

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

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

**DEBTORS' APPLICATION FOR ENTRY OF AN
ORDER PURSUANT TO 28 U.S.C. §156(c) AUTHORIZING THE
EMPLOYMENT AND RETENTION OF BMC GROUP, INC. AS CLAIMS AND
NOTICING AGENT, EFFECTIVE NUNC PRO TUNC TO THE PETITION DATE**

Conexant Systems, Inc. and its debtor affiliates, as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the "*Debtors*"),² 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 section 156(c) of title 28 of the United States Code (the "*Judicial Code*"), section 503(b) of the Bankruptcy Code, Rules 2002-

¹ 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

² 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*").

1(f) and 9013-1(m) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “*Local Rules*”) and the Court’s *Protocol for the Employment of Claims and Noticing Agents under 28 U.S.C. § 156(c)*, instituted by the Clerk on February 1, 2012 (the “*Claims Agent Protocol*”).

Relief Requested

4. By this application (the “*Application*”), the Debtors request entry of an order, substantially in the form attached hereto as **Exhibit A** (the “*Order*”), (a) authorizing the Debtors to employ and retain BMC Group, Inc. (“*BMC*”) as notice and claims agent in these chapter 11 cases, pursuant to the terms and conditions set forth in the services agreement between the Debtors’ and BMC dated as of February 7, 2103 (a copy of which is annexed as **Exhibit 1** to **Exhibit A** attached hereto and incorporated herein by reference) (the “*Services Agreement*”) and (b) approving the terms of BMC’s employment and the indemnification provisions set forth in the Services Agreement (as modified pursuant to this Application). In support of this application, the Debtors submit the Declaration of Tinamarie Feil, President of Client Services (the “*Feil Declaration*”), a copy of which is attached hereto as **Exhibit B**.

BMC’s Qualifications

5. The Debtors believe that they may have at least a few thousand potential creditors and parties-in-interest that must be given notice of developments related to these chapter 11 cases. With such a significant number of parties involved in these chapter 11 cases, it is likely that heavy administrative burdens will be imposed upon the Court and the Clerk of the United States Bankruptcy Court for the District of Delaware (the “*Clerk’s Office*”). To relieve the Clerk’s Office of these burdens and comply with the Local Rules, the Debtors seek to engage BMC as an independent, third-party notice and claims agent to effectively and efficiently serve

notice upon all creditors and other relevant constituencies in these chapter 11 cases, as well as transmit, receive, docket and maintain all proofs of claim and proofs of interest filed in these chapter 11 cases.

6. BMC is a claims administration firm that specializes in chapter 11 administration, consulting and analysis, including noticing, claims processing, voting and other tasks in the effective administration of chapter 11 cases. BMC has developed efficient and cost-effective methods to handle the voluminous mailings associated with chapter 11 noticing and claims processing that ensure the orderly and fair treatment of creditors, interest holders and all parties in interest. The Debtors believe that such assistance will expedite service of notices, streamline the claims administration process and enable the Debtors to focus on their reorganization efforts.

7. Further, BMC has experience working with, and will continue to work with, the Clerk's Office to ensure that BMC's services conform with all of the Court's procedures, the Local Rules and any orders entered by this Court. BMC's experience in matters of this size and complexity (or greater) in which it has acted as the official notice and claims agent in this District is extensive. *See, e.g., In re Coach AM Group Holdings Corp.*, No. 12-10010 (KG); *In re Graceway Pharmaceuticals, LLC*, No. 11-13036 (MFW); *In re Regen Biologics, Inc.*, No. 11-11083 (PJW); *In re Urban Brands, Inc.*, No. 10-13005; *In re Ultimate Escapes Holdings, Inc.*, No. 10-12915 (BLS); and (KJC); *In re W.R. Grace & Co.*, No. 01-01139 (JKF). Furthermore, BMC has acted as the official notice, claims and balloting agent in large chapter 11 cases outside this District. *See, e.g., In re Atari, Inc.*, No. 13-10176 (JMP) (Bankr. S.D.N.Y. Feb. 15, 2013) (authorizing the retention of BMC Group, Inc. as claims and noticing agent); *In re Jennifer Convertibles, Inc.*, No. 10-13779 (ALG) (Bankr. S.D.N.Y. July 22, 2010) (same).

Services Performed

8. In accordance with the terms and conditions of the Services Agreement, and in compliance with Local Rule 2002-1(f), it is anticipated that BMC will perform the services required pursuant thereto (and noted below), as well as any additional services at the request of the Debtors or the Clerk's Office.

9. Specifically, the Debtors seek to engage BMC to provide certain noticing and claims processing services, including:

- a. Prepare and serve required notices and documents in the cases in accordance with the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure (the "***Bankruptcy Rules***") in the form and manner directed by the Debtors and/or the Court, including (i) notice of the commencement of the cases and the initial meeting of creditors under Bankruptcy Code § 341(a), (ii) notice of any claims bar date, (iii) notices of transfers of claims, (iv) notices of objections to claims and objections to transfers of claims, (v) notices of any hearings on a disclosure statement and confirmation of the Debtors' plan or plans of reorganization, including under Bankruptcy Rule 3017(d), (vi) notice of the effective date of any plan and (vii) all other notices, orders, pleadings, publications and other documents as the Debtors or Court may deem necessary or appropriate for an orderly administration of the cases.
- b. Maintain an official copy of the Debtors' schedules of assets and liabilities and statement of financial affairs (collectively, "***Schedules***"), listing the Debtors' known creditors and the amounts owed thereto;
- c. Maintain (i) a list of all potential creditors, equity holders and other parties-in-interest; and (ii) a "core" mailing list consisting of all parties described in sections 2002(i), (j) and (k) and those parties that have filed a notice of appearance pursuant to Bankruptcy Rule 9010; update said lists and make said lists available upon request by a party-in-interest or the Clerk;
- d. Furnish a notice to all potential creditors of the last date for the filing of proofs of claim and a form for the filing of a

proof of claim, after such notice and form are approved by this Court, and notify said potential creditors of the existence, amount and classification of their respective claims as set forth in the Schedules, which may be effected by inclusion of such information (or the lack thereof, in cases where the Schedules indicate no debt due to the subject party) on a customized proof of claim form provided to potential creditors;

- e. Maintain a post office box or address for the purpose of receiving claims and returned mail, and process all mail received;
- f. For *all* notices, motions, orders or other pleadings or documents served, prepare and file or caused to be filed with the Clerk an affidavit or certificate of service within seven (7) business days of service which includes (i) either a copy of the notice served or the docket numbers(s) and title(s) of the pleading(s) served, (ii) a list of persons to whom it was mailed (in alphabetical order) with their addresses, (iii) the manner of service, and (iv) the date served;
- g. Process all proofs of claim received, including those received by the Clerk's Office, and check said processing for accuracy, and maintain the original proofs of claim in a secure area;
- h. Maintain the official claims register for each Debtor (the "**Claims Registers**") on behalf of the Clerk; upon the Clerk's request, provide the Clerk with certified, duplicate unofficial Claims Registers; and specify in the Claims Registers the following information for each claim docketed: (i) the claim number assigned, (ii) the date received, (iii) the name and address of the claimant and agent, if applicable, who filed the claim, (iv) the amount asserted, (v) the asserted classification(s) of the claim (*e.g.*, secured, unsecured, priority, *etc.*), (vi) the applicable Debtor, and (vii) any disposition of the claim;
- i. Implement necessary security measures to ensure the completeness and integrity of the Claims Registers and the safekeeping of the original claims;
- j. Record all transfers of claims and provide any notices of such transfers as required by Bankruptcy Rule 3001(e);

- k. Relocate, by messenger or overnight delivery, all of the court-filed proofs of claim to the offices of Claims and Noticing Agent, not less than weekly;
- l. Upon completion of the docketing process for all claims received to date for each case, turn over to the Clerk copies of the claims register for the Clerk's review (upon the Clerk's request);
- m. Monitor the Court's docket for all notices of appearance, address changes, and claims-related pleadings and orders filed and make necessary notations on and/or changes to the claims register;
- n. Assist in the dissemination of information to the public and respond to requests for administrative information regarding the case as directed by the Debtors or the Court, including through the use of a case website and/or call center.
- o. If the case is converted to chapter 7, contact the Clerk's Office within three days of the notice to Claims and Noticing Agent of entry of the order converting the case;
- p. Thirty days prior to the close of these cases, to the extent practicable, request that the Debtors submit to the Court a proposed Order dismissing the Claims and Noticing Agent and terminating the services of such agent upon completion of its duties and responsibilities and upon the closing of these cases;
- q. Within seven days of notice to Claims and Noticing Agent of entry of an order closing the chapter 11 cases, provide to the Court the final version of the claims register as of the date immediately before the close of the cases; and
- r. At the close of these cases, box and transport all original documents, in proper format, as provided by the Clerk's Office, to (i) the Federal Archives Record Administration, located at Central Plains Region, 200 Space Center Drive, Lee's Summit, MO 64064 or (ii) any other location requested by the Clerk's Office.

10. The Claims Registers shall be opened to the public for examination without charge during regular business hours and on a case-specific website maintained by BMC.

11. BMC will follow the notice and claim procedures that conform to the guidelines promulgated by the Clerk's Office, section 331 of the Judicial Code (the "*Judicial Conference of the United States*") or as it otherwise may be directed by the Court.

Professional Compensation

12. The Debtors propose to retain BMC at the rates set forth in the Services Agreement. In addition, before the Petition Date, the Debtors paid a retainer to BMC in the amount of \$10,000. The Debtors respectfully submit that BMC's rates for its notice and claims processing services are competitive and comparable to the rates charged by its competitors for similar services. The Debtors' compared BMC's engagement proposal to at least three of BMC's competitors, that are court-approved claims and noticing agents pursuant to the claims agent protocol, before engaging BMC on the terms included in the Services Agreement.

13. The Debtors respectfully request that the undisputed fees and expenses incurred by BMC in the performance of the above services be treated as administrative expenses of the Debtors' estates pursuant to 28 U.S.C. § 156(c) and 11 U.S.C. § 503(b)(1)(A) and be paid in the ordinary course of business without further application to or order of the Court. BMC agrees to maintain records of all services showing dates, categories of services, fees charged and expenses incurred, and to serve monthly invoices on the Debtors, the office of the United States Trustee, counsel for the Debtors, counsel for any official committee, if any, monitoring the expenses of the Debtors and any party-in-interest who specifically requests service of the monthly invoices.

14. If any dispute arises relating to the Services Agreement or BMC's monthly invoices, the Debtors and BMC will meet in an attempt to resolve the dispute. If a resolution is not achieved, the Debtors and BMC will seek resolution of the matter from the Court.

15. As of the Petition Date, the Debtors do not owe BMC any amounts for services rendered before the Petition Date. Although certain expenses and fees may have been incurred but not yet applied to the retainer, such amounts, if any, would be less than the balance of the retainer as of the Petition Date.

Disinterestedness

16. BMC shall not employ any past or present employee of the Debtors for work that involves the Debtors' chapter 11 cases. As disclosed in the Feil Declaration, to the best of BMC's knowledge, and except as otherwise disclosed in the Feil Declaration, BMC is a "disinterested person" within the meaning of section 101(14) of the Bankruptcy Code and neither holds nor represents an interest adverse to the Debtors' estates nor has a connection to the Debtors, their creditors or their related parties with respect to any matter for which BMC will be employed.

17. Should BMC discover any relevant facts or relationships bearing on the matters described herein, BMC will use reasonable efforts to promptly file a supplemental declaration with the Court.

18. BMC further represents that:

- a. it will not consider itself employed by the United States government and shall not seek any compensation from the United States government in its capacity as agent;
- b. by accepting employment in these chapter 11 cases, BMC waives any right to receive compensation from the United States government; and
- c. in its capacity as agent, BMC will not be an agent of the United States and will not act on behalf of the United States.

Indemnification

19. As part of the overall compensation payable to BMC under the terms of the Services Agreement, the Debtors have agreed to certain indemnification obligations as specifically enumerated in the Services Agreement, to the extent permitted by applicable law and as set forth in the Order attached hereto as **Exhibit A**.

20. The terms of the Services Agreement and indemnification provisions included therein were negotiated at arm's-length between the Debtors and BMC, and the Debtors respectfully submit that these provisions of the Services Agreement are reasonable and in the best interests of the Debtors, their estates and creditors.

21. Moreover, consistent with the practice in this jurisdiction, the Debtors requested, and BMC has agreed, that the Court approve the indemnification provisions reflected in the Services Agreement subject to the modifications set forth in the proposed order attached hereto as **Exhibit A**.

22. The Debtors believe that the proposed modifications to the indemnification provisions of the Service Agreement are appropriate under the circumstances, consistent with recent orders entered in this jurisdiction and should be approved.

Supporting Authority

23. Section 156(c) of the Judicial Code, which governs the staffing and expenses of the Court, authorizes the Court to use facilities other than the Clerk's Office for administration of chapter 11 cases:

Any court may utilize facilities or services, either on or off the court's premises, which pertain to the provision of notices, dockets, calendars, and other administrative information to parties in cases filed under the provisions of title 11, United States Code, where the costs of such facilities or services are paid for out of the assets of the estate and are not charged to the United States. The

utilization of such facilities or services shall be subject to such conditions and limitations as the pertinent circuit council may prescribe.

28 U.S.C. § 156(c).

24. In addition, Local Rule 2002-1(f) provides, in relevant part, as follows:

Notice and Claims Clerk. Upon motion of the debtor or trustee, at any time without notice or hearing, the Court may authorize the retention of a notice and/or claims clerk under 28 U.S.C. § 156(c). In all cases with more than 200 creditors or parties in interest listed in the creditor matrix, unless the Court orders otherwise, the debtor shall file such motion on the first day of the case or within seven (7) days thereafter.

Del. Bankr. L.R. 2002-1(f).

25. Accordingly, section 156(c) of the Judicial Code empowers the Court to utilize outside agents and facilities for notice and claims purposes, provided the Debtors' estates pay the cost of such services. Additionally, Local Rule 2002-1(f) requires that a debtor in a case with over 200 creditors (such as these chapter 11 cases) file a motion to retain a claims agent on the first day of the case or within seven days thereafter. Thus the Debtors retention of BMC as the notice and claims agent in these chapter 11 cases is consistent with controlling law and is in the best interests of the Debtors, their estates and creditors.

26. In view of the number of anticipated claimants and the complexity of the Debtors' businesses, the Debtors submit that the appointment of BMC as notice and claims agent is both necessary and in the best interests of the Debtors' estates and their creditors, because the Debtors will be relieved of the burdens associated with the claims and noticing services. Accordingly, the Debtors will be able to devote their full attention and resources to the restructuring efforts described above

Nunc Pro Tunc Relief is Appropriate

27. Pursuant to the Debtors' request, BMC has acted as the Claims and Noticing Agent since the Petition Date with assurances that the Debtors would seek approval of its employment and retention *nunc pro tunc* to the Petition Date so that BMC may be compensated for its pre-application services. The Debtors believe that no party in interest will be prejudiced by the granting of the *nunc pro tunc* employment of BMC, since BMC has provided and continues to provide valuable services to the Debtors' estates in the interim period.

28. Courts in this jurisdiction have routinely approved *nunc pro tunc* employment similar to that requested herein in matters comparable to this matter. *See e.g., In re Satcon Technology Corp.*, No. 12-12869 (Bankr. D. Del. Oct. 18, 2012) (approving *nunc pro tunc* employment of the claims and noticing agent to perform claims and noticing services); *In re Prince Sports, Inc.*, No. 12-11439 (Bankr. D. Del. May 2, 2012) (same).

29. Based on the foregoing, the Debtors submit that they have satisfied the requirements of the Judicial Code, Bankruptcy Rules, Local Rules and Claims Agent Protocol. Accordingly, the Debtors respectfully request entry of the Order pursuant to section 156(c) of the Judicial Code, Local Rule 2002-1(f) and the Claims Agent Protocol authorizing the Debtors to retain and employ BMC to act as Claims and Noticing Agent *nunc pro tunc* to the Petition Date.

Notice

30. 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

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

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WHEREFORE, for the reasons set forth herein, the First Day Declaration and the Kass Declaration, the Debtors respectfully request that the Court enter an order, substantially in the form attached hereto as **Exhibit A**, (a) authorizing the Debtors to employ and retain [BMC] as notice and claims agent in accordance with the terms set forth in the Service Agreement [as modified by the Order] and (b) granting such other and further relief as may be appropriate.

Dated: February 28, 2013
Wilmington, Delaware

Conexant Systems, Inc
Brooktree Broadband Holding, Inc
Conexant CF, LLC
Conexant Systems Worldwide, Inc.
Conexant, Inc.

/s/ Sailesh Chittipeddi

Sailesh Chittipeddi, Ph.D.
President and Chief Executive Officer
Conexant Systems, Inc.