

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

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In re: : Chapter 11  
: :  
THQ INC., *et al.*, : Case No. 12-13398 (MFW)  
: :  
Debtors.<sup>1</sup> : Jointly Administered  
: :  
: RE: Docket No. 709  
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**DECLARATION OF JASON KAY IN SUPPORT OF THE DEBTORS' GENERAL  
RELEASE OF CERTAIN MEMBERS OF MANAGEMENT PURSUANT TO THE PLAN**

I, Jason Kay, hereby declare, pursuant to section 1746 of title 28 of the United States Code, as follows:

1. I am over eighteen (18) years of age and if called upon I would competently testify to the matters set forth herein from my own personal knowledge, except as otherwise stated. Until my termination without cause effective January 30, 2013, I was the Chief Strategy Officer of THQI, Inc. ("THQI" and together with its above-captioned debtor affiliates, the "Debtors") and have over twenty years of experience in the computer and video game industry.

2. I submit this Declaration in in support of confirmation of the *Amended Chapter 11 Plan of Liquidation of THQ Inc. and its Affiliated Debtors*, dated May 28, 2013 (as may be further modified, supplemented ore restated, the "Plan"), which provides for the general release of certain members of the Debtors' management, as more fully described therein and in Exhibit "1" to the Plan.<sup>2</sup> Except as otherwise indicated, all statements in this Declaration

<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> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Plan.



are based upon my review of relevant documents, my discussions with the Debtors and their professionals, and my personal knowledge and experience. If I were called upon to testify, I could and would testify to each of the facts set forth below.

**The Auction and the Committee's Allegations of Management's Potential Exposure**

3. 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 (the "**Sale Motion**") to the proposed stalking horse bidder, Clearlake Capital Group, L.P ("**Clearlake**"), or to a higher bidder. If Clearlake were the successful bidder, it is my understanding from preliminary conversations with representatives of Clearlake that it had anticipated offering employment to many of the Debtors' employees, including, without limitation, Jason Rubin, the President of THQI, me, and other members of senior management. We had not, however, received any offer for employment or agreed upon employment terms, pending completion of the auction.

4. On January 22 and January 23, 2013, the Debtors conducted a series of auctions for some or substantially all of their operating assets (the "**Auction**"), which I attended along with Jason Rubin and other representatives of the Debtors. The piecemeal bids that were submitted by five separate bidders at the Auction substantially exceeded the initial stalking horse bid that had been submitted by Clearlake for all or substantially all of the Debtors' assets and operations. Clearlake told us that it was not willing to submit a higher bid for substantially all of the Debtors' assets. Clearlake indicated that it was, however, interested in considering submitting a bid that excluded certain portions of the Debtors' assets that would be greater than the piecemeal bids the Debtors had received for such assets. Clearlake informed us that it had limited independent expertise relating to the Debtors' operations. Thus, in order to formulate its bid for piecemeal assets, Clearlake sought to confer with me and with Jason Rubin during the

Auction regarding the Debtors' business operations, synergies between different portions of the operations, and the impact of acquiring less than all of the Debtors' assets.

5. Prior to the Auction, the Committee had alleged in pleadings it submitted in connection with the Sale Motion and at the hearing on the Sale Motion that Jason Rubin and I had purportedly conspired with Clearlake to orchestrate an expedited sale process that did not maximize the value of the Debtors. I also understand that this Court stated at the hearing on January 4, 2013 to consider the Sale Motion that it did not accept the Committee's "conspiracy theory." Nevertheless, given the Committee's previous accusations, Jason Rubin and I were unwilling to create any possible exposure for ourselves personally or for other members of the Debtors' management by conferring with Clearlake, if the Committee might then allege that this was somehow evidence of a conspiracy among us and Clearlake.

6. During the Auction, our concerns were presented to the Committee by the Debtors' professionals, together with two alternatives: (a) management would confer with Clearlake to determine whether Clearlake could formulate a competing bid that would increase the proceeds from the Auction if the Committee would support the granting of the General Release to members of senior management; or (b) Clearlake could determine whether or not to formulate a competing bid without any further discussions with members of senior management. Clearlake indicated that it was prepared to commit to submit a competing bid if it could confer with members of senior management, but would not submit a competing bid if it was not permitted to do so.

7. The Committee decided not to risk that Clearlake would stop bidding and, therefore, agreed to support the granting of a release to the members of senior management, if and only if, Clearlake submitted a higher competing bid that enhanced the recovery to the

Debtors' estates through the Auction after Clearlake conferred with Jason Rubin and me. Relying on the Committee's commitment to support the general release, Jason Rubin and I provided Clearlake with the requested information regarding the impact of bidding on less than the entire company.

8. As a result, Clearlake submitted a competing bid for less than substantially all of the Debtors' assets (the "**Clearlake Bid**"). The piecemeal bidders increased their bids in response to the Clearlake Bid. Additional rounds of bidding followed. The amount of the aggregate piecemeal bids ultimately exceeded the amount of the Clearlake Bid and, therefore, the piecemeal bids were accepted by the Debtors. Although Clearlake was not one of the successful bidders, the additional bids submitted in response to the Clearlake Bid resulted, to the benefit of the Debtors' estates, in a total increase in the amount received by the Debtors for the relevant assets of more than \$3 million.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated: July 11, 2013

/s/ Jason Kay  
Jason Kay