

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

**In re**

**CONEXANT SYSTEMS INC., *et al.*,<sup>1</sup>**

**Reorganized Debtor.**

**Chapter 11**

**Case No. 13-10367 (MFW)**

**Hearing Date: January 9, 2014 at 11:30 a.m. (ET)**

**Objection Deadline: January 2, 2014 at 4:00 p.m. (ET)**

**MOTION FOR ORDER (A) ENFORCING CONFIRMATION ORDER,  
(B) HOLDING JONATHAN Y. YI IN CONTEMPT, AND  
(C) IMPOSING SANCTIONS FOR WILLFUL VIOLATION OF CONFIRMATION  
ORDER'S DISCHARGE, EXCULPATION AND INJUNCTION PROVISIONS**

Conexant Systems, Inc. ("Conexant"), hereby files this Motion (the "Motion") for entry of an Order (a) enforcing this Court's Confirmation Order (as defined below), (b) holding Jonathan Y. Yi in contempt, and (c) imposing sanctions for willful violation of the discharge, exculpation and injunction provisions imposed by the Confirmation Order. In support of the Motion, Conexant states as follows:

**Jurisdiction**

1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334 and Article XI of the Plan. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicates for the relief requested herein are sections 105 and 1142 of title 11 of the United States Code, 11 U.S.C. § 101 *et seq.* (the "Bankruptcy Code") and Rule 9020 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

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<sup>1</sup> The Reorganized Debtor in this case, along with the last four digits of the Reorganized Debtor's federal tax identification number is Conexant Systems, Inc. (9439). The Reorganized Debtor's main corporate address is 4000 MacArthur Blvd., Newport Beach, California 92660. The chapter 11 cases of the Reorganized Debtor's affiliated debtors have been closed.

### Case Background

3. On February 28, 2013, each of the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code (the “Chapter 11 Cases”). Information regarding the Debtors’ businesses, their capital and debt structure, and the events leading to the filing of these Chapter 11 Cases is contained in the *Declaration of Sailesh Chittipeddi, President and CEO of Conexant Systems, Inc., In Support of Chapter 11 Petitions and First Day Pleadings* [Docket No. 3].

4. On April 19, 2013, the Debtors filed the *Second Modified Joint Plan of Reorganization of Conexant Systems, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 206] (the “Plan”).<sup>2</sup>

5. On May 13, 2013, the Debtors filed the *Plan Supplement to the Second Modified Joint Plan of Reorganization of Conexant Systems, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 241], and on May 24, 2013, the Debtors filed the *First Supplement to the Plan Supplement to the Second Modified Joint Plan of Reorganization of Conexant Systems, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 262].

6. On June 6, 2013, the Court entered its *Findings of Facts, Conclusions of Law, and Order Confirming the Second Modified Joint Plan of Reorganization of Conexant Systems, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* (the “Confirmation Order”) [Docket No. 287].

7. The Plan’s Effective Date occurred on July 12, 2013. [Docket No. 322].

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

**Jonathan Y. Yi Background**

8. On May 17, 2013, Jonathan Y. Yi (“Mr. Yi”) filed Claim No. 141 (the “Yi Claim”) as a general unsecured claim in the amount of \$87,000,000.00 for damages from future loss and personal injury. A copy of the Yi Claim is attached hereto as **Exhibit A**.

9. On June 24, 2013, nearly three weeks after the Confirmation Order was entered, Mr. Yi sent a letter (the “Yi Letter”) to BMC Group, Inc., the claims agent in these cases, purportedly objecting to the Plan. A copy of the Yi Letter is attached hereto as **Exhibit B**.

10. On October 16, 2013, the Trustee (the “Liquidating Trustee”) of the Conexant Liquidating Trust filed an objection (the “Yi Claim Objection”) to the Yi Claim [Docket No. 382]. The Yi Claim Objection is scheduled for hearing before this Court on January 9, 2014 at 11:30 a.m.

11. On November 15, 2013, Mr. Yi filed a Complaint (the “California Complaint”) against Conexant in the Superior Court of California, Orange County (the “California Court”). A copy of the California Complaint is attached hereto as **Exhibit C**. The California Complaint seeks damages of \$195,000,000.00 based on alleged causes of action for (1) Breach of Contract, and (2) Common Counts. Mr. Yi’s breach of contract count is based not on a contract with Conexant, but rather on the “Internal Guiding rules of Delaware Bankruptcy Court proceedings.”

12. On December 12, 2013, Conexant filed a Demurrer (the “Demurrer”) to the California Complaint, generally and specifically demurring to the causes of action alleged therein, including on the grounds that the California Court has no subject matter jurisdiction because this Court has exclusive jurisdiction. A copy of the Demurrer is attached hereto as **Exhibit D**. A hearing before the California Court on Conexant’s Demurrer is scheduled for January 31, 2014 at 2:00 p.m.

**DISCHARGE, EXCULPATION, INJUNCTION AND RETENTION OF JURISDICTION**

13. Both the Plan and the Confirmation Order contain broad provisions discharging claims against the Debtors, exculpating the Debtors for claims related to the administration of these cases, and enjoining claimants from pursuing such claims. This Court by the Confirmation Order retained exclusive jurisdiction to adjudicate disputes over and enforce those provisions.

**Discharge Provisions**

14. Article VIII.B of the Plan, titled “Discharge of Claims and Termination of Interests,” provides in relevant part,

Pursuant to section 1141(d) of the Bankruptcy Code, and except as otherwise specifically provided in the Plan or in any contract, instrument or other agreement or document created pursuant to the Plan, the distributions, rights and treatment provided in the Plan shall be in complete satisfaction, discharge and release, effective as of the Effective Date, of Claims ... Interests and Causes of Action of any nature whatsoever ... whether known or unknown, against, liabilities of, Liens on, obligations of, rights against, and Interests in, the Debtors or any of their assets or properties ... **The Confirmation Order shall be a judicial determination of the discharge of all Claims and Interests subject to the Effective Date occurring.** (emphasis added)

15. Likewise, the Confirmation Order, at paragraph 106, titled “Discharge of Claims and Termination of Interests,” provides that “As provided in Article VIII.B of the Plan, pursuant to section 1141(d) of the Bankruptcy Code and except as otherwise specifically provided in the Plan, herein or in any contract, instrument or other agreement or document created pursuant to the Plan, the provision in the Plan with respect to the discharge of Claims and termination of Interests is approved in all respects. **This Confirmation Order shall constitute a judicial determination of the discharge of all Claims and Interests subject to the occurrence of the Effective Date.**” (emphasis added)

### **Exculpation Provisions**

16. The Plan at Article VIII.G includes a broad exculpation provision that exculpates the Debtors, among others, for claims arising from the administration of these cases.

It provides, in relevant part:

EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED IN THE PLAN OR PLAN SUPPLEMENT, NO EXCULPATED PARTY SHALL HAVE OR INCUR, AND EACH EXCULPATED PARTY IS HEREBY RELEASED AND EXCULPATED FROM ANY EXCULPATED CLAIM, OBLIGATION, CAUSE OF ACTION OR LIABILITY FOR ANY EXCULPATED CLAIM, EXCEPT FOR GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

17. The term “Exculpated Parties” is defined to include the Debtors. See Plan at Article I.50; Confirmation Order at ¶ 38.<sup>3</sup> The term “Exculpated Claim” means, in relevant part:

any Claim related to any act or omission derived from, based upon, related to or arising from the Chapter 11 Cases, formulation, preparation, dissemination, negotiation or filing of the Disclosure Statement, the Plan (including any term sheets related thereto) or any contract, instrument, release or other agreement or document created or entered into in connection with the Disclosure Statement, the Plan, the filing of the Chapter 11 Cases, the pursuit of Consummation and the administration and implementation of the Plan ...

18. The Confirmation Order, at paragraph 110, provides that “As provided for in Article VIII.G of the Plan and as amended herein and except as otherwise provided for in the Plan, as of the Effective Date, the Exculpation is approved and authorized in all respects.”

### **Injunction Provisions**

19. The Plan also provided for a broad injunction of actions based on claims released and discharged. Article VIII.H of the Plan provides in relevant part,

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<sup>3</sup> Paragraph 38 of the Confirmation Order revised the definition of “Exculpated Party” but in ways not relevant to this Motion.

FROM AND AFTER THE EFFECTIVE DATE, ALL ENTITIES ARE PERMANENTLY ENJOINED FROM COMMENCING OR CONTINUING IN ANY MANNER, ANY CAUSE OF ACTION RELEASED OR TO BE RELEASED PURSUANT TO THE PLAN OR THE CONFIRMATION ORDER.

\* \* \*

EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THE PLAN, THE PLAN SUPPLEMENT OR RELATED DOCUMENTS, OR IN OBLIGATIONS ISSUED PURSUANT TO THE PLAN, ALL ENTITIES WHO HAVE HELD, HOLD OR MAY HOLD CLAIMS OR INTERESTS ... DISCHARGED PURSUANT TO ARTICLE VIII.B ... ARE PERMANENTLY ENJOINED FROM AND AFTER THE EFFECTIVE DATE, FROM TAKING ANY OF THE FOLLOWING ACTIONS: (1) COMMENCING OR CONTINUING IN ANY MANNER ANY ACTION OR OTHER PROCEEDING OF ANY KIND ON ACCOUNT OF OR IN CONNECTION WITH OR WITH RESPECT TO ANY SUCH CLAIMS OR INTERESTS

\* \* \*

THE RIGHTS AFFORDED IN THE PLAN AND THE TREATMENT OF ALL CLAIMS AND INTERESTS SHALL BE IN EXCHANGE FOR AND IN COMPLETE SATISFACTION OF CLAIMS AND INTERESTS OF ANY NATURE WHATSOEVER ... ON THE EFFECTIVE DATE, ALL SUCH CLAIMS AGAINST THE DEBTORS SHALL BE FULLY RELEASED AND DISCHARGED, AND THE INTERESTS SHALL BE CANCELLED.

20. The Confirmation Order, at paragraph 111, provides that “From and after the Effective Date, and as contemplated in Article VIII.H of the Plan, the Injunction shall be in full force and effect.”

#### **Retention of Jurisdiction**

21. Finally, the Plan at Article XI provides for this Court’s retention of exclusive jurisdiction over “all matters arising out of, or related to, the Chapter 11 Cases and the Plan pursuant to sections 105 and 1142 of the Bankruptcy Code,” including jurisdiction to:

7. enter and implement such orders as may be necessary or appropriate to execute, implement or consummate the provisions

of the Plan and all contracts, instruments, releases, indentures and other agreements or documents created in connection with the Plan, the Plan Supplement or the Disclosure Statement;

\* \* \*

10. issue injunctions, enter and implement other orders, or take such other actions as may be necessary or appropriate to restrain interference by any Entity with Consummation or enforcement of the Plan.

11. resolve any cases, controversies, suits, disputes or Causes of Action with respect to the releases, injunctions and other provisions contained in Article VIII, and enter such orders as may be necessary or appropriate to implement such releases, injunctions and other provisions.”

\* \* \*

21. hear and determine all disputes involving the existence, nature, scope or enforcement of any exculpations, discharges, injunctions and releases granted in connection with and under the Plan, including under Article VIII.

22. The Confirmation Order, at paragraph 135, provides that “Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, on and after the Effective Date, the Bankruptcy Court shall retain exclusive jurisdiction over all matters arising out of, or related to, the Chapter 11 Cases and the Plan pursuant to Article XI of the Plan.

### **RELIEF REQUESTED**

23. By this Motion, Conexant seeks entry of an Order (i) enforcing the discharge, exculpation, and injunction provisions of the Plan and Confirmation Order, (ii) requiring Mr. Yi to voluntarily dismiss the California Complaint with prejudice, and (iii) if Mr. Yi does not voluntarily dismiss the California Complaint by the objection deadline set for this Motion, finding Mr. Yi in contempt and issuing sanctions against Mr. Yi by awarding Conexant

its costs (including attorneys' fees) incurred in preparing and prosecuting this Motion and responding to the California Complaint.

### **Enforcement of Confirmation Order**

24. This Court has the inherent power to enforce its own order. *In re Continental Airlines, Inc.*, 236 B.R. 318, 325–26 (Bankr. D. Del. 1999), *aff'd*, 279 F.3d 226 (3d Cir. 2002) (citations omitted); see also FED. R. BANKR. P. 3020(d) (“[n]otwithstanding the entry of the order of confirmation, the court may issue any other order necessary to administer the estate.”). Bankruptcy Code section 105(a) provides that a bankruptcy court is authorized to issue any order, process or judgment necessary to carry out the provisions of the Bankruptcy Code, and “gives the bankruptcy court ‘the power and the jurisdiction to enforce its valid orders.’” *In re Marcus Hook Dev. Park, Inc.*, 943 F.2d 261, 266 (3d Cir. 1991) (quoting *In re Radco Merch. Servs., Inc.*, 111 B.R. 684, 688–89 (N.D. Ill. 1990)); 11 U.S.C. § 105(a). In the exercise of this authority, courts have inherent powers to enforce compliance with and execution of their lawful orders. *See, e.g., Continental Airlines*, 236 B.R. at 331 (finding creditors in contempt of plan and confirmation order and awarding debtor attorneys' fees and costs); *In re Kennedy*, 80 B.R. 673 (Bankr. D. Del. 1987) (finding party in contempt of court order and awarding attorneys' fees incurred in bringing motion for contempt).

25. In the context of enforcing a confirmed plan, section 1142(b) of the Bankruptcy Code permits the court to order performance of the plan:

(b) The court may direct the debtor and any other necessary party to execute or deliver or to join in the execution or delivery of any instrument required to effect a transfer of property dealt with by a confirmed plan, and to perform any other act, including the satisfaction of any lien, that is necessary for the consummation of the plan.

11 U.S.C. § 1142(b); *Pioneer Liquidating Corp. v. U.S. Trustee (In re Consol. Pioneer Mortgage Entities)*, 248 B.R. 368, 384 (B.A.P. 9th Cir. 2000) (“the Code gives the bankruptcy court



authority to ‘direct the debtor and any other necessary party’ to perform any act necessary to consummate the plan, and ‘to issue any order, process or judgment that is necessary or appropriate to carry out the provisions’ of the Code.”) (citing 11 U.S.C. §§ 105(a) and 1142(b)). “Subsection (b) implicitly contemplates a creditor, shareholder, or other party affected by the plan moving for an order which triggers the court’s authority to direct a recalcitrant debtor or other party to perform acts necessary to consummate the plan.” *Harlow v. Palouse Producers, Inc.* (*In re Harlow Props., Inc.*), 56 B.R. 794, 798 (B.A.P. 9th Cir. 1985).

26. Indeed, a bankruptcy court has “broad power” under section 1142(b) to enforce the terms of a confirmed plan and to ensure that the plan is being implemented consistent with the terms of the plan. *See Gordon Sel-Way, Inc. v. United States (In re Gordon Sel-Way, Inc.)*, 270 F.3d 280, 289 (6th Cir. 2001) (“[S]everal courts have held that 11 U.S.C. § 1142 provides bankruptcy courts with broad power to enforce the terms of a confirmed plan.”); *see also Hillis Motors, Inc. v. Haw. Auto. Dealers’ Ass’n*, 997 F.2d 581, 587 n.11 (9th Cir. 1993) (“Regardless of any plan provision, a bankruptcy court has statutory jurisdiction under 11 U.S.C. § 1142(b) to ensure that any act necessary for the consummation of the plan is carried out and it has continuing responsibilities to satisfy itself that the plan is being properly implemented.”) (citations omitted).

27. As set forth above, both the Plan and the Confirmation Order discharge claims against Debtors and exculpate the Debtors from claims related to the administration of these cases, other than for gross negligence or willful misconduct. The allegations that form the basis of Mr. Yi’s California Complaint appear to be based on a pre-petition claim Mr. Yi asserts against Conexant, and apparently on the impact of these bankruptcy proceedings on that claim. As such the claim was clearly and unequivocally discharged under Article VIII.B of the Plan and paragraph 106 of the Confirmation Order. To the extent it relates to the impact of the bankruptcy

proceedings on his claim, it was released and the Debtors are exculpated pursuant to Article VIII.G of the Plan and paragraph 110 of the Confirmation Order. Likewise, Article VIII.H of the Plan and paragraph 111 of the Confirmation Order enjoined further pursuit of such released claims. Mr. Yi's filing of the California Complaint asserting damages based on a pre-petition claim discharged under the Plan, and the effect of these bankruptcy proceedings upon that claim, violates the Confirmation Order's discharge, exculpation, and injunction provisions.

28. Although its allegations are unclear, there is no question that Mr. Yi's California Complaint arises fully and directly out of Conexant's Chapter 11 case. The breach of contract allegations of the California Complaint are ambiguous to the point of being nearly unintelligible, but it is clear that Mr. Yi does not allege the existence of a written contract with Conexant on which his \$195 million damage claim is based. Rather, the contract on which the action is based is described as the "Internal Guiding rules of Delaware Bankruptcy Court proceedings." The essence of the California Complaint appears to be based on Mr. Yi's objection to the "reclassification" of his claim by this Court, and the allegation that this Court ignored his objection to the Plan.<sup>4</sup>

29. Exhibit A to the California Complaint makes a series of disjointed allegations related to Conexant's pre-petition ownership structure, and states that "[t]his long standing case is one of the bankruptcy court claims, only to find out it was soon reclassified and cornered into a lot of residual pools of monies." California Complaint, Ex. A. Mr. Yi also asks the California Court "to aid us in sorting out where have all the monies allocated for this case have had gone to [sic]." Id. Mr. Yi claims "monetary damages of \$87MM + \$87MM + \$21MM

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<sup>4</sup> As noted above, Mr. Yi's purported objection came in the form of a letter written to the Debtors' claim agent almost three weeks after the Confirmation Order was entered, and therefore was both hopelessly late and procedurally improper.

= \$195 Million.” Id. Although Mr. Yi does not explain this damage calculation, it appears that it relates to the \$87 million claim Mr. Yi filed by Claim 141 in the Debtors’ bankruptcy cases.<sup>5</sup>

30. The claims asserted in the California Complaint were released, discharged and enjoined under the Plan and Confirmation Order, and this Court retained exclusive jurisdiction to hear any and all claims related to the discharge, exculpation and injunctive provisions of the Plan. Pursuant to the Court’s inherent power to enforce its own orders, this Court should order Mr. Yi to voluntarily dismiss the California Complaint with prejudice. Allowing Mr. Yi to proceed would contravene the Confirmation Order’s provisions regarding discharge, exculpation and injunction.

31. If Mr. Yi is asserting a claim based on the acts or procedures of this Court, both the Plan and the Confirmation Order retain this Court’s exclusive jurisdiction to hear matters arising from Conexant’s bankruptcy case. To the extent they are even proper, and Conexant submits that they are not, Mr. Yi’s asserted claims related to this Court’s “reclassification” of his claim against Conexant, and the handling of his late-filed and procedurally improper objection must proceed before this Court pursuant to the Plan and Confirmation Order.

### **Contempt and Sanctions**

32. It is well-settled that bankruptcy courts have the power to issue civil contempt orders where parties have violated an order of the court. *See, e.g. Nisselson v. Empyrean Inv. Fund, L.P. (In re Marketxt Holdings Corp.)*, 2006 Bankr. LEXIS 3951, at \*5

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<sup>5</sup> It should be noted that even if Mr. Yi’s claim in this case is allowed in full or in part, any recovery will be a fractional share of the \$2.9 million General Unsecured Claims Recovery Pool (as defined in the Plan). The California Complaint filed in violation of the Confirmation Order therefore seeks damages roughly 65 times the funds available to pay all allowed unsecured claims.

(Bankr. S.D.N.Y. Jan. 27, 2006) (“It is well accepted, in list of the 2001 amendments to Rule 9020, that bankruptcy courts have power to enter civil contempt orders.”).

33. Imposition of a civil contempt order by a bankruptcy court requires a showing of two elements: (1) the existence of a clear, specific, enforceable order or statute unambiguously commanding a party to perform or refrain from performing certain acts; and (2) such party’s non-compliance with the order or statute. *In re Keane*, 110 B.R. 477, 482-83 (S.D. Cal. 1990); *In re Andrus*, 184 B.R. 311, 315 (Bankr. N.D. Ill. 1995), *aff’d*, 189 B.R. 413 (N.D. Ill. 1995).

34. Here both elements for the Court to enter a civil contempt order exist because (a) the Confirmation Order clearly prohibits actions based on a claim discharged under the Plan, and (b) Mr. Yi violated the Confirmation Order by filing the California Complaint seeking damages based on a released and discharged claim. Furthermore, as indicated by his untimely and improper objection to the confirmed Plan, Mr. Yi’s violation was knowing and willful, and he was clearly aware of the Plan and Confirmation Order when filing the California Complaint. If Mr. Yi has not voluntarily dismissed the California Complaint prior to the objection deadline on this Motion, Mr. Yi should be found in contempt and should be sanctioned in an amount not less than Conexant’s costs (including attorneys’ fees) in preparing, filing and prosecuting this Motion and otherwise responding to the California Complaint.

**NOTICE**

35. Notice of this Motion has been given to (a) Mr. Yi, (b) the United States Trustee, (c) the Liquidating Trustee, and (d) all parties requesting notice pursuant to Bankruptcy Rule 2002. Conexant submits that such notice is adequate and proper and respectfully submit that no other or further notice is necessary or required. No prior motion for the relief sought herein has been made to this or any other court.

WHEREFORE, Conexant requests that this Court enter the Order, substantially in the form attached hereto as **Exhibit E**, (a) enforcing this Court's Confirmation Order (b) if he has not voluntarily dismissed the California Complaint prior to the objection deadline stated in the caption of this Motion, holding Mr. Yi in contempt and imposing sanctions for willful violation of the injunction imposed by the Confirmation Order, and (c) granting such other and further relief as may be just and proper.

Dated: December 19, 2013  
Wilmington, Delaware

Respectfully submitted,

Pepper Hamilton LLP

/s/ Michael J. Custer

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