Bankruptcy Court for the District of Delaware, 824 N. Market Street, 3<sup>rd</sup> Floor, Wilmington, Delaware 19801 on or before **February 12, 2013, at 4:00 p.m. (ET)** (the "**Objection Deadline**"). At the same time, you must serve a copy of your response upon the undersigned counsel.

**A HEARING ON THE RELIEF REQUESTED IN THE MOTION WILL BE HELD ON FEBRUARY 19, 2013 AT 9:30 A.M. (ET) BEFORE THE HONORABLE MARY F. WALRATH, UNITED STATES BANKRUPTCY JUDGE, IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE, 824 N. MARKET STREET, 5<sup>TH</sup> FLOOR, COURTROOM 4, WILMINGTON, DELAWARE 19801.**

<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.



IF YOU FAIL TO RESPOND TO THE MOTION IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF REQUESTED THEREIN WITHOUT FURTHER NOTICE OR A HEARING.

Dated: January 31, 2013  
Wilmington, Delaware

YOUNG CONAWAY STARGATT & TAYLOR, LLP

/s/ Jaime Luton Chapman

Michael R. Nestor (No. 3526)  
M. Blake Cleary (No. 3614)  
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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)
  
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Debtors.<sup>1</sup> : Jointly Administered
  
:
  
: RE: Docket No. \_\_\_\_
  
:
  
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**ORDER ESTABLISHING PROCEDURES FOR THE SALE OR ABANDONMENT OF CERTAIN MISCELLANEOUS ASSETS OUTSIDE THE ORDINARY COURSE OF BUSINESS FREE AND CLEAR OF LIENS, CLAIMS, AND ENCUMBRANCES**

Upon consideration of the motion (the “Motion”)<sup>2</sup> of the above-captioned debtors and debtors in possession (the “Debtors”) for entry of an order, pursuant to sections 105, 363(b) and 554(a) of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “Bankruptcy Code”) and Rules 2002, 6004 and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”); and due and sufficient notice of the Motion having been given; and it appearing that no other or further notice need be provided; and it appearing that the relief requested by this Motion is in the best interests of the Debtors, their estates and creditors and other parties in interest; and after due deliberation and sufficient cause appearing therefor,

**IT IS HEREBY ORDERED THAT:**

1. The Motion is granted.

<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); Volition, Inc. (4944); THQ Digital Studios Phoenix, Inc. (1056); THQ Wireless Inc. (7991); and Vigil Games, Inc. (8651). The Debtors’ principal offices are located at 29903 Agoura Road, Agoura Hills, CA 91301.

<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

2. The Debtors are authorized to sell the Miscellaneous Assets in accordance with the following procedures (the “Sale Procedures”):

- a. If the consideration to be received by the Debtors from a purchaser of Miscellaneous Assets is \$15,000 or less, on a per-transaction basis, the Debtors may sell the assets without further notice to any party, other than the filing of a certification upon closing of the sale transaction, or order of the Court, unless such sale is to an insider, as that term is defined in section 101(31) of the Bankruptcy Code.
- b. If the consideration to be received by the Debtors from a purchaser for the Miscellaneous Assets, on a per-transaction basis, exceeds \$15,000 but is less than \$100,000,<sup>3</sup> or if the sale is to an insider in an amount less than or equal to \$15,000 (a “Proposed Sale”), the Debtors will file with the Court a notice of such Proposed Sale (a “Sale Notice”) and serve the Sale Notice by overnight, facsimile or hand delivery on the following parties: (i) the Office of the United States Trustee (the “U.S. Trustee”); (ii) all known parties holding or asserting liens, claims, encumbrances or other interests in the Miscellaneous Assets which are the subject of the Proposed Sale and their respective counsel, if known; and (iii) counsel to the Creditors’ Committee and any other statutory committee appointed in the Debtors’ chapter 11 cases (collectively, the “Notice Parties”).
- c. The Sale Notice, to the extent that the Debtors have such information, will include: (i) a description of the Miscellaneous Assets which are the subject of the Proposed Sale; (ii) the location of the Miscellaneous Assets; (iii) the economic terms of the Proposed Sale; (iv) the identity of any non-debtor party to the Proposed Sale and specify whether that party is an “affiliate” or “insider” as those terms are defined under section 101 of the Bankruptcy Code; and (v) the identity of the party, if any, holding liens, claims, encumbrances or other interests in the Miscellaneous Assets.
- d. The Notice Parties will have five (5) business days after the Sale Notice is filed and served to object to a Proposed Sale and to file such objection with the United States Bankruptcy Court for the District of Delaware, 824 Market Street, 3rd Floor, Wilmington, Delaware 19801 and to serve such objection by overnight or hand delivery on the Notice Parties and counsel to the Debtors (the “Sale Objection Deadline”). In the absence of an objection on or before the Sale Objection Deadline, the Debtors may

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<sup>3</sup> Asset sales where the sale consideration to be received by the Debtors from a purchaser of Miscellaneous Assets, on a per-transaction basis, exceeds \$100,000 are not covered by this Motion. Approval of such sales will be sought by separate motion after notice and a hearing. Alternatively, the Debtors reserve the right to seek, by separate motion, modification of any order authorizing the procedures described herein to increase the amounts authorized or to otherwise modify the authorized procedures.

consummate the Proposed Sale without further notice or hearing and such Proposed Sale will be deemed fully authorized by the Court.

- e. If an objection to a Proposed Sale is timely filed and served by the Sale Objection Deadline, the Debtors will not proceed with the Proposed Sale unless (i) the objection is withdrawn or otherwise resolved, or (ii) this Court overrules such objection at the next regularly scheduled omnibus hearing that is at least five (5) business days after service of the objection upon counsel to the Debtors, or at the next omnibus hearing that is agreed to by the objecting party and the Debtors.
- f. All buyers will acquire the Miscellaneous Assets sold by the Debtors pursuant to these Sale Procedures on an “AS IS, WHERE IS” basis without any representations or warranties from the Debtors as to the quality or fitness of such assets for either their intended use or any other purposes; provided, however, that buyers will take title to the Miscellaneous Assets free and clear of liens, claims, encumbrances and other interests pursuant to section 363(f) of the Bankruptcy Code, with all such liens, claims, encumbrances and other interests, if any, to attach to the proceeds of the sale of the Miscellaneous Assets.

3. Pursuant to section 363(f) of the Bankruptcy Code, any sale of Miscellaneous Assets pursuant to this Order will be free and clear of all liens, claims and encumbrances whatsoever with any such liens, claims and encumbrances to attach to the proceeds of the sale.

4. If the Debtors are unable to sell certain Miscellaneous Assets, and determine in their business judgment that it is in the best interests of the Debtors, their estates and creditor to abandon such Miscellaneous Assets, the Debtors shall be authorized, but not required, pursuant to section 554 of the Bankruptcy Code to abandon these Miscellaneous Assets in accordance with the following procedures (the “Abandonment Procedures”):

- a. The Debtors shall provide written notice by overnight, facsimile or hand delivery to the Notice Parties, which notice shall include (a) a list of assets being abandoned and (b) a statement of the Debtors’ attempts to sell the Miscellaneous Assets.
- b. The Notice Parties will have five (5) business days thereafter to object to such proposed abandonment by filing an objection with the United States

Bankruptcy Court for the District of Delaware, 824 Market Street, Wilmington, Delaware 19801 and serving such objection by overnight or hand delivery on the other Notice Parties and counsel to the Debtors (the “Abandonment Objection Deadline”).

- c. In the absence of an objection on or before the Abandonment Objection Deadline, the Debtors may abandon the Miscellaneous Assets without further notice or hearing and such abandonment will be deemed fully authorized by the Court. If an objection to a Proposed Abandonment is timely filed and served by the Abandonment Objection Deadline, the Debtors will not proceed with the Proposed Abandonment unless (i) the objection is withdrawn or otherwise resolved or (ii) this Court overrules such objection at the next regularly scheduled omnibus hearing that is at least five (5) business days after service of the objection upon counsel to the Debtors, or at the next omnibus hearing that is agreed to by the objecting party and the Debtors.

5. The provision in Bankruptcy Rule 6004(h) staying an order authorizing the use, sale, or lease of property until the expiration of fourteen (14) days after entry of the order is hereby waived in respect of the sale of any Miscellaneous Assets made in accordance with this Order.

6. This Order shall be immediately effective and enforceable upon its entry.

7. This Court shall retain jurisdiction over interpretation and implementation of this Order.

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

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Mary F. Walrath  
United States Bankruptcy Judge