

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:	)	
	)	Chapter 11
CONEXANT SYSTEMS, INC., <i>et al.</i> , <sup>1</sup>	)	Case No. 13-10367 ( )
	)	
Debtors.	)	Joint Administration Requested
	)	

**DEBTORS' MOTION FOR ENTRY OF INTERIM AND FINAL  
ORDERS AUTHORIZING THE DEBTORS TO PAY PREPETITION  
CLAIMS OF CERTAIN FOREIGN VENDORS AND LIEN CLAIMANTS**

Conexant Systems, Inc. and its debtor affiliates, as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the “*Debtors*”),<sup>2</sup> respectfully represent:

**Jurisdiction**

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).
2. Venue in this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409.
3. The bases for the relief requested herein are sections 105(a), 362(b)(3), 363(b), 363(e), 546(b), 1107(a) and 1108 of the Bankruptcy Code, Rules 6003 and 6004(h) of the Federal Rules of Bankruptcy Procedure (the “*Bankruptcy Rules*”) and Rule 9013-1(m) of the

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal taxpayer-identification number, are: Conexant Systems, Inc. (9439); Conexant CF, LLC (6434); Brooktree Broadband Holding, Inc. (5436); Conexant, Inc. (8218); and Conexant Systems Worldwide, Inc. (0601). The Debtors’ main corporate address is 4000 MacArthur Blvd., Newport Beach, California 92660.

<sup>2</sup> A detailed description of the Debtors and their businesses, and the facts and circumstances supporting this motion and the Debtors’ chapter 11 cases, are set forth in greater detail in the Declaration of Sailesh Chittipeddi, President and CEO of Conexant Systems, Inc., in Support of First Day Pleadings (the “*First Day Declaration*”), filed contemporaneously with the Debtors’ voluntary petitions for relief filed under chapter 11 of title 11 of the United States Code (the “*Bankruptcy Code*”), on February 28, 2013 (the “*Petition Date*”).

Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “*Local Rules*”).

### **Relief Requested**

4. By this motion, the Debtors request entry of interim and final orders, substantially in the forms attached hereto as **Exhibit A** and **Exhibit B** (the “*Interim Order*” and the “*Final Order*,” respectively), (a) authorizing, but not directing, the Debtors to pay the prepetition claims of certain (i) vendors and suppliers located in foreign jurisdictions and (ii) possessory lien claimants, in each instance in accordance with a Court approved procurement policy (b) authorizing financial institutions to receive, process, honor and pay all related checks and electronic payment requests for payment of prepetition claims of certain Foreign Vendors and Lien Claimants (each as defined herein) and (c) scheduling a final hearing (the “*Final Hearing*”) to consider entry of the Final Order, to the extent necessary. In support of this motion, the Debtors submit the Declaration of Shawn Hassel, a managing director of Alvarez & Marsal North America, LLC (“*A&M*”), a copy of which is attached hereto as **Exhibit C** (the “*Hassel Declaration*”).

5. More specifically, the Debtors seek permission to pay, in consultation with their prepetition secured lender, QP SFM Capital Holdings Limited, an entity managed by Soros Fund Management LLC (the “*Secured Lender*”), outstanding prepetition amounts to certain vendors and suppliers located outside of the United States and its territories that, in the Debtors’ business judgment, are critical to the Debtors’ business operations or may discontinue providing goods and services absent payment of their prepetition claims (collectively, the “*Foreign Vendors*,” and the claims of Foreign Vendors, whether unsecured or administrative, the “*Foreign Vendor Claims*”).

6. Pursuant to the Interim Order, the Debtors seek authority to remit payment on account of the Foreign Vendor Claims in an amount up to \$4.5 million within 21-days of the commencement of these chapter 11 cases. Pursuant to the Final Order, the Debtors seek the authority, but not the direction, to pay an additional \$1.1 million in Foreign Vendor Claims for a total amount up to \$5.6 million.

7. Additionally, the Debtors seek permission to pay, in consultation with the Secured Lender, outstanding prepetition amounts to both foreign and domestic third-party carriers who are in possession of the Debtors' property as of the Petition Date (collectively, the "*Lien Claimants*," and the claims of Lien Claimants, the "*Lien Claims*"). Because the Debtors will face substantial harm if the Lien Claimants move to assert their lien rights or fail to release the goods in their possession, the Debtors seek authority to remit payment on account of the Lien Claimants in an amount up to \$55,000 within 21-days from the Petition Date.

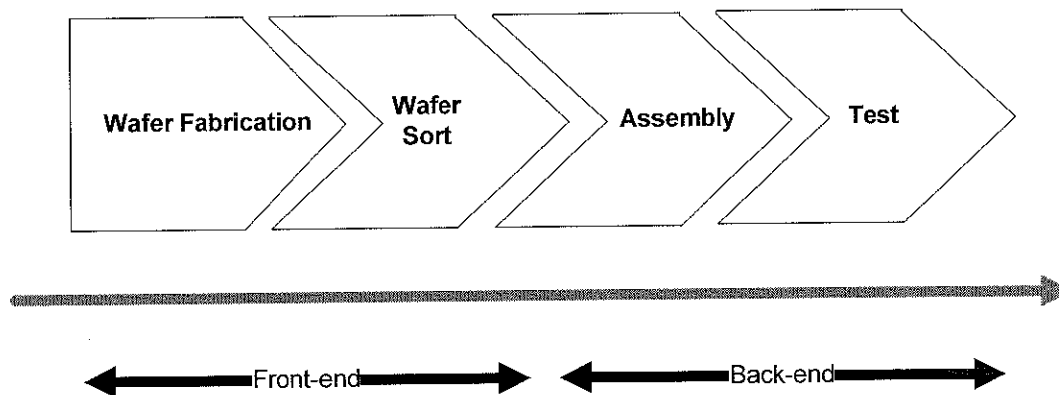
8. The Debtors will use commercially reasonable efforts to obtain agreement from Foreign Vendors and Lien Claimants to provide goods and/or services on customary trade terms (the "*Customary Trade Terms*") (*i.e.* reasonable price, service, quality and payment terms) in accordance with a procurement policy (the "*Procurement Policy*"). The proposed Procurement Policy is annexed as Exhibit 1 to Exhibit A attached hereto and incorporated herein by reference. The Debtors will endeavor to ensure that the Customary Trade Terms will be no less favorable (from the Debtors' perspective) than those trade terms provided by each Foreign Vendor or Lien Claimant to the Debtors as of the Petition Date.

### Basis for Relief

#### A. Overview of the Debtors' Supply Chain and Relationship with Foreign Vendors

9. The Debtors design, develop and sell semiconductor system solutions, comprised of semiconductor devices, software and reference designs for imaging, audio, embedded-modem and video application. The Debtors are a leading "fabless" semiconductor company, meaning that the Debtors outsource the fabrication of their semiconductors to third parties. This structure allows the Debtors to focus on the design, development and marketing of their products. While this business structure has greatly contributed to the Debtors' cutting-edge innovations, it leaves the Debtors particularly vulnerable to disruptions in their supply chain.

10. More specifically, the Debtors' supply chain is primarily located overseas and consists of various foundries – specialized manufacturers – that fabricate the Debtors' products. Typically, the Debtors' products are manufactured as follows:



- Wafer Fabrication:* The Debtors receive a number of bids from foundries to fabricate wafers – slices of semiconductor material that serve as the foundation that circuits are deposited on. The Debtors select a wafer foundry and then qualify such party to produce their wafers in an extensive process that takes seven to eight months. Once a wafer foundry has been qualified, the Debtors seek customer sign-off on the foundry selection. These wafer foundries, once fully vetted by the Debtors and their customers, create integrated circuits on raw wafers using photolithography – a process that uses light to transfer the desired circuit

pattern onto wafers through “masks” (opaque plates with transparencies that allow light to shine through, which are designed by the Debtors and manufactured by third parties).

- *Wafer Sort and Probe:* A third party vendor tests the individual circuits on the fabbed wafers (also called die) and determines the die bank (*i.e.*, the inventory of good die). Circuits are typically stored in die bank form until a customer order is received. The process of wafer fabrication and sorting is considered front-end manufacturing.
- *Assembly:* Once a customer order is received, the back-end manufacturing process begins. At this stage, the die bank are assembled into packages by qualified third party vendors. Any change in a vendor at this stage requires not only that the Debtors qualify a new vendor in a process that takes three to four months, but the issuance of a product change notice to the Debtors’ customers.
- *Test:* Finished packages are tested by third party vendors, and, if the packages meet specifications, they are sent directly to the Debtors’ customers. A change at this stage requires the Debtors qualify a new vendor in a process that takes six to eight weeks, and the issuance of a product change notice.

Notably, the Debtors do not take possession of the semiconductors at any point during the manufacturing process.

11. The Debtors’ manufacturing process is complex and is viable only if the Debtors’ vendors and suppliers have been qualified by both the Debtors and their customers. Any change in the Debtors’ supply chain disrupts the careful coordination contemplated with each production line and will materially impact the Debtors’ ability to operate their business.

12. The Debtors have taken carefully formulated measures to avoid any supply chain interruptions due to the filing of these chapter 11 cases. Nonetheless, the nature of the semiconductor marketplace and the filing of these chapter 11 cases will likely result in many Foreign Vendors making credible threats to cease supplying and manufacturing the Debtors’

semiconductors absent satisfaction of prepetition claims. And this interruption in the supply chain could place the Debtors' restructuring efforts in peril.

13. The Foreign Vendors supply goods or services to the Debtors that are crucial to the Debtors' ongoing operations and many supply goods or services that cannot be obtained from other sources. Even if the Debtors locate alternative vendors, such vendors likely cannot supply the Debtors with sufficient quantity or quality or without significant delays.

14. The Debtors regularly transact business with Foreign Vendors in Taiwan, Korea, Singapore, China, the Philippines and Malaysia. Foreign suppliers often have confused and guarded reactions to the U.S. bankruptcy process. For example, many of these entities are unfamiliar (or uncomfortable) with the unique debtor-in-possession mechanism that is at the heart of chapter 11. A debtor seeking to explain the chapter 11 process to a foreign vendor and convince that foreign vendor – particularly one unfamiliar with chapter 11 – to continue shipments post-petition is often greeted with a high degree of skepticism and mistrust. And there is a significant risk that the nonpayment of even a single invoice could cause a Foreign Vendor to sever its business relationship with the Debtors. Nonpayment of prepetition claims may cause Foreign Vendors to utilize extreme caution and adopt a wait-and-see attitude in approaching the unfamiliar territory of chapter 11, resulting in costly delays in the shipment of goods. The Debtors can ill afford delays of this nature.

15. In addition, because the Foreign Vendors are located abroad, the Debtors have no means of compelling them to continue manufacturing the goods necessary to maintain their operations. Although section 362 of the Bankruptcy Code provides for an automatic stay of creditor remedies, the power of a United States Bankruptcy Court to enforce its jurisdiction against an entity without a presence in the United States presents may be dishonored. The

Debtors have a number of non-Debtor affiliates located in foreign countries; thus, the Foreign Vendors may also attempt to take action against those non-Debtor affiliates. Although the automatic stay applies to protect the Debtors' global assets, attempting to enforce the Bankruptcy Code in foreign countries is difficult, disruptive and costly. Moreover, even if it could be enforced, the automatic stay by itself would not serve to protect assets of the Debtors' non-Debtor affiliates, which could remain at risk in an adverse action.

16. The Debtors believe that the fact that their wafer manufacturers have facilities overseas where the wafers are physically manufactured is sufficient to necessitate the inclusion of such vendors as "Foreign Vendors" for purposes of the relief sought herein. To the extent that certain Foreign Vendors have U.S. operations or affiliates, however, the Debtors still require the ability to pay some or all of the prepetition claims of those vendors for several reasons. First, and as described herein, those Foreign Vendors with U.S. affiliates may have warehouse lien rights in their respective jurisdictions that could require the Debtors to satisfy those claims to release their products. Second, even if the Foreign Vendors do not have lien rights, they are not subject to long-term contracts with the Debtors that would require them to continue to provide the Debtors with these necessary services. And third, to the extent that the Foreign Vendors have U.S. affiliates and the chapter 11 automatic stay would apply, due to the importance of these vendors to the Debtors' operations, the Debtors do not believe that enforcement of the automatic stay is a sufficient remedy. For all these reasons, the Debtors require authorization but not direction to satisfy the prepetition claims of their Foreign Vendors, whether or not those Foreign Vendors have U.S. affiliates or operations, in order to avoid immediate and irreparable harm to their business.

17. In short, the vendors identified as Foreign Vendors supply goods and services that are vital to the Debtors' business operations. The Debtors believe that the authority to pay the Foreign Vendors Claims up to the maximum amount set forth herein will be necessary to preserve operations and successfully reorganize. The need for the flexibility to pay such claims is particularly acute in the period immediately following the Petition Date. At this juncture, the Debtors and their advisors will be focusing on stabilizing operations and moving quickly to secure their plan of reorganization.<sup>3</sup> At the same time, Foreign Vendors may attempt to assert their considerable leverage and stop providing goods and services, suddenly and without notice, potentially crippling the Debtors' manufacturing process. Any occurrence affecting operations could prolong the Debtors' chapter 11 cases, increase administrative expenses and jeopardize their reorganization.

#### **B. The Lien Claimants**

18. The Debtors require the delivery of goods on a regular basis for the production and distribution of their finished products throughout the world. The Debtors' business operations rely on their ability to distribute finished goods in a timely fashion. To maintain their operations and efficiently transport products, the Debtors employ an extensive distribution network that uses both foreign and domestic third-party carriers who are in current possession of the Debtors' property as of the Petition Date. Under the laws of most states,<sup>4</sup> these carriers will,

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<sup>3</sup> Contemporaneously herewith, the Debtors filed the *Debtors' Joint Plan of Reorganization of Conexant Systems, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code*.

<sup>4</sup> For example, section 7-307 of the Uniform Commercial Code provides, in pertinent part, that a "carrier has a lien on the goods covered by a bill of lading or on the proceeds thereof in its possession for charges after the date of the carrier's receipt of the goods for storage or transportation (including demurrage and terminal (Continued...))



in certain circumstances, have a lien on the goods in their possession that secures the charges or expenses incurred in connection with the transportation of the goods. If the Lien Claimants' claims are not satisfied, they may refuse to release the Debtors' property, thereby disrupting the Debtors' product flow and operations.

19. The Lien Claimants fall into the following general categories:

- *Shippers*: The Debtors' distribution network depends upon the use of reputable domestic and foreign common carriers, truckers, rail carriers, barge owners and dockers (collectively, the "*Shippers*") to deliver goods to the Debtors' production facilities and distribute products to the Debtors' customers. The services provided by the Shippers are essential to the Debtors' daily operations. At any given time, there are numerous shipments of products at various points in production or to the Debtors' customers. Thus, it is a certainty that some of the Shippers are currently in possession of the Debtors' property. The delivery of these goods is vital to maintaining the Debtors' operations during their transition into, and ultimately their emergence from, chapter 11. If the Debtors do not pay the prepetition, ordinary course obligations owed to these Shippers, the Shippers may refuse to deliver or release such property, thereby disrupting the Debtors' business operations.
- *Warehousemen*: The Debtors store products at facilities owned by other parties (the "*Warehousemen*"). In the event that the Debtors fail to remit payment owed to the Warehousemen before the Petition Date, the Warehousemen may refuse to release the goods they retain pending satisfaction of all or a portion of their claims, thereby disrupting the Debtors' operations.
- *Processors*: The Debtors also rely on third-party processors to manufacture or finish goods according to the Debtors' detailed specifications (the "*Processors*"). At any given time, the Processors may be performing services on, and therefore be in possession of, the Debtors' works in process and finished goods. Accordingly, the Debtors' failure to satisfy payment obligations to the Processors would result in the Processors' refusal to return the Debtors' goods, thereby disrupting the Debtors' business operations.

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charges) and for expenses necessary for preservation of the goods incident to their transportation or reasonably incurred in their sale pursuant to law." See U.C.C. § 7-307(a) (2005).

**C. The Debtors' Proposed Procurement Policy and Conditions on Payment to Foreign Vendors and Lien Claimants**

20. The Debtors seek authority to pay prepetition claims of Foreign Vendors and Lien Claimants solely to the extent that such payments are necessary on a postpetition basis to ensure that a particular vendor continues to provide necessary goods and services to the Debtors, up to a maximum of \$4.5 million to Foreign Vendors pursuant to the Interim Order and \$5.6 million to Foreign Vendors to the Final Order and \$55,000 to Lien Claimants pursuant to both the Interim Order and the Final Order. Despite the critical need for the receipt of essential goods and services provided by the Foreign Vendors and Lien Claimants, the Debtors have historically sought to bargain with their vendors to achieve the lowest price, the best service and quality and the most favorable payment terms possible for each necessary product or service. Nonetheless, the Debtors recognize that efficiency in procurement is critical to achieving profitability and, to that end, the Debtors have developed valued relationships with many vendors who have met the Debtors' standards for price, service, quality and payment terms. The Debtors hope to maintain and improve upon those vendor relationships on a postpetition basis.

21. To further ensure that the Debtors' business operations will be minimally impacted during these chapter 11 cases, the Debtors will use commercially reasonable efforts to obtain agreement from Foreign Vendors and Lien Claimants to provide goods and/or services on Customary Trade Terms in accordance with the Procurement Policy annexed as **Exhibit 1** to **Exhibit A** attached hereto. The Debtors will endeavor to ensure that the Customary Trade Terms will be no less favorable (from the Debtors' perspective) than those trade terms provided by each Foreign Vendor or Lien Claimant to the Debtors as of the Petition Date.

22. Finally, the Debtors have incorporated a mechanism to provide information regarding actual Foreign Vendor and Lien Claimant payments on a confidential basis to the United States Trustee for the District of Delaware. The Debtors believe this measured process further justifies the relief requested herein, and will help ensure that the relief sought will maximize the value of the Debtors' estates for all stakeholders.

### **Supporting Authority**

#### **A. Ample Authority Exists to Support Payment of the Foreign Vendor Claims**

23. Courts have authorized payment of prepetition obligations under section 363(b) of the Bankruptcy Code where a sound business purpose exists for doing so. *See, e.g., In re Kmart Corp.*, 359 F.3d 866, 872 (7th Cir. 2004) (recognizing that payment of prepetition claims may be permitted under section 363, but holding that the debtor's evidentiary record did not support paying the prepetition claims of vendors); *In re Tropical Sportswear Int'l Corp.*, 320 B.R. 15, 20 (Bankr. M.D. Fla. 2005) ("Bankruptcy courts recognize that section 363 is a source of authority to make critical vendor payments, and section 105 is used to fill in the blanks."); *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) (finding that a sound business justification existed to justify payment of prepetition wages); *Armstrong World Indus., Inc. v. James A. Phillips, Inc. (In re James A. Phillips, Inc.)*, 29 B.R. 391, 397-98 (S.D.N.Y. 1983) (allowing contractor to pay prepetition claims of suppliers who were potential lien claimants under section 363 because the payments were necessary for general contractors to release funds owed to debtors); *In re UAL Corp.*, No. 02-48191 (Bankr. N.D. Ill. Dec. 11, 2002) (essential trade motion relying upon section 363 is "completely consistent with the Bankruptcy Code;" payments to critical trade vendors have further support when debtor seeks "the extension of

credit under section 364 on different than usual terms, terms that might include the payment of a prepetition obligation”).

24. The Debtors have a strong business purpose for paying the Foreign Vendor Claims. Indeed, failure to pay the Foreign Vendor Claims – or at least some portion of them – could potentially cause the shutdown of the Debtors’ manufacturing and supply chain. If the Foreign Vendors are unwilling to provide their goods and services postpetition because of their outstanding prepetition claims, the Debtors’ operations would suffer – compromising the value of the Debtors’ estates to the detriment of the Debtors’ creditors.

**B. Ample Authority Exists to Support Payment of the Lien Claims**

25. Pursuant to section 363(e) of the Bankruptcy Code, the Lien Claimants may be entitled to adequate protection of a valid possessory lien to the extent that the Debtors use or sell the estate property against which a Lien Claim is asserted. Given that the value of such property will generally far exceed the value of the related Lien Claim, creditors will not be harmed – and, in fact, will be benefited – by the satisfaction of certain amounts owed to the Lien Claimants. Those payments will facilitate the use and/or sale of estate property against which liens may otherwise be asserted, helping to preserve the going-concern value of the Debtors’ businesses and enabling the Debtors to smoothly transition into chapter 11.

26. Based on the foregoing, and in order to maintain a seamless transition of the Debtors’ operations into chapter 11, the Debtors respectfully submit that honoring the prepetition claims of the Lien Claimants is justified under the circumstances.

**C. The Court Should Authorize the Debtors to Pay Foreign Vendor Claims and Lien Claims Under the Doctrine of Necessity**

27. Courts generally acknowledge that, under appropriate circumstances, they may authorize a debtor to pay (or provide special treatment for) certain prepetition obligations. *See, e.g., In re Just for Feet, Inc.*, 242 B.R. 821, 824-45 (Bankr. D. Del. 1999) (noting that, in the Third Circuit, debtors may pay prepetition claims that are essential to the continued operation of the debtor's business); *In re Ionosphere Clubs, Inc.*, 98 B.R. at 175 (granting the debtor the authority to pay prepetition wages); *In re James A. Phillips, Inc.*, 29 B.R. at 398 (granting the debtor the authority to pay prepetition claims of suppliers who were potential lien claimants). When authorizing payments of certain prepetition obligations, courts have relied upon several legal theories rooted in sections 1107(a), 1108, 363(b) and 105(a) of the Bankruptcy Code.

28. Pursuant to sections 1107(a) and 1108 of the Bankruptcy Code, debtors in possession are fiduciaries charged with "holding the bankruptcy estate[s] and operating the business[es] for the benefit of [their] creditors and (if the value justifies) equity owners." *In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002). Inherent in a debtor in possession's fiduciary duties is the obligation to "protect and preserve the estate, including an operating business's going-concern value," which, in certain instances, can be fulfilled "only . . . by the preplan satisfaction of a prepetition claim." *Id.* Indeed, the *CoServ* court specifically noted that the preplan satisfaction of prepetition claims would be a valid exercise of the debtor's fiduciary duty when the payment "is the only means to effect a substantial enhancement of the estate . . . ." *Id.*

29. Consistent with a debtor's fiduciary duties, where there is a sound business purpose for the payment of prepetition obligations, and where the debtor is able to "articulate

some business justification, other than the mere appeasement of major creditors,” courts have authorized debtors to make such payments under section 363(b) of the Bankruptcy Code. *See, e.g., In re Ionosphere Clubs, Inc.*, 98 B.R. at 175 (finding that a sound business justification existed to pay prepetition wages); *In re James A. Phillips, Inc.*, 29 B.R. at 397 (relying upon section 363 as a basis to allow a contractor to pay the prepetition claims of suppliers who were potential lien claimants).<sup>5</sup>

30. In addition to the authority granted a debtor in possession under sections 1107(a), 1108, 363(b) and 105(a) of the Bankruptcy Code, courts have developed the “doctrine of necessity” or the “necessity of payment” rule, which originated in the landmark case of *Miltenberger v. Logansport, C. & S.W.R. Co.*, 106 U.S. 286 (1882). Since *Miltenberger*, courts have expanded their application of the doctrine of necessity to cover instances of a debtor’s reorganization, *see Dudley v. Mealey*, 147 F.2d 268, 271 (2d Cir. 1945) (holding, in a hotel reorganization matter, that the court was not “helpless” to apply the rule to supply creditors where the alternative was the cessation of operations), including the United States Court of Appeals for the Third Circuit, which recognized the doctrine in *In re Lehigh & New England Ry. Co.*, 657 F.2d 570, 581 (3d Cir. 1981).

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<sup>5</sup> Courts have also authorized payment of prepetition claims in appropriate circumstances pursuant to section 105(a) of the Bankruptcy Code. Section 105(a) of the Bankruptcy Code, which codifies the inherent equitable powers of the bankruptcy court, empowers the bankruptcy court to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). Under section 105(a), courts may permit preplan payments of prepetition obligations when such payments are essential to the continued operation of the debtor’s business and, in particular, where nonpayment of a prepetition obligation would trigger a withholding of goods or services essential to the debtors’ business reorganization plan. *See In re UNR Indus.*, 143 B.R. 506, 520 (Bankr. N.D. Ill. 1992) (permitting the debtor to pay prepetition claims of suppliers or employees whose continued cooperation is essential to the debtors’ successful reorganization); *Ionosphere Clubs*, 98 B.R. at 177 (finding that section 105 empowers bankruptcy courts to authorize payment of prepetition debt when such payment is needed to facilitate the rehabilitation of the debtor).

31. In *Lehigh*, the Third Circuit held that a court could authorize the payment of prepetition claims if such payment was essential to the continued operation of the debtor. *Id.* (stating that a court may authorize payment of prepetition claims when there “is the possibility that the creditor will employ an immediate economic sanction, failing such payment”); *see also In re Penn Cent. Transp. Co.*, 467 F.2d 100, 102 n.1 (3d Cir. 1972) (holding that the necessity of payment doctrine permits “immediate payment of claims of creditors where those creditors will not supply services or material essential to the conduct of the business until their pre-reorganization claims have been paid”); *In re Just for Feet, Inc.*, 242 B.R. at 824-45 (noting that debtors may pay prepetition claims that are essential to continued operation of the business); *In re Columbia Gas Sys., Inc.*, 171 B.R. 189, 191-92 (Bankr. D. Del. 1994) (same).

32. Today, the rationale for the necessity of payment rule – the rehabilitation of a debtor in reorganization cases – is “the paramount policy and goal of Chapter 11.” *In re Ionosphere Clubs, Inc.*, 98 B.R. at 176; *Just For Feet*, 242 B.R. at 826 (finding that payment of prepetition claims to certain trade vendors was “essential to the survival of the debtor during the chapter 11 reorganization.”); *see also In re Quality Interiors, Inc.*, 127 B.R. 391, 396 (Bankr. N.D. Ohio 1991) (“[P]ayment by a debtor-in-possession of pre-petition claims outside of a confirmed plan of reorganization is generally prohibited by the Bankruptcy Code”, but “[a] general practice has developed . . . where bankruptcy courts permit the payment of certain pre-petition claims, pursuant to 11 U.S.C. § 105, where the debtor will be unable to reorganize without such payment.”); *In re Eagle-Picher Indus., Inc.*, 124 B.R. 1021, 1023 (Bankr. S.D. Ohio 1991) (approving payment of prepetition unsecured claims of tool makers as “necessary to avert a serious threat to the Chapter 11 process”); *Burchinal v. Cent. Wash. Bank (In re Adams Apple, Inc.)*, 829 F.2d 1484, 1490 (9th Cir. 1987) (finding that it is appropriate to provide for the

“unequal treatment of pre-petition debts when [such treatment is] necessary for rehabilitation . . .”); Collier on Bankruptcy P 105.02[4][a] (Alan N. Resnick & Henry J. Sommer eds., 16th ed. rev.) (discussing cases in which courts have relied upon the “doctrine of necessity” or the “necessity of payment” rule to pay prepetition claims immediately).

33. The flexible approaches developed by bankruptcy courts are particularly applicable where a prepetition creditor – here, the Foreign Vendors and Lien Claimants – provides vital goods or services to a debtor that would be otherwise unavailable if the debtor were unable to satisfy its prepetition obligations. As set forth above, the Debtors have determined, in the exercise of their sound business judgment, that payment of Foreign Vendor Claims and Lien Claims is essential to continue the uninterrupted supply of goods and services that directly affect the viability of the Debtors’ ongoing day-to-day operations. The relief requested herein is crafted to minimize the number and amount of prepetition claims that are paid and at the same time maximize the value that the Debtors receive in return for such payments. Thus, the Debtors submit that the relief requested herein is narrowly-tailored to facilitate the Debtors’ chapter 11 reorganization process and to ensure that the value of the Debtors’ businesses as a going concern is preserved through the pendency of these chapter 11 cases.

34. Courts in this jurisdiction routinely grant authorization for chapter 11 debtors to pay claims owing to foreign entities against which the automatic stay cannot be enforced readily in the United States and as to which it would be unduly time-consuming and expensive to seek enforcement of an order of the bankruptcy court in the creditor’s home country. *See, e.g., In re School Specialty, Inc.*, No. 13-10125 (KJC) (Bankr. D. Del. Jan. 30, 2013) (authorizing payment of up to \$4 million in prepetition foreign vendor claims on an interim basis); *In re Overseas*



*Shipholding Grp., Inc.*, No. 12-20000 (PJW) (Bankr. D. Del. Dec. 7, 2012) (authorizing payment of up to \$4.8 million in prepetition critical vendor and foreign vendor claims); *In re A123 Sys., Inc.*, No. 12-12859 (KJC) (Bankr. D. Del. Nov. 8, 2012) (authorizing payment of up to \$2.76 million in prepetition foreign vendor claims); *In re S. Air Holdings, Inc.*, No. 12-12690 (CSS) (Bankr. D. Del. Oct. 25, 2012) (authorizing payment of up to \$2.4 million in prepetition foreign vendor claims); *In re Pemco World Air Servs., Inc.*, No. 12-10799 (MFW) (Bankr. D. Del. Apr. 3, 2012) (authorizing payment of up to \$2.35 million in prepetition foreign vendor claims); *In re Harry & David Holdings, Inc.*, No. 11-10884 (MFW) (Bankr. D. Del. Mar. 29, 2011) (authorizing payment of up to \$300,000 in prepetition foreign vendor claims); *In re Visteon Corp.*, No. 09-11786 (CSS) (Bankr. D. Del. June 19, 2009) (authorizing payment of up to \$5.1 million in prepetition foreign vendor claims); *In re Bldg. Materials Holding Corp.*, No. 09-12074 (KJC) (Bankr. D. Del. June 17, 2009) (authorizing payment of up to \$1.25 million in prepetition foreign vendor claims); *In re Premier Int'l Holdings Inc.*, No. 09-12019 (CSS) (Bankr. D. Del. June 15, 2009) (authorizing payment of up to \$559,224 in prepetition foreign vendor claims); *In re Aleris Int'l, Inc.*, No. 09-10478 (BLS) (Bankr. D. Del. Mar. 10, 2009) (authorizing payment of up to \$3.5 million in prepetition foreign creditor claims); *In re Nortel Networks, Inc.*, No. 09-10138 (KG) (Bankr. D. Del. Jan. 16, 2009) (authorizing payment of up to \$3 million in prepetition foreign creditor claims).

35. Additionally, it is not uncommon for courts in this district and others to authorize payments to prepetition creditors, and in particular to Shippers, Warehousemen and other lien claimants. *See, e.g., In re School Specialty, Inc.*, No. 13-10125 (KJC) (Bankr. D. Del. Jan. 30, 2013) (authorizing payment of up to \$3 million in prepetition claims to freight carriers on an interim basis); *In re A123 Sys., Inc.*, No. 12-12859 (KJC) (Bankr. D. Del. Nov. 8, 2012)

(authorizing payment of up to \$1.12 million in prepetition claims to lien claimants); *In re Buffets Restaurants Holdings, Inc.*, No. 12-10237 (MFW) (Bankr. D. Del. Jan. 19, 2012) (authorizing payment of up to \$150,000 in prepetition claims to freight carriers); *In re Allen Family Foods, Inc.*, No. 11-11764 (KJC) (Bankr. D. Del. June 10, 2011) (authorizing payment of up to \$140,000 in prepetition claims to lien claimants); *In re Appleseed's Intermediate Holdings, LLC*, No. 11-10160 (KG) (Bankr. D. Del. Feb. 23, 2011) (authorizing payment of up to \$10 million in prepetition claims to lien claimants); *In re Bldg. Materials Holding Corp.*, No. 09-12074 (KJC) (Bankr. D. Del. June 17, 2009) (authorizing payment of up to \$1.13 million in prepetition claims to lien claimants); *In re Premier Int'l Holdings Inc.*, No. 09-12019 (CSS) (Bankr. D. Del. June 13, 2009) (authorizing payment of up to \$47,261 in prepetition claims to shippers and warehousemen); *In re Aleris Int'l, Inc.*, No. 09-10478 (BLS) (Bankr. D. Del. Mar. 13, 2009) (authorizing payment of up to \$11.3 million in prepetition claims to lien claimants); *In re Spansion Inc.*, No. 09-10690 (KJC) (Bankr. D. Del. Mar. 4, 2009) (authorizing payment of up to \$1.9 million in prepetition claims to lien claimants).<sup>6</sup>

**C. Cause Exists to Authorize the Debtors' Financial Institutions to Honor Checks and Electronic Fund Transfers**

36. The Debtors represent that they have sufficient availability of funds to pay the amounts described herein in the ordinary course of business by virtue of cash reserves, expected cash flows from ongoing business operations and anticipated access to debtor in possession financing. Also, under the Debtors' existing cash management system, the Debtors represent

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<sup>6</sup> Because of the voluminous nature of the orders cited herein, such orders are not attached to this motion. Copies of these orders are available upon request to the Debtors' counsel.

that checks or wire transfer requests can be readily identified as relating to an authorized payment of the Foreign Vendor Claims or Lien Claims. Accordingly, the Debtors believe that checks or wire transfer requests, other than those relating to authorized payments, will not be honored inadvertently and that all applicable financial institutions should be authorized, when requested by the Debtors, to receive, process, honor and pay any and all checks or wire transfer requests with respect to the Foreign Vendor Claims and Lien Claims.

**The Requirements of Bankruptcy Rule 6003 Are Satisfied**

37. As described above, the Debtors are seeking authority pursuant to this motion to pay up to \$4.5 million on account of prepetition claims of Foreign Vendors and up to \$55,000 on account of prepetition claims of Lien Claimants during the first 21 days of these chapter 11 cases. Under Bankruptcy Rule 6003, the Court may authorize the Debtors to satisfy the prepetition claims of Foreign Vendors and Lien Claimants during the first 21 days of these chapter 11 cases to the extent such relief is necessary to avoid immediate and irreparable harm to the Debtors' estates. *See* Fed. R. Bankr. P. 6003(b). Immediate and irreparable harm exists where the absence of relief would impair a debtor's ability to reorganize or threaten the debtor's future as a going concern. *See In re Ames Dep't Stores, Inc.*, 115 B.R. 34, 36 n.2 (Bankr. S.D.N.Y. 1990) (discussing the elements of "immediate and irreparable harm" in relation to Bankruptcy Rule 4001).

38. As discussed above, payment of the prepetition claims of Foreign Vendors and Lien Claimants is integral to the Debtors operations. Failure to satisfy such prepetition obligations in the ordinary course of business during the first 21 days of these cases will jeopardize both the Debtors' supply of materials and the outflow of finished products, causing significant disruption to the Debtors' operations and their transition into these chapter 11 cases.

Accordingly, the Debtors respectfully submit that they have satisfied the “immediate and irreparable harm” standard of Bankruptcy Rule 6003 and seek authority to honor and, where necessary, pay, the prepetition obligations owed to Foreign Vendors and Lien Claimants in the ordinary course of business and pursuant to the Interim Order.

**Waiver of Bankruptcy Rules Regarding Notice and Stay of an Order**

39. To implement the foregoing successfully, the debtors seek a waiver of the notice requirements under Bankruptcy Rule 6004(a) and any stay of an order granting the relief requested herein pursuant to Bankruptcy Rule 6004(h), 7062, 9014 or otherwise.

**The Debtors’ Reservation of Rights**

40. Nothing contained herein is intended or should be construed as an admission as to the validity of any claim against the Debtors, a waiver of the Debtors’ rights to dispute any claim or an approval or assumption of any agreement, agreement, contract or lease under section 365 of the Bankruptcy Code. Additionally, nothing contained herein is intended or should be construed as an admission as to the validity of any claim against the Debtors or a waiver of the Debtors’ rights to dispute any claims regarding escheatment. The Debtors expressly reserve their rights to contest any claim or billing dispute. Likewise, if this Court grants the relief sought herein, any payment made pursuant to the Court’s order is not intended and should not be construed as an admission as to the validity of any claim or a waiver of the Debtors’ rights to subsequently dispute such claim.

**Notice**

41. The Debtors have provided notice of this motion to: (a) the Office of the United States Trustee for the District of Delaware; (b) the entities listed on the Consolidated List of Creditors Holding the 30 Largest Unsecured Claims filed pursuant to Bankruptcy Rule 1007(d);

(c) counsel to the Debtors' prepetition secured lender and debtor in possession lender; (d) the agent for the Debtors' prepetition secured notes; (e) counsel to each of the prepetition equity holders; (f) the Delaware Secretary of State; (g) the Delaware Secretary of Treasury; (h) the Delaware State Attorney General; (i) the Office of the United States Attorney General for the State of Delaware; (j) the Internal Revenue Service; and (k) the Securities and Exchange Commission. In light of the nature of the relief requested in this motion, the Debtors respectfully submit that no further notice is necessary.

**No Prior Request**

42. No prior motion for the relief requested herein has been made to this or any other court.

WHEREFORE, for the reasons set forth herein and in the Hassel Declaration, the Debtors respectfully request that the Court enter an order, substantially in the form attached hereto as **Exhibit A** and **Exhibit B**, (a) authorizing, but not directing, the Debtors to pay the prepetition claims of Foreign Vendors and Lien Claimants in accordance with the Procurement Policy; (b) authorizing financial institutions to receive, process, honor and pay all related checks and electronic payment requests for payment of prepetition claims of certain Foreign Vendors and Lien Claimants; and (c) granting such other and further relief as may be appropriate.

Dated: February 28, 2013  
Wilmington, Delaware

*/s/ Domenic E. Pacitti*

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Domenic E. Pacitti (DE Bar No. 3989)  
Michael W. Yurkewicz (DE Bar No. 4165)  
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- and -

Morton Branzburg (*pro hac vice* admission pending)  
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- and -

Paul M. Basta (*pro hac vice* admission pending)  
Joshua A. Sussberg (*pro hac vice* admission pending)  
Christopher T. Greco (*pro hac vice* admission pending)  
**KIRKLAND & ELLIS LLP**  
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New York, New York 10022  
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*Proposed Co-Counsel to the Debtors  
and Debtors in Possession*

**Exhibit A**

**Proposed Interim Order**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:	)	
	)	Chapter 11
CONEXANT SYSTEMS, INC., <i>et al.</i> , <sup>1</sup>	)	
	)	Case No. 13-10367 ( )
	)	
Debtors.	)	Joint Administration Requested
	)	

**INTERIM ORDER AUTHORIZING THE DEBTORS TO PAY PREPETITION  
CLAIMS OF CERTAIN FOREIGN VENDORS AND LIEN CLAIMANTS**

Upon the motion (the “*Motion*”)<sup>2</sup> of the Debtors for entry of an interim order (this “*Order*”) pursuant to sections 105(a), 362(b)(3), 363(b), 363(e), 546(b), 1107(a) and 1108 of the Bankruptcy Code, Rules 6003 and 6004(h) of the Bankruptcy Rules and Rule 9013-1(m) of the Local Rules, (a) authorizing, but not directing, the Debtors to pay prepetition Foreign Vendor Claims on an interim basis up to \$4.5 million and prepetition Lien Claims on an interim basis of up to \$55,000, all in accordance with the Procurement Policy set forth on Exhibit 1 attached hereto and the form vendor agreement attached hereto as Exhibit 2 (the “*Vendor Agreement*”), (b) authorizing financial institutions to receive, process, honor and pay all related checks and electronic payment requests for payment of prepetition claims of certain Foreign Vendors and Lien Claimants and (c) scheduling a Final Hearing to the extent a hearing is necessary, all as more fully described in the Motion and the relief requested therein in accordance with 28 U.S.C.

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal taxpayer-identification number, are: Conexant Systems, Inc. (9439); Conexant CF, LLC (6434); Brooktree Broadband Holding, Inc. (5436); Conexant, Inc. (8218); and Conexant Systems Worldwide, Inc. (0601). The Debtors’ main corporate address is 4000 MacArthur Blvd., Newport Beach, California 92660.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Motion.



§§ 157 and 1334; and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and venue being proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion being adequate and appropriate under the particular circumstances; and a hearing having been held to consider the relief requested in the Motion (the “*Hearing*”); and upon consideration of the Hassel Declaration, the record of the Hearing and all proceedings had before the Court; and the Court having found and determined that the relief sought in the Motion is in the best interests of the Debtors’ estates, their creditors and other parties in interest, and that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and any objections to the requested relief having been withdrawn or overruled on the merits; and after due deliberation and sufficient cause appearing therefor, it is hereby ORDERED:

1. The Motion is granted on an interim basis to the extent provided herein.
2. The Debtors are authorized, but not required, to pay or honor prepetition claims of Foreign Vendors and Lien Claimants pursuant to the Procurement Policy; *provided, however*, that the Debtors shall only be authorized to pay Foreign Vendor Claims up to a maximum aggregate cap of \$4.5 million and Lien Claims up to a maximum aggregate cap of \$55,000 prior to the Final Hearing on the Motion.
3. The Debtors shall make a reasonable effort to condition payment to any Foreign Vendor or Lien Claimant upon an agreement by the party in question to provide Customary Trade Terms, including reasonable and customary price, service, quality and payment terms to the Debtors on a postpetition basis, in accordance with the Procurement Policy attached hereto as **Exhibit 1**, which is incorporated herein by reference. In the event that the Debtors and the Foreign Vendor or Lien Claimant in question are not, despite diligent efforts, able to come to a

resolution pursuant to the Procurement Policy, the Debtors are authorized, but not directed, in the exercise of their business judgment and after good-faith negotiations, to make full or partial payment to a Foreign Vendor or Lien Claimant only to the extent that the Debtors deem such payment is necessary to ensure that the particular vendor will provide necessary goods and services to the Debtors on a postpetition basis.

4. The Debtors are hereby authorized to issue postpetition checks and to make postpetition fund transfer requests to replace any prepetition checks and prepetition transfers to Foreign Vendors or Lien Claimants that may be dishonored by any bank.

5. Nothing herein shall prejudice the Debtors' rights to request additional authority to pay the prepetition claims of Foreign Vendor and Lien Claimants pursuant to this Order.

6. Notwithstanding the relief granted herein and any actions taken hereunder, nothing contained in this Order or any payment made pursuant to this Order shall constitute, nor is it intended to constitute, an admission as to the validity or priority of any claim against the Debtors, a waiver of the Debtors' rights to subsequently dispute such claim or the assumption or adoption of any agreement, contract or lease under section 365 of the Bankruptcy Code.

7. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.

8. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized and directed to receive, process, honor and pay all such checks and electronic payment requests when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as being approved by this Order.

9. Notwithstanding anything to the contrary contained herein, any payment to be made, or authorization contained, hereunder shall be subject to the requirements imposed on the Debtors under any approved debtor-in-possession financing facility, or budget in connection therewith approved by this Court in these cases.

10. The requirements set forth in Bankruptcy Rule 6003(b) are satisfied by the contents of the Motion or are otherwise deemed waived.

11. Notwithstanding the possible applicability of Bankruptcy Rules 6004(h), 7062, 9014 or otherwise, this Order shall be immediately effective and enforceable upon its entry. The Final Hearing on the Motion shall be held on \_\_\_\_\_, 2013 at \_\_\_\_:\_\_\_\_ a.m./p.m. prevailing Eastern Time. Any objections or responses to entry of the proposed Final Order shall be filed **seven days before** the Final Hearing and served on the following parties: (a) the Debtors, 4000 MacArthur Blvd., Newport Beach, California 92660, Attn: Dennis Gallagher, Esq.; (b) proposed counsel for the Debtors, Kirkland & Ellis LLP, 601 Lexington Avenue, New York, New York 10022, Attn: Joshua A. Sussberg, Esq.; (c) proposed co-counsel for the Debtors, Klehr Harrison Harvey Branzburg LLP, 919 N. Market Street, Suite 1000, Wilmington, Delaware 19801, Attn: Domenic E. Pacitti, Esq.; (d) counsel to the senior secured noteholders, Akin Gump Strauss Hauer & Feld LLP, One Bryant Park, New York, New York 10036, Attn: Michael S. Stamer, Esq.; (e) counsel to Golden Gate Private Equity, Inc., DLA Piper, 203 North LaSalle Street, Suite 1900, Chicago, Illinois 60601, Attn: Chris L. Dickerson, Esq.; (f) counsel to August Capital, Cooley LLP, 101 California Street, 5th Floor, San Francisco, California 94111-5800, Attn: Robert L. Eisenbach III, Esq.; (g) counsel to any statutory committee appointed in these chapter 11 cases; and (h) the office of the United States Trustee for the District of Delaware, Caleb Boggs Federal Building, 844 King Street, Suite 2207, Lockbox 35, Wilmington,

Delaware 19801, Attn: Tiiara Patton, Esq. In the event no objections to entry of the Final Order are timely received, the Court may enter the Final Order without need for the Final Hearing.

12. The Court retains jurisdiction with respect to all matters arising from or related to the interpretation or implementation of this Order.

Date: \_\_\_\_\_, 2013  
Wilmington, Delaware

\_\_\_\_\_  
United States Bankruptcy Judge

**Exhibit 1 to Exhibit A**

**Procurement Policy**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:	)	
	)	Chapter 11
CONEXANT SYSTEMS, INC., <i>et al.</i> , <sup>1</sup>	)	Case No. 13-10367 ( )
	)	
Debtors.	)	Joint Administration Requested
	)	

**PROCUREMENT POLICY**

Pursuant to the *Interim Order Authorizing the Debtors to Pay Prepetition Claims of Certain Foreign Vendors and Lien Claimants* (the “**Order**”),<sup>2</sup> the following procurement procedures shall apply in the chapter 11 cases of Conexant Systems, Inc. and its affiliated debtors and debtors in possession (collectively, the “**Debtors**”) with respect to the payment of prepetition claims of Foreign Vendors and Lien Claimants:

- a. To ensure that the Foreign Vendors and Lien Claimants deal with the Debtors on customary trade terms (the “**Customary Trade Terms**”) (it being understood that Customary Trade Terms shall be no less favorable than those trade terms provided by each such Foreign Vendor or Lien Claimant to the Debtors before the Petition Date), the Debtors may, in their discretion, send a letter substantially in the form attached hereto as **Exhibit 2** to Foreign Vendors and Lien Claimants, along with a copy of the Order (each a “**Vendor Agreement**”). The Vendor Agreement will require that the Foreign Vendor or Lien Claimant enter into an agreement with the Debtors that includes the following information and terms:

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal taxpayer-identification number, are: Conexant Systems, Inc. (9439); Conexant CF, LLC (6434); Brooktree Broadband Holding, Inc. (5436); Conexant, Inc. (8218); and Conexant Systems Worldwide, Inc. (0601). The Debtors’ main corporate address is 4000 MacArthur Blvd., Newport Beach, California 92660.

<sup>2</sup> All capitalized terms used but otherwise not defined herein shall have the meanings set forth in the *Debtors’ Motion for Entry of Interim and Final Orders Authorizing the Debtors to Pay Prepetition Claims of Certain Foreign Vendors and Lien Claimants*.

- (i) the amount of such Foreign Vendor's or Lien Claimant's estimated claim, accounting for any setoffs, other credits and discounts thereto, which shall be mutually determined in good faith by the Foreign Vendor or Lien Claimant and the Debtors (but such amount shall be used only for the purposes of determining the amount of such claim under the Order and shall not be deemed a claim allowed by the Court, and the rights of all interested persons to object to such claim shall be fully preserved until further order of the Court);
  - (ii) a description of the Customary Trade Terms between such Foreign Vendor or Lien Claimant and the Debtors, or such more favorable terms as to which the Foreign Vendor or Lien Claimant and the Debtors may agree, and the creditor's agreement to provide goods and services to the Debtors based upon Customary Trade Terms or upon more favorable terms as the Debtors and the Foreign Vendor or Lien Claimant may agree;
  - (iii) the Foreign Vendor's or Lien Claimant's acknowledgement that it has reviewed the terms and provisions of the Order and consents to be bound thereby; and
  - (iv) the Foreign Vendor's or Lien Claimant's agreement that it will not separately seek payment for reclamation claims outside the terms of the Order.
- b. To the extent the Debtors and the Foreign Vendor or Lien Claimant in question have not, despite diligent efforts, entered into a Vendor Agreement, the Debtors shall have the right to pay such Foreign Vendor or Lien Claimant if they determine, in their sole business judgment, that failure to pay such Foreign Vendor or Lien Claimant is likely to result in irreparable harm to the Debtors' business operations. The Debtors further retain the right, on a case-by-case basis, to obtain other written acknowledgement from a Foreign Vendor or Lien Claimant of the Customary Trade Terms to which the parties have agreed.
- c. Designation of Vendor Payments: Any checks used to pay claims pursuant to the Order (to the extent checks are issued) or the letter sent in accordance with paragraph (a) above (to the extent payments are made by electronic transfer), shall contain a legend substantially in the following form:

"By accepting this payment, the payee agrees to the terms of that certain Order of the United States Bankruptcy Court of the District

of Delaware (the “*Bankruptcy Court*”), dated \_\_\_\_\_, 2013 in the payor’s chapter 11 case (Jointly Administered under Case No. 13-10367 ( ), entitled “[Interim/Final] Order Authorizing The Debtors To Pay Prepetition Claims of Certain Foreign Vendors And Lien Claimants” and submits to the jurisdiction of the Bankruptcy Court for enforcement thereof.”

- d. Breach of Vendor Agreement: If a Foreign Vendor or Lien Claimant refuses to supply goods and/or services to the Debtors on Customary Trade Terms following receipt of payment on its claim, or fails to comply with any Vendor Agreement entered into between the parties, the Debtors may, in their sole discretion and without further order of the Court, declare that such Foreign Vendor or Lien Claimant is in breach of its Vendor Agreement with the Debtors. To the extent such Foreign Vendor or Lien Claimant fails to cure such default or reach a more favorable alternative agreement with the Debtors, the Debtors may: (i) seek appropriate relief from the Court, including injunctive relief to compel performance pursuant to the existing Vendor Agreement; (ii) declare the payment of the applicable claim a voidable postpetition transfer pursuant to section 549(a) of the Bankruptcy Code (or otherwise) that the Debtors may recover from such Foreign Vendor or Lien Claimant in cash or in goods; and (iii) demand that the Foreign Vendor or Lien Claimant immediately return such payment(s) in respect of its claim to the extent the aggregate amount of such payment(s) exceeds the postpetition obligations then outstanding without giving effect to alleged setoff rights, recoupment rights, adjustments or setoffs of any type whatsoever, and the Foreign Vendor’s or Lien Claimant’s claim shall be reinstated in such an amount as to restore the Debtors and the Foreign Vendor or Lien Claimant to their original positions, as if the agreement had never been entered into and the payment of the claim had not been made. In sum, the Debtors have the ability, in the event of a breach of a Vendor Agreement, to return the parties to their positions immediately before the entry of the Order.
- e. Vendor Payment List: The Debtors shall maintain a summary list of all payments to Foreign Vendors and Lien Claimants and shall provide, on a monthly basis, updated copies of such list to the Office of the United States Trustee for the District of Delaware, counsel to the agent for the Debtors’ proposed postpetition secured lenders, counsel to the agents for the Debtors’ prepetition lenders and counsel to any statutory committee appointed in these chapter 11 cases.



**Exhibit 2 to Exhibit A**

**Vendor Agreement**

\_\_\_\_\_, 2013

TO: [Foreign Vendor or Lien Claimant]  
[Name]  
[Address]

Dear [Foreign Vendor or Lien Claimant]:

On February 28, 2013 (the "**Petition Date**"), Conexant Systems, Inc. and certain of its affiliates (collectively, the "**Company**" or the "**Debtors**") filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the "**Bankruptcy Code**") in the United States District Court for the District of Delaware (the "**Bankruptcy Court**").

On the Petition Date, the Debtors requested the Bankruptcy Court's authority but not direction to pay certain suppliers or service providers in recognition of the importance of our relationship with such suppliers and service providers. The Bankruptcy Court entered an order authorizing this relief on \_\_\_\_\_, 2013, a copy of which is enclosed herewith (the "**Order**").

In accordance with the Order, the Debtors are prepared to enter into this vendor agreement (this "**Agreement**") in accordance with the following terms:

1. The estimated balance of the prepetition claim (net of any setoffs, credits or discounts) that is due and owing is \$ \_\_\_\_\_ (the "**Claim**").

2. The Debtors hereby agree to pay \$ \_\_\_\_\_ on account of the Claim (the "**Claim Payment**"), subject to the terms and conditions set forth herein, [it being understood that the remaining amount of your Claim against the Debtors shall be forever released and waived].

3. In consideration of the Claim Payment, you agree to continue providing and/or supplying goods or services to the Company based on acceptable and customary trade terms (the "**Customary Trade Terms**"), it being understood that the Customary Trade Terms shall be no less favorable than those trade terms provided by each such Critical Vendor to the Debtors before the Petition Date. For purposes of this Agreement, Customary Trade Terms consist of those terms provided [in the agreement attached hereto as **Exhibit A** and/or the following terms and conditions:].

4. You agree to continue providing and/or supplying goods or services to the Company pursuant to the Customary Trade Terms for at least 18 months following the effective date of a plan of reorganization in the Debtors' chapter 11 cases.

5. The Claim Payment may only be made upon execution of this Agreement by a duly authorized representative of your company. Your execution of this Agreement and the return of same to the Debtors constitute an agreement by you and the Debtors. You agree to be

bound by the terms of this Agreement and you submit to the jurisdiction of the Bankruptcy Court in connection with any enforcement of this Agreement. You further agree and/or represent:

- a. to the Customary Trade Terms and, subject to the reservations contained above, to the amount of the claim set forth above;
- b. that, from and after the effective date of this agreement you will continue to supply the Debtors with goods or services, as applicable, pursuant to the Customary Trade Terms and that the Debtors will pay for such goods in accordance with Customary Trade Terms;
- c. that you have reviewed the terms and provisions of the Order and Agreement and that you consent to be bound by such terms and provisions; and
- d. that you agree to not file or otherwise assert against the Debtors or their assets any lien (regardless of the statute or other legal authority upon which such lien is asserted) or seek payment for reclamation claims in any way related to prepetition amounts allegedly owed to you by Debtors arising from agreements, written or otherwise, entered into before the Petition Date.

6. Notwithstanding the foregoing, if you receive the Claim Payment from the Debtors and you do not extend to the Debtors all Customary Trade Terms, or fail to perform in accordance with any of the terms and provisions of this Agreement, you are required to return the Claim Payment to the Reorganized Debtors and the Company may take any of the remedial actions described in the Order.

7. Any dispute with respect to this Agreement and/or your participation in this payment program shall be determined by the Bankruptcy Court.

8. All terms of this Agreement (including the existence of this Agreement) are confidential between you and the Debtors.

If you have any questions about this Agreement or our financial restructuring, please do not hesitate to call (\_\_\_\_) \_\_\_\_\_ or (\_\_\_\_) \_\_\_\_\_.

Sincerely,

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

Agreed and Accepted By:

[Name of Foreign Vendor or Lien Claimant]

**Exhibit B**

**Proposed Final Order**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:	)	
	)	Chapter 11
CONEXANT SYSTEMS, INC., <i>et al.</i> , <sup>1</sup>	)	Case No. 13-10367 ( )
	)	
Debtors.	)	Joint Administration Requested
	)	
	)	<b>Related to Docket No.</b>

**FINAL ORDER AUTHORIZING THE DEBTORS TO PAY PREPETITION  
CLAIMS OF CERTAIN FOREIGN VENDORS AND LIEN CLAIMANTS**

Upon the motion (the “*Motion*”)<sup>2</sup> of the Debtors for entry of a final order (this “*Order*”) pursuant to sections 105(a), 362(b)(3), 363(b), 363(e), 546(b), 1107(a) and 1108 of the Bankruptcy Code, (a) authorizing, but not directing, the Debtors to pay prepetition Foreign Vendor Claims on a final basis up to an aggregate of \$5.6 million and prepetition claims of Lien Claimants on a final basis of up to \$55,000, all in accordance with the Procurement Policy and (b) authorizing financial institutions to receive, process, honor and pay all related checks and electronic payment requests for payment of prepetition claims of certain Foreign Vendors and Lien Claimants, all as more fully described in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334; and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and venue being proper in this District pursuant to 28 U.S.C.

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal taxpayer-identification number, are: Conexant Systems, Inc. (9439); Conexant CF, LLC (6434); Brooktree Broadband Holding, Inc. (5436); Conexant, Inc. (8218); and Conexant Systems Worldwide, Inc. (0601). The Debtors’ main corporate address is 4000 MacArthur Blvd., Newport Beach, California 92660.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Motion.

§§ 1408 and 1409; and due and proper notice of the Motion being adequate and appropriate under the particular circumstances; and the Court having entered the *Interim Order Authorizing the Debtors to Pay Prepetition Claims of Certain Foreign Vendors and Lien Claimants* [Docket No. \_\_\_\_] (the “*Interim Order*”); and a hearing or hearings having been held to consider the relief requested in the Motion (the “*Hearing*”); and upon consideration of the Hassel Declaration, the record of the Hearing and all proceedings had before the Court; and the Court having found and determined that the relief sought in the Motion is in the best interests of the Debtors’ estates, their creditors and other parties in interest, and that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and any objections to the requested relief having been withdrawn or overruled on the merits; and after due deliberation and sufficient cause appearing therefor, it is hereby ORDERED:

1. The Motion is granted to the extent provided herein.
2. The relief provided in the Interim Order, including the Procurement Policy and Vendor Agreement attached thereto as Exhibit 1 and Exhibit 2, respectively, and incorporated therein by reference, is approved on a final basis.
3. The Debtors are authorized, but not required, subject to the review procedures approved in paragraph 4 below, to pay or honor prepetition claims of Foreign Vendors and Lien Claimants pursuant to the Procurement Policy; *provided, however*, that the Debtors shall only be authorized to pay Foreign Vendor Claims up to a maximum aggregate cap of \$5.6 million and prepetition claims of Lien Claimants up to a maximum aggregate cap of \$55,000.
4. The provisions set forth in paragraph 3 of the Interim Order are incorporated herein by reference and are hereby approved on a final basis.

5. The Debtors are hereby authorized to issue postpetition checks and to make postpetition fund transfer requests to replace any prepetition checks and prepetition transfers to Foreign Vendors and Lien Claimants that may be dishonored by any bank.

6. Nothing herein shall prejudice the Debtors' rights to request additional authority to pay the prepetition claims of Foreign Vendor and Lien Claimants pursuant to this Order

7. Notwithstanding anything to the contrary contained herein, any payment to be made, or authorization contained, hereunder shall be subject to the requirements imposed on the Debtors under any approved debtor-in-possession financing facility, or budget in connection therewith, or any order regarding the use of cash collateral approved by this Court in these cases.

8. Notwithstanding the relief granted herein and any actions taken hereunder, nothing contained in this Order or any payment made pursuant to this Order shall constitute, nor is it intended to constitute, an admission as to the validity or priority of any claim against the Debtors, a waiver of the Debtors' rights to subsequently dispute such claim or the assumption or adoption of any agreement, contract or lease under section 365 of the Bankruptcy Code.

9. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.

10. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized and directed to receive, process, honor and pay all such checks and electronic payment requests when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as being approved by this Order.



11. Notwithstanding anything to the contrary contained herein, any payment to be made, or authorization contained, hereunder shall be subject to the requirements imposed on the Debtors under any approved debtor-in-possession financing facility, or budget in connection therewith approved by this Court in these cases.

12. Notwithstanding the possible applicability of Bankruptcy Rules 6004(h), 7062, 9014 or otherwise, this Order shall be immediately effective and enforceable upon its entry.

13. The Court retains jurisdiction with respect to all matters arising from or related to the interpretation or implementation of this Order.

Date: \_\_\_\_\_, 2013  
Wilmington, Delaware

\_\_\_\_\_  
United States Bankruptcy Judge

**Exhibit C**

**Hassel Declaration**

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re:	)	
	)	Chapter 11
CONEXANT SYSTEMS, INC., <i>et al.</i> , <sup>1</sup>	)	Case No. 13-10367 ( )
	)	
Debtors.	)	Joint Administration Requested
	)	

DECLARATION OF SHAWN HASSEL IN SUPPORT OF THE  
DEBTORS' MOTION FOR ENTRY OF INTERIM AND FINAL  
ORDERS AUTHORIZING THE DEBTORS TO PAY PREPETITION  
CLAIMS OF CERTAIN FOREIGN VENDORS AND LIEN CLAIMANTS

Pursuant to 28 U.S.C. § 1746, I, Shawn Hassel, hereby declare as follows under penalty of perjury:

1. I submit this declaration in support of the motion of Conexant Systems, Inc. its debtor affiliates (collectively, the "**Debtors**") for entry of an interim order (the "**Interim Order**") and a final order (the "**Final Order**"), authorizing, but not directing, the Debtors to pay or honor prepetition obligations of certain foreign vendors and lien claimants (the "**Motion**").<sup>2</sup> Except as otherwise noted herein, the facts set forth in this Declaration are based upon my personal knowledge, upon information and belief or upon information that was reviewed by me, employees of Alvarez & Marsal North America, LLC and Alvarez and Marsal Securities, LLC (collectively, "**A&M**") under my general supervision and direction, or employees of the Debtors.

2. Pursuant to the Motion, the Debtors seek permission to pay, outstanding

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal taxpayer-identification number, are: Conexant Systems, Inc. (9439); Brooktree Broadband Holding, Inc. (5436); Conexant, Inc. (8218); Conexant Systems Worldwide, Inc. (0601); Conexant CF, LLC (6434). The Debtors' main corporate address is 4000 MacArthur Blvd., Newport Beach, California 92660.

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

prepetition amounts to certain vendors and suppliers located outside of the United States and its territories that, in the Debtors' business judgment, are critical to the Debtors' business operations or may discontinue providing goods and services absent payment of their prepetition claims (collectively, the "**Foreign Vendors**," and the claims of Foreign Vendors, whether unsecured or administrative, the "**Foreign Vendor Claims**"). To ensure that the Debtors maintain access to key goods and services during these chapter 11 cases, the Debtors seek authority to remit payment on account of the Foreign Vendor Claims in an amount up to \$4.5 million within 21-days from the Petition Date. Pursuant to the Final Order, the Debtors seek the authority, but not the direction, to pay Foreign Vendor Claims in an amount up to \$5.6 million.

3. Additionally, the Debtors seek permission to pay, subject to the terms of the Interim Order, the Final Order and the Procurement Policy, outstanding prepetition amounts to both foreign and domestic third-party carriers who are in possession of the Debtors' property as of the Petition Date (collectively, the "**Lien Claimants**," and the claims of Lien Claimants, the "**Lien Claims**"). Because the Debtors will face substantial harm if the Lien Claimants move to assert their lien rights or fail to release the goods in their possession, the Debtors seek authority on an interim and final basis to remit payment to Lien Claimants up to an aggregate of \$55,000.

4. As explained herein:

- With the help of A&M and their other professionals, the Debtors have followed a comprehensive and thoughtful process to identify potential Foreign Vendors and Lien Claimants and appropriately size the amount of the relief requested.
- The Debtors will use commercially reasonable efforts to obtain agreement from Foreign Vendors and Lien Claimants to provide goods and/or services on customary trade terms (the "**Customary Trade Terms**") in accordance with a procurement policy (the "**Procurement Policy**").
- I believe that the Debtors' ability to ensure the Foreign Vendors and Lien Claimants continue to provide goods and services is vital to the success of their businesses and overall restructuring efforts.

5. I believe that payment of the Foreign Vendor Claims and Lien Claims as

described herein will be necessary to preserve operations and successfully reorganize. The need for the flexibility to pay such claims is particularly acute in the period immediately following the Petition Date. During this period, the Debtors and their advisors will be focusing on stabilizing operations and pursuing confirmation of a plan of reorganization as expeditiously as possible. At the same time, Foreign Vendors and Lien Claimants may attempt to assert their considerable leverage and stop providing goods and services, suddenly and without notice, potentially crippling operations. I firmly believe that any occurrence affecting operations could prolong the Debtors' chapter 11 cases, increase administrative expenses and jeopardize their reorganization.

#### **Professional Background**

6. I am a Managing Director of Alvarez and Marsal North America, LLC and manage its Phoenix office. I have nearly eighteen (18) years of restructuring and financial advisory experience. During my career, I have been involved in numerous out-of-court and chapter 11 restructurings involving public and private companies. I have been involved in all aspects of the reorganization process and have acted, among other roles, as Chief Restructuring Officer, Chief Operating Officer and Chief Financial Officer. My experience includes developing and negotiating complex capital structure solutions, formulating and evaluating strategic business plans, developing and implementing short-term turnaround strategies and helping companies mitigate crisis situations to manage their return to corporate viability. My notable engagements include William Lyon and Shea (market-leading homebuilders), Leiner Health Products (a leading vitamin manufacturer), as well as cases related to the semiconductor industry, including Vitesse Semiconductor, in which I served as the Chief Restructuring Officer and Chief Financial Officer and Read-Rite Corporation, which involved debt and equity financings, mergers & acquisitions, and restructurings.

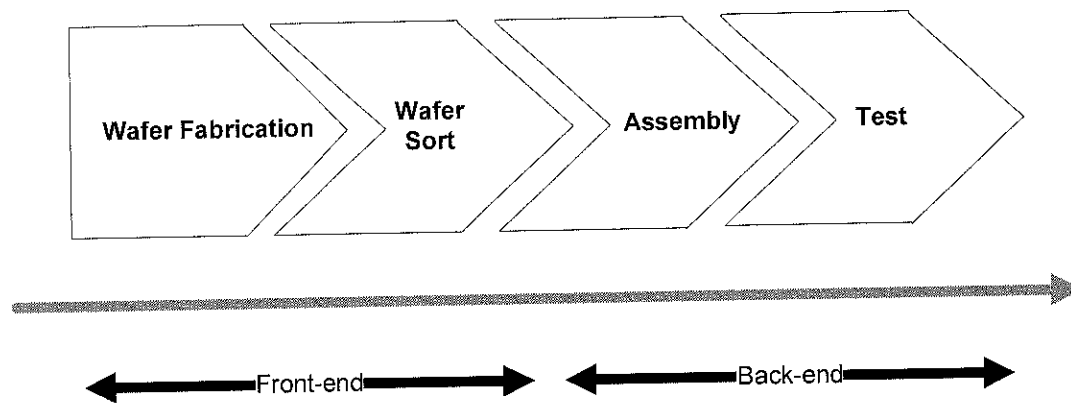
7. In September 2012, the Debtors engaged A&M to act as their advisor in

connection with the Debtors' restructuring initiatives.<sup>3</sup> Since last September, I have worked with Debtors' management and other professionals retained by the Debtors. In that process, we have become well-acquainted with the Debtors' capital structure and business operations.

### **Overview of the Debtors' Supply Chain and Relationship with Foreign Vendors**

8. The Debtors design, develop and sell semiconductor system solutions, comprised of semiconductor devices, software and reference designs for imaging, audio, embedded-modem and video application. The Debtors are a leading "fabless" semiconductor company, meaning that the Debtors outsource the fabrication of their semiconductors to third parties. This structure allows the Debtors to focus on the design, development and marketing of their products. While this business structure has greatly contributed to the Debtors' cutting-edge innovations, it leaves the Debtors particularly vulnerable to disruptions in their supply chain.

9. More specifically, the Debtors' supply chain is primarily located overseas and consists of various foundries – specialized manufacturers – that fabricate the Debtors' products. Typically, the Debtors' products are manufactured as follows:



- *Wafer Fabrication:* The Debtors receive a number of bids from foundries to fabricate wafers – slices of semiconductor material that serve as the foundation that circuits are deposited on. The Debtors select a wafer foundry and then qualify such party to produce their wafers in an

<sup>3</sup> Contemporaneously herewith, the Debtors have filed that certain *Application for Entry of an Order Authorizing the Employment and Retention of Alvarez & Marsal North America, LLC as Restructuring Advisor and Financial Advisor to the Debtors Nunc Pro Tunc to the Petition Date*.

extensive process that takes seven to eight months. Once a wafer foundry has been qualified, the Debtors seek customer sign-off on the foundry selection. These wafer foundries, once fully vetted by the Debtors and their customers, create integrated circuits on raw wafers using photolithography – a process that uses light to transfer the desired circuit pattern onto wafers through “masks” (opaque plates with transparencies that allow light to shine through, which are designed by the Debtors and manufactured by third parties).

- *Wafer Sort and Probe:* A third party vendor tests the individual circuits on the fabbed wafers (also called die) and determines the die bank (*i.e.*, the inventory of good die). Circuits are typically stored in die bank form until a customer order is received. The process of wafer fabrication and sorting is considered front-end manufacturing.
- *Assembly:* Once a customer order is received, the back-end manufacturing process begins. At this stage, the die bank are assembled into packages by qualified third party vendors. Any change in a vendor at this stage requires not only that the Debtors qualify a new vendor in a process that takes three to four months, but the issuance of a product change notice to the Debtors’ customers.
- *Test:* Finished packages are tested by third party vendors, and, if the packages meet specifications, they are sent directly to the Debtors’ customers. A change at this stage requires the Debtors qualify a new vendor in a process that takes six to eight weeks, and the issuance of a product change notice.

Notably, the Debtors do not take possession of the semiconductors at any point during the manufacturing process.

10. The Debtors’ manufacturing process is complex and is viable only if the Debtors’ vendors and suppliers have been qualified by both the Debtors and their customers. Any change in the Debtors’ supply chain will result in material delays that will have a significant impact the Debtors’ ability to operate their business.

11. The Debtors regularly transact business with Foreign Vendors in Taiwan, Korea, Singapore, China, the Philippines and Malaysia. Foreign suppliers often have confused and guarded reactions to the U.S. bankruptcy process. For example, many of these entities are unfamiliar (or uncomfortable) with the unique debtor-in-possession mechanism that is at the

heart of chapter 11. A debtor seeking to explain the chapter 11 process to a foreign vendor and convince that foreign vendor – particularly one unfamiliar with chapter 11 – to continue shipments post-petition is often greeted with a high degree of skepticism and mistrust. And there is a significant risk that the nonpayment of even a single invoice could cause a Foreign Vendor to sever its business relationship with the Debtors. Nonpayment of prepetition claims may cause Foreign Vendors to utilize extreme caution and adopt a wait-and-see attitude in approaching the unfamiliar territory of chapter 11, resulting in costly delays in the shipment of goods. The Debtors can ill afford delays of this nature.

12. In short, the vendors identified as Foreign Vendors supply goods and services that are vital to the Debtors' business operations. I believe that the authority to pay the Foreign Vendors Claims up to the maximum amount set forth herein will be necessary to preserve operations and successfully reorganize the Debtors. The need for the flexibility to pay such claims is particularly acute in the period immediately following the Petition Date. At this juncture, the Debtors and their advisors, including A&M, will be focusing on stabilizing operations and moving quickly to secure their plan of reorganization. At the same time, Foreign Vendors may attempt to assert their considerable leverage and stop providing goods and services, suddenly and without notice, potentially crippling the Debtors' manufacturing process. Any occurrence affecting operations could prolong the Debtors' chapter 11 cases, increase administrative expenses and jeopardize their reorganization.

### **The Lien Claimants**

13. The Debtors require the delivery of goods on a regular basis for the production and distribution of their finished products throughout the world. The Debtors' business operations rely on their ability to distribute finished goods in a timely fashion. To maintain their operations and efficiently transport products, the Debtors employ an extensive distribution



network that uses both foreign and domestic third-party carriers who are in current possession of the Debtors' property as of the Petition Date. It is my understanding that these carriers will, in certain circumstances, have a lien on the goods in their possession that secures the charges or expenses incurred in connection with the transportation of the goods. If the Lien Claimants' claims are not satisfied, they may refuse to release the Debtors' property, thereby disrupting the Debtors' product flow and operations.

14. The Lien Claimants fall into the following general categories:

- *Shippers*: The Debtors' distribution network depends upon the use of reputable domestic and foreign common carriers, truckers, rail carriers, barge owners and dockers (collectively, the "*Shippers*") to deliver goods to the Debtors' production facilities and distribute products to the Debtors' customers. The services provided by the Shippers are essential to the Debtors' daily operations. At any given time, there are numerous shipments of products at various points in production or to the Debtors' customers. Thus, it is a certainty that some of the Shippers are currently in possession of the Debtors' property. The delivery of these goods is vital to maintaining the Debtors' operations during their transition into, and ultimately their emergence from, chapter 11. If the Debtors do not pay the prepetition, ordinary course obligations owed to these Shippers, the Shippers may refuse to deliver or release such property, thereby disrupting the Debtors' business operations.
- *Warehousemen*: The Debtors store products at facilities owned by other parties (the "*Warehousemen*"). In the event that the Debtors fail to remit payment owed to the Warehousemen before the Petition Date, the Warehousemen may refuse to release the goods they retain pending satisfaction of all or a portion of their claims, thereby disrupting the Debtors' operations.
- *Processors*: The Debtors also rely on third-party processors to manufacture or finish goods according to the Debtors' detailed specifications (the "*Processors*"). At any given time, the Processors may be performing services on, and therefore be in possession of, the Debtors' works in process and finished goods. Accordingly, the Debtors' failure to satisfy payment obligations to the Processors would result in the Processors' refusal to return the Debtors' goods, thereby disrupting the Debtors' business operations.

#### **The Debtors' Identification of Foreign Vendors and Lien Claimants**

15. The identification of the potential Foreign Vendors and Lien Claimants has been

the culmination of a detailed review of the Debtors' business operations and trade creditor base. The Debtors, together with their advisors (including A&M), spent more than two months before the Petition Date reviewing and analyzing their books and records, and consulting operations management and personnel in each of their business divisions, to identify certain critical business relationships, the disruption of which would impair the Debtors' ability to continue as a going concern. As part of this process, the Debtors and their professionals rigorously scrutinized their open accounts and approximately trade payables and considered a variety of factors to identify creditors that potentially could be designated as Foreign Vendors and Lien Claimants, including the following:

- a. whether there would be a disruption to the Debtors' business associated with a long lead time in finding a replacement vendor that could meet the Debtors' needs;
- b. whether the vendor is an integral part of the Debtors' well-established, coordinated production and supply process;
- c. whether a particular vendor is a "sole source" vendor;
- d. whether there are alternative vendors who could provide similar goods or services on better (or equal) terms and price;
- e. whether certain quality and customer specifications would prevent the Debtors from obtaining a vendor's products or services from alternative sources;
- f. whether the Debtors have sufficient inventory to continue operations while a replacement vendor, if any, could be located;
- g. whether the failure to pay amounts owed would cause the Debtors to incur higher costs or cause the Debtors to lose significant sales or profit margin;
- h. whether an agreement exists that would compel the vendor to maintain its commercial relationship with the Debtors and, if so, whether the enforcement thereof could be accomplished in a timely and cost-efficient manner without unduly disrupting the Debtors' business;
- i. whether the goods or materials supplied by the vendor are in short capacity and, thus, whether the vendor in question is vital to the

Debtors' ability to obtain sufficient quantities of the goods or materials necessary for production;

- j. whether a vendor operates outside the domestic United States such that it may be less likely to continue to work with the Debtors during the chapter 11 cases;
- k. whether a vendor will have a lien on the Debtors' goods in their possession that secured the charges or expenses incurred in connection with the transportation of the goods;
- l. whether a vendor satisfying the foregoing criteria is able or likely to refuse to ship products to the Debtors postpetition in the event that its prepetition balances are not paid; and
- m. whether a vendor meeting the foregoing criteria might face liquidity constraints in the event its prepetition balances are not paid within a short period of time after the Petition Date.

16. At the core of this analysis is the Debtors' need to maintain a seamless and well-coordinated supply and production chain postpetition. Crucial to the Debtors' supply chain are the Debtors' strategic partnerships with existing third-party vendors and suppliers that provide the Debtors with goods and services. The Debtors' manufacturing process is complex and is viable only if the Debtors' vendors and suppliers have been qualified by both the Debtors and their customers. Any change in the Debtors' supply chain, which is primarily located overseas, disrupts the careful coordination contemplated with each production line and will materially impact the Debtors' ability to operate their business.

17. Importantly, the Debtors did not include in the classification of potential Foreign Vendors and Lien Claimants those parties who are subject to a prepetition contract because those counterparties are compelled to perform after the Petition Date.

#### **The Debtors' Proposed Procurement Policy**

18. The Debtors seek authority to pay prepetition claims of Foreign Vendors and Lien Claimants solely to the extent that such payments are necessary on a postpetition basis to ensure that a particular vendor continues to provide necessary goods and services to the Debtors, up to a

maximum of \$4.5 million to Foreign Vendors pursuant to the Interim Order and \$5.6 million to Foreign Vendors pursuant to the Final Order and up to a maximum of \$55,000 to Lien Claimants.

19. To further ensure that the Debtors' business operations will be minimally impacted during these chapter 11 cases, the Debtors will use commercially reasonable efforts to obtain agreement from Foreign Vendors and Lien Claimants to provide goods and/or services on Customary Trade Terms in accordance with the Procurement Policy annexed as Exhibit 1 to Exhibit A attached to the Motion. The Debtors will endeavor to ensure that the Customary Trade Terms will be no less favorable than those trade terms provided by each Foreign Vendor and Lien Claimant to the Debtors as of the Petition Date.

20. The Debtors have also incorporated a mechanism to provide information regarding actual Foreign Vendor and Lien Claimant payments on a confidential basis to the United States Trustee for the District of Delaware. The Debtors believe this measured process further justifies the relief requested herein, and will help ensure that the relief sought in the Interim Order and the Final Order maximizes the value of the Debtors' estates for all stakeholders.

21. In sum, payment of Foreign Vendor Claims and Lien Claims is essential to continue the uninterrupted supply of goods and services on Customary Trade Terms that directly affect the viability of the Debtors' ongoing day-to-day operations. Indeed, the Debtors only seek to pay the claims of Foreign Vendors and Lien Claimants where non-payment would likely lead to the interruption of the delivery of goods and services or would seriously disrupt the Debtors' operations.

22. I am informed that the Debtors have sufficient availability of funds to pay the amounts described herein in the ordinary course of business by virtue of cash reserves, expected

cash flows from ongoing business operations and anticipated access to debtor in possession financing. Also, under the Debtors' existing cash management system, I understand that checks or wire transfer requests can be readily identified as relating to an authorized payment made to a Foreign Vendor or Lien Claimant. Accordingly, I understand that checks or wire transfer requests, other than those relating to authorized payments, will not be honored inadvertently and that all applicable financial institutions should be authorized, when requested by the Debtors, to receive, process, honor and pay any and all checks or wire transfer requests with respect to the Foreign Vendor Claims and Lien Claims.

*[Remainder of page intentionally left blank.]*

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

Executed on: February 28, 2013

By:

/s/ Shawn Hassel

Shawn Hassel

Managing Director

Alvarez & Marsal North America, LLC