

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

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

**DEBTORS' MOTION FOR ENTRY OF INTERIM AND FINAL
ORDERS AUTHORIZING THE DEBTORS TO (A) CONTINUE TO
OPERATE THEIR CASH MANAGEMENT SYSTEM; (B) MAINTAIN
EXISTING BUSINESS FORMS; AND (C) GRANT ADMINISTRATIVE
PRIORITY TO INTERCOMPANY CLAIMS AND PERFORM UNDER
CERTAIN INTERCOMPANY ARRANGEMENTS AND HISTORICAL
PRACTICES BETWEEN DEBTORS AND NON-DEBTOR SUBSIDIARIES**

Conexant Systems, Inc., 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.

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*").

3. The bases for the relief requested herein are sections 363, 364, 365, 503, 507, 1107(a) and 1108 of the Bankruptcy Code, Rules 6003 and 6004(h) of the Federal Rules of Bankruptcy Procedure (the “*Bankruptcy Rules*”) and Rules 2015-2 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*”).

Relief Requested

4. As described in the First Day Declaration, the Debtors utilize a cash management system that provides well-established and efficient mechanisms for the collection, concentration, management and disbursement of funds used in their operations (the “*Cash Management System*”). More specifically, the Debtors use the Cash Management System to (a) collect, transfer and disburse funds globally from operations and (b) facilitate cash monitoring, forecasting and reporting. The Cash Management system, among other things, enables the Debtors to maintain control over their domestic bank accounts (collectively, the “*Domestic Bank Accounts*”) and fund foreign bank accounts (collectively, the “*Foreign Bank Accounts*”) located at the banks identified on the lists annexed as **Exhibit 1** and **Exhibit 2** to **Exhibit A** attached hereto (the “*Banks*”).³

5. 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), authorizing the Debtors to (a) continue to operate the Cash Management System, (b) maintain existing business forms, (c) grant administrative priority to intercompany

³ For purposes of confidentiality, the Debtors have only provided the last four digits of the Bank Accounts described in this motion. The Debtors will share a list of the complete account numbers associated with each Bank Account with the United States Trustee for the District of Delaware (the “*U.S. Trustee*”), counsel to the Debtors’ prepetition and postpetition secured lender, and any statutory committee of creditors appointed in these chapter 11 cases.

claims and continue to perform under certain intercompany arrangements consistent with historical practices between the Debtors and certain of their non-Debtor affiliates and subsidiaries (collectively, the “*Foreign Affiliates*”), and (d) schedule a final hearing (the “*Final Hearing*”) to consider entry of the Final Order, to the extent necessary.

6. The Debtors further request that the Court authorize the Banks to (a) continue to maintain, service and administer the Bank Accounts and (b) debit the Bank Accounts in the ordinary course of business on account of (i) checks or electronic funds transfers drawn on the Bank Accounts that are presented for payment at the Banks or exchanged for cashier’s checks before the Petition Date, (ii) checks or other items deposited in the Bank Accounts before the Petition Date that have been dishonored or returned unpaid for any reason (including any associated fees and costs) to the same extent the Debtors were responsible for such items before the Petition Date and (iii) undisputed, outstanding service charges owed to the Banks as of the Petition Date on account of the maintenance of the Debtors’ Cash Management System, if any.

7. Absent authority enabling the Debtors to continue to operate their Cash Management System, the Debtors would be unable to effectively maintain their financial operations, which would cripple the Debtors’ business and cause significant harm to the Debtors, their estates, creditors and all parties in interest.

Basis for Relief

A. Description of the Debtors’ Cash Management System

(i) Overview

8. The Debtors’ financial personnel manage the Cash Management System from the Debtors’ corporate headquarters located in Newport Beach, California. The Debtors designed the Cash Management System to meet their specific operating needs to, among other things: enable the efficient transfer of funds domestically and internationally, thereby reducing the

administrative burden of manual transfers and the costs associated therewith; enable management to control and monitor corporate funds by creating status reports on the location and amount of funds; and to simply ensure cash availability and liquidity.

9. The businesses and financial affairs of the Debtors are complex. While the majority of the Debtors' operations are located in the United States, the Debtors rely heavily on the Foreign Affiliates to provide research and development and sales services in the European and Asian marketplaces. Because each Foreign Affiliate provides goods or services exclusively for the benefit of the Debtors, the Foreign Affiliates do not independently generate their own cash flow, but rely on intercompany payments from Debtors. As such, the Cash Management System is not only essential to domestic operations, but provides the mechanism for cash to flow throughout the enterprise both domestically and abroad.

10. The seamless account controls afforded by the Cash Management System are essential for the continuation of the Debtors' operations given the significant volume of cash transactions managed through the Cash Management System on a daily basis. Notably, with the assistance of their advisors, the Debtors have implemented internal procedures to control and prohibit payments on account of prepetition debts without the prior approval of the Debtors' finance department. The chart annexed as Exhibit 3 to Exhibit A attached hereto summarizes the structure of the Cash Management System and each of the Bank Accounts.

11. The Cash Management System consists of approximately 18 Bank Accounts with the following financial institutions:

- Silicon Valley Bank ("*SVB*");
- Comerica Bank ("*Comerica Bank*"); and

- Wells Fargo Bank, N.A. (“*Wells Fargo Bank*”).⁴

(ii) *The Debtors’ Existing Bank Accounts*

12. Below is a description of the Debtors’ existing Bank Accounts.⁵

a. Domestic Cash Collection, Concentration, and Overnight Accounts.

- CF Controlled Account.* Conexant CF, LLC maintains a CF Controlled Account at SVB. The CF Controlled Account is used to collect funds generated by customer cash receipts and wire transfers. Various lockboxes are maintained at the CF Controlled Account for customer deposits. Funds in the CF Controlled Account are swept daily into the CF Corporate Account.⁶ The CF Controlled Account generally maintains a zero-balance.
- CF Corporate Account.* Conexant CF, LLC maintains a CF Corporate Account at SVB. Funds from the CF Corporate Account are manually transferred on a weekly basis to the CSI Concentration Account (defined below) on an as-needed basis to fund the vast majority of the Debtors’ disbursements.
- CSI Concentration Account.* Conexant Systems, Inc. maintains a CSI Concentration Account at SVB. Funds from the CSI Concentration Account are manually transferred to various Disbursement Accounts (defined below) on a weekly, bi-weekly or monthly basis. In addition to funding Disbursement Accounts, specific funds, including those for payroll taxes, employee 401k contributions, medical self-insurance withholdings⁷ and vendor

⁴ As of the Petition Date, all of the Debtors’ financial institutions are authorized depositories (the “*Authorized Depositories*”) pursuant to the U.S. Trustee Chapter 11 Guidelines for the District of Delaware (“*U.S. Trustee Guidelines*”). Should it be determined at a later time that any such financial institution is not an Authorized Depository, in accordance with the practice in this jurisdiction, the Debtors will make a good faith effort after the Petition Date to cause those Banks that are not Authorized Depositories to execute a Uniform Depository Agreement in a form prescribed by the U.S. Trustee. To the extent the Debtors need to open a new bank account after the Petition Date, they will only do so either at an Authorized Depository or after consulting with the U.S. Trustee.

⁵ A list of the Debtors’ Bank Accounts is annexed as Exhibit 1 to Exhibit A attached hereto.

⁶ Because of a previous line of credit that is no longer utilized, the CF Controlled Account was previously subject to a control agreement. This control agreement is no longer valid.

⁷ A complete description and all discussion of the Debtors’ withholdings for payroll taxes, employee 401k contributions and medical self insurance is set forth in the *Debtors’ Motion for Entry of Interim and Final Orders Authorizing, but not Directing, the Debtors to (A) Pay Prepetition Employee Wages, Other*
(Continued...)

payments are transferred from the CSI Concentration Account directly to the applicable recipient. Miscellaneous cash receipts are also collected directly by the CSI Concentration Account. The CSI Concentration Account generally maintains a zero-balance.

- iv. *Overnight Accounts.* The Debtors maintain two interest-bearing Overnight Accounts where the leftover balance of funds from the CF Corporate Account and CSI Concentration Account are automatically swept on a nightly basis. The invested funds are automatically re-deposited into the CF Corporate Account and CSI Concentration Account the following morning.

b. Domestic Disbursement Accounts.

- i. *Vendor Accounts.* Conexant Systems, Inc. maintains vendor disbursement accounts at SVB. One Vendor Account is used for all payments disbursed to vendors via check and automatically pulls funds from the CSI Concentration Account as checks are presented, while the other Vendor Account is used for payments disbursed via automatic clearing house (“ACH”), manually funded as needed.
- ii. *Master Payroll Account.* Conexant Systems, Inc. maintains a master payroll, account at SVB. The Master Payroll Account is used for payroll check and direct deposit disbursements for domestic employees, funded as needed on a bi-weekly basis.
- iii. *French Branch Account.* Conexant Systems Worldwide, Inc. maintains a disbursement account for its French branch with Wells Fargo. The French Branch Account is used to fund all necessary expenses of the Debtors’ operations in France, including rent, payroll, taxes and utilities.
- iv. *Flexible Spending Account.* Conexant Systems, Inc. maintains a flexible spending account at SVB. The Flexible Spending Account is funded as needed by the Debtors, and is used to fund third-party reimbursement checks for employee childcare and medical benefit flexible spending payments.
- v. *Benefit Administration Account.* Conexant Systems, Inc. maintains a benefit administration fee checking account at SVB. The Benefit Administration Account is funded as needed by the Debtors, and is

Compensation and Reimbursable Employee Expenses and (B) Continue Employee Benefits Programs, filed contemporaneously herewith.

used to fund the administration fees of Aon Hewitt, the Debtors' primary third party benefit administrator.

- vi. *Foreign Exchange Fee Account.* Conexant Systems, Inc. maintains a foreign exchange administration fee checking account with Wells Fargo Bank, which is used to pay Wells Fargo Bank fees for maintaining a foreign currency facility and performing foreign currency transactions.

c. Domestic Stand-Alone Accounts.

- i. *Letter of Credit Collateral Accounts.* Conexant Systems, Inc. maintains a Letter of Credit Collateral Account with Comerica Bank, which holds approximately \$4.5 million as security for various letters of credit for certain utility providers, real property leases, and self insurance plans.
- ii. *Corporate Card Account.* Conexant Systems, Inc. maintains a deposit account with Wells Fargo Bank, which holds approximately \$10,000 as security for the Debtors' corporate credit cards.
- iii. *Premium Business Money Market Account.* Conexant Systems Worldwide Inc. maintains a "Money Account" with Comerica Bank. The Money account has not been utilized since March, 2012 and maintains a zero-balance.

(iii) *Foreign Bank Accounts*

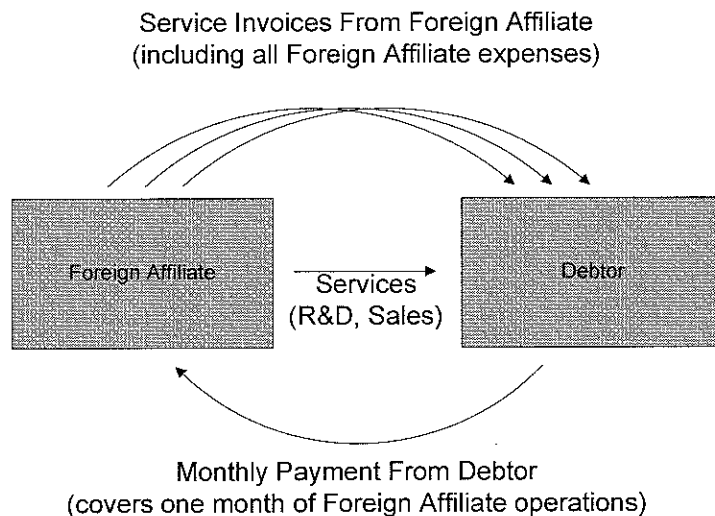
13. The Foreign Affiliates utilize the Foreign Bank Accounts identified on the list annexed as **Exhibit 2** to **Exhibit A** attached hereto.⁸ The Foreign Bank Accounts are funded primarily through inter-company transfers from the Concentration Account discussed in more detail below.

⁸ The Foreign Bank Accounts are not owned by the Debtors and, therefore, are not property of the Debtors' estates. Accordingly, the Debtors respectfully submit that Court authorization is not necessary to maintain the Foreign Bank Accounts. Nonetheless, this motion provides information about the Foreign Bank Accounts in the interests of full disclosure and, out of an abundance of caution, seeks authority for the Debtors to continue to use the Foreign Bank Accounts on a postpetition basis.

B. The Debtors' Intercompany Transactions

14. As described herein and in further detail in the First Day Declaration, the Debtors operate in Europe and Asia through their Foreign Affiliates. The Foreign Affiliates provide services to the Debtors and charge the Debtor(s) for their respective services, which primarily include product research and development and global sales. The Debtors subsequently reimburse their Foreign Affiliates for these services (the "*Intercompany Transactions*"). As a result of the Intercompany Transactions, a receivable is recorded on the applicable Foreign Affiliate's balance sheet, and a corresponding liability is posted on the balance sheet of the Debtor that received the services or to which the invoices are allocable, which serves as the basis for the accrual of intercompany claims (collectively, the "*Intercompany Claims*").

15. Generally, the Debtors maintain sufficient liquidity for operations for one month at each of the Foreign Affiliates. To that end, funds are transferred on a monthly basis from the Debtors to the Foreign Affiliates based on the forecast of the Foreign Affiliates' upcoming monthly expenses as well as on an as-needed basis if any Foreign Affiliates maintains low cash reserves.



16. In the ordinary course of business the Debtors, on average, make aggregate monthly payments of approximately \$1.2 million to the Foreign Affiliates. For tax and accounting purposes, the Foreign Affiliates invoice the Debtors on a cost-plus basis⁹ and the Debtors fund the Foreign Affiliates at cost. As a result, the Debtors have accrued approximately \$11.8 million in prepetition payables to the Foreign Affiliates (the “*Prepetition Intercompany Claims*”). The Debtors are not, however, seeking to pay any Prepetition Intercompany Claims pursuant to this Motion. Instead the Debtors merely seek to continue to transfer cash in the ordinary course of business to the Foreign Affiliates on account of Intercompany Transactions occurring after the Petition Date that would give rise to postpetition Intercompany Claims (the “*Postpetition Intercompany Claims*”) in exchange for the services provided to the Debtors.

17. To ensure that none of the Debtors will permanently fund the operations of any other Debtors, the Debtors respectfully request that, pursuant to sections 364(b), 503(b)(1) and 507(a)(2) of the Bankruptcy Code, all Postpetition Intercompany Claims against a Debtor by another Debtor be accorded administrative expense priority. If Postpetition Intercompany Claims are accorded administrative expense priority, each entity utilizing funds flowing through the Cash Management System should continue to bear the ultimate repayment responsibility for such ordinary course transactions.

C. The Debtors’ Ordinary Course ACH Payments, Bank Fees and Preparation for the Chapter 11 Filing

18. In the ordinary course of business, the Debtors conduct transactions by debit, wire or ACH and other similar methods. In addition, a large percentage of the Debtors’ customer

⁹ The cost-plus basis used by each Foreign Affiliate is defined in an intercompany agreement and determined through a transfer pricing study which is updated on a periodic basis.

payments are received through ACH or wire transfer. In fact, the Debtors are required by certain federal and state taxing authorities to submit tax payments electronically through wire or ACH, and failure to do so results in the imposition of penalties.

19. Thus, the Debtors respectfully request that the Court authorize and direct the Banks to continue to maintain service and administer the Bank Accounts as accounts of the Debtors as debtors-in-possession, without interruption and in the ordinary course of business. In this regard, the Debtors request that the Banks be authorized and directed to receive, process, honor and pay any and all checks, ACH and other instructions, and drafts payable through, drawn or directed on such Bank Accounts after the Petition Date by holders, makers or other parties entitled to issue instructions with respect thereto. Notwithstanding the foregoing, any check, draft or other notification that the Debtors advised the Banks to have been drawn, issued or otherwise presented before the Petition Date may be honored by the Banks only to the extent authorized by order of the Court.

20. Furthermore, in the ordinary course, the Banks (as well as certain credit card processors) charge, and the Debtors pay, honor or allow the deduction from the appropriate account, certain service charges and other fees, costs and expenses (collectively, the "*Bank Fees*"). The Debtors respectfully request that the Court authorize the Banks to (a) continue to charge the Debtors the Bank Fees and (b) charge-back returned items to the Bank Accounts, whether such items are dated before, on or subsequent to the Petition Date. The Debtors further request that the Court order that liens on any of the Bank Accounts granted to creditors will not have priority over the Bank Fees of the respective Bank at which the Bank Account is located.

D. The Debtors' Existing Business Forms and Checks

21. In the ordinary course of business, the Debtors use a variety of checks and business forms. To minimize expenses to their estates, the Debtors believe it is appropriate to

continue to use all correspondence and business forms (including letterhead, purchase orders and invoices) as such forms were in existence immediately before the Petition Date – without reference to the Debtors’ status as debtors in possession – rather than requiring the Debtors to incur the expense and delay of ordering entirely new business forms.

22. Nonetheless, as soon as practicable after the Petition Date, the Debtors will include “Debtor-In-Possession” on the checks they print electronically. Further, upon depletion of the Debtors’ check stock and/or business forms stock, the Debtors will obtain new check stock and/or business forms stock reflecting their status as debtors in possession.

Supporting Authority

A. The Court Should Approve the Postpetition Use of the Debtors’ Cash Management System

(i) The Continued Use of the Debtors’ Cash Management System is Essential to the Debtors’ Operations and Restructuring Efforts

23. Absent the relief sought in this motion, the Debtors would be unable to continue to operate their Cash Management System after the Petition Date. For example, the U.S Trustee Guidelines require, among other things, that a debtor: (a) establish one debtor in possession account for all estate funds required solely for the payment of taxes (including payroll taxes); (b) close all existing bank accounts and open new debtor in possession accounts; (c) maintain a separate debtor in possession account for cash collateral; and (d) obtain checks that bear the designation “debtor in possession” and reference the bankruptcy case number and type of account.

24. As discussed above, however, the Debtors’ business and financial affairs are complex, requiring the Debtors to collect, disburse and move funds through numerous Bank Accounts in an expedited manner. Given the Debtors’ corporate and financial structure, the Debtors believe that it would be difficult and unduly burdensome to establish an entirely new

cash management system for each Debtor entity. To comply with the U.S. Trustee Guidelines, the Debtors would also need to execute new signatory cards and depository agreements, and create a new system for manually issuing checks and paying postpetition obligations.¹⁰ The delays that would result from opening these accounts, revising cash management procedures and instructing customers to redirect payments would significantly disrupt the Debtors' business at this critical time.

25. In addition, requiring the Debtors to maintain separate accounts would decentralize the Cash Management System. Indeed, courts in this and other districts have noted that an integrated cash management system "allows efficient utilization of cash resources and recognizes the impracticalities of maintaining separate cash accounts for the many different purposes that require cash." *In re Columbia Gas Sys., Inc.*, 136 B.R. 930, 934 (Bankr. D. Del. 1992), *aff'd in part and rev'd in part*, 997 F.2d 1039 (3d Cir. 1993). The United States Court of Appeals for the Third Circuit has agreed, emphasizing that requiring a debtor to maintain separate accounts "would be a huge administrative burden and economically inefficient." *Columbia Gas*, 997 F.2d at 1061; *see also In re Southmark Corp.*, 49 F.3d 1111, 1114 (5th Cir. 1995) (finding a cash management system allows a debtor "to administer more efficiently and effectively its financial operations and assets").

(ii) Maintaining the Existing Cash Management System Will Not Harm Parties in Interest

26. The Debtors' continued use of their Cash Management System will greatly facilitate the Debtors' transition into chapter 11 by, among other things, avoiding administrative

¹⁰ Notwithstanding anything herein to the contrary, the Debtors reserve the right to close their prepetition Bank Accounts and open new accounts as may be necessary in the Debtors' business judgment. The Debtors will give prompt notice of such actions, however, to the U.S. Trustee and any statutory committee appointed in these chapter 11 cases.

inefficiencies and expenses and minimizing delays in payment of postpetition obligations. The Debtors respectfully submit that parties in interest will not be harmed by their maintenance of the existing Cash Management System, and the Bank Accounts because the Debtors have implemented appropriate mechanisms to ensure that unauthorized payments will not be made on account of prepetition obligations.

27. Specifically, with the assistance of their advisors, the Debtors have implemented internal control procedures that prohibit payments on account of prepetition debts without the prior approval of the Debtors' finance department. In light of such protective measures, the Debtors submit that maintaining the Cash Management System will benefit all parties in interest and is in the best interests of the Debtors' estates and creditors.

(iii) The Court Should Authorize the Debtors to Continue Using Debit, Wire and Automatic Clearing House Payments

28. The Debtors request that the Court grant further relief from the U.S. Trustee Guidelines to the extent they require the Debtors to make all disbursements by check. In particular, the U.S. Trustee Guidelines require that all receipts and all disbursements of estate funds must be made by check with a notation representing the reason for the disbursement. As discussed above, in the ordinary course of business, the Debtors conduct transactions through ACH and other similar methods. In addition, a certain percentage of the Debtors' customer receipts are received through wire transfer payments. In fact, the Debtors are required by certain federal and state taxing authorities to submit tax payments electronically through wire or ACH, and failure to do so results in the imposition of penalties. If the Debtors' ability to conduct transactions by debit, wire, ACH or other similar methods is impaired, the Debtors may be unable to perform under certain contracts, their business operations may be unnecessarily disrupted and their estates will incur additional costs.

(iv) *The Court Should Authorize the Banks to Continue to Maintain, Service and Administer the Debtors' Bank Accounts in the Ordinary Course of Business*

29. The Debtors submit that parties in interest will not be prejudiced or injured by the Debtors' maintenance of their Bank Accounts in the ordinary course of business. The Debtors strongly believe that replacing the Bank Accounts with new accounts pursuant to the U.S. Trustee Guidelines would needlessly interrupt their operations and impair their efforts to preserve the value of their estates and reorganize in an efficient manner.

30. Thus, the Debtors respectfully request that the Court authorize and direct the Banks to continue to maintain service and administer the Bank Accounts as accounts of the Debtors as debtors in possession, without interruption. In this regard, the Banks should be authorized and directed to receive, process, honor and pay any and all checks, ACH and other instructions, and drafts payable through, drawn or directed on such Bank Accounts after the Petition Date by holders, makers or other parties entitled to issue instructions with respect thereto; *provided, however*, that any check, advise, draft or other notification that the Debtors advised the Banks to have been drawn, issued or otherwise presented before the Petition Date may be honored by the Banks only to the extent authorized by order of the Court.

31. The Debtors further request that the Court authorize and direct the Banks to accept and honor all representations from the Debtors as to which checks, drafts, wires or ACH should be honored or dishonored consistent with any order of the Court and governing law, whether such checks, drafts, wires or ACH are dated before or subsequent to the Petition Date. The Debtors also request that, to the extent a Bank honors a prepetition check or other item drawn on any account that is the subject of the motion either (a) at the direction of the Debtors, (b) in a good faith belief that the Court has authorized such prepetition check or item to be honored or (c) as a result of an innocent mistake made despite the above-described protective

measures, such Bank will not be deemed to be liable to the Debtors or to their estates on account of such prepetition check or other item honored postpetition. The Debtors respectfully submit that such relief is reasonable and appropriate because the Banks are not in a position to independently verify or audit whether a particular item may be paid in accordance with a Court order or otherwise.

32. Moreover, the Debtors request that the Court authorize the Banks to (a) continue to charge the Debtors the Bank Fees and (b) charge-back returned items to the Bank Accounts, whether such items are dated before, on or subsequent to the Petition Date, in the ordinary course of business. The Debtors further request that the Court order that liens on any of the Bank Accounts granted to creditors will not have priority over the Bank Fees of the respective Bank at which the Bank Account is located.

33. In similar large chapter 11 cases, courts in this district have regularly waived the U.S. Trustee Guidelines on the grounds that they are potentially detrimental to a debtor's postpetition business operations and restructuring effort. *See, e.g., In re Sea Launch Co., L.L.C.*, No. 09-12153 (BLS) (Bankr. D. Del. Jan. 30, 2012) (authorizing the debtors' continued use of existing cash management system and bank accounts); *In re Buffets Restaurants Holdings Inc.*, No. 12-10237 (MFW) (Bankr. D. Del. Jan. 19, 2012) (same); *In re LTAP US, LLLP*, No. 10-14125 (KG) (Bankr. D. Del. Oct. 18, 2011) (same); *In re U.S. Concrete, Inc.*, No. 10-11407 (PJW) (Bankr. D. Del. Apr. 30, 2010) (same); *In re Atrium Corp.*, No. 10-10150 (BLS) (Bankr. D. Del. Feb. 23, 2010) (same).¹¹

¹¹ 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.

B. The Court Should Authorize the Debtors to Continue Using Their Existing Business Forms

34. The Debtors submit that parties in interest will not be prejudiced if the Debtors are authorized to continue to use their business forms substantially in the forms existing immediately before the Petition Date. Parties doing business with the Debtors undoubtedly will be aware of their status as debtors in possession and, thus, changing business forms is unnecessary and unduly burdensome.

35. In other large chapter 11 cases, courts in this district have allowed debtors to use their prepetition business forms without the “debtor in possession” label. *See, e.g., In re Sea Launch Co., L.L.C.*, No. 09-12153 (BLS) (Bankr. D. Del. Jan. 30, 2012) (authorizing continued use of business forms); *In re Buffets Restaurants Holdings Inc.*, No. 12-10237 (MFW) (Bankr. D. Del. Jan. 19, 2012) (same); *In re LTAP US, LLLP*, No. 10-14125 (KG) (Bankr. D. Del. Oct. 18, 2011) (same); *In re Friendly’s Ice Cream Corp.*, No. 11-13167 (KG) (Bankr. D. Del. Oct. 5, 2011) (same); *In re Neb. Book Co.*, No. 11-12005 (PJW) (Bankr. D. Del. Oct. 5, 2011) (same).¹²

36. The Debtors represent that if the relief requested herein is granted, they will implement appropriate mechanisms to ensure that no payments will be made on account of debts incurred before the Petition Date (other than those authorized by the Court). To prevent the inadvertent, unauthorized payment of prepetition claims, the Debtors will work closely with the Banks to ensure that appropriate procedures are in place to prevent checks that were issued prepetition from being honored without the Court's approval.

¹² 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.

C. Permitting Continued Intercompany Transactions and Granting Administrative Expenses Status to Intercompany Obligations is Appropriate

37. The Debtors can ascertain, trace and account for all Intercompany Transactions previously described. Moreover, the Debtors will continue to maintain records of such Intercompany Transactions postpetition. To ensure that each individual Debtor will not fund, at the expense of its creditors, the operations of another entity, the Debtors respectfully request that, pursuant to sections 364(b), 503(b) and 507(a)(2) of the Bankruptcy Code, all Postpetition Intercompany Claims, as a result of ordinary course Intercompany Transactions through the Cash Management System, be accorded administrative expense priority status. If Postpetition Intercompany Claims are accorded administrative priority expense status, each entity utilizing funds flowing through the Cash Management System will continue to bear ultimate repayments responsibility for such ordinary course transactions.

38. Discontinuing the Intercompany Transactions could impact the Debtors' ability to receive certain services from the Foreign Affiliates, including product research and development and global sales. Accordingly, the Debtors believe that continuation of the Intercompany Transactions is in the best interests of the Debtors' estates and creditors, and seek the authority to enter into such Intercompany Transactions in the ordinary course of business. Because the Foreign Affiliates are part of the Debtors' group of affiliated entities, the entirety of the Intercompany Transactions among Debtors and Foreign Affiliates alike remain within the spectrum of the Debtors' control.

39. The Debtors believe in the exercise of their reasonable business judgment that the preservation of the going-concern value of the Debtors as a worldwide enterprise, including the maintenance of the Foreign Affiliates, is essential to the success of any reorganization plan for

the Debtors due to the critical services provided to the Debtors by the Foreign Affiliates. Therefore the relief requested herein is necessary to maintain their continued operations.

The Requirements of Bankruptcy Rule 6003 are Satisfied

40. As described above, the Debtors are seeking authority pursuant to the Interim Order to continue to operate the Cash Management System during the first 21 days of these chapter 11 cases. Under Bankruptcy Rule 6003, this Court may authorize the relief requested herein within the 21-day period after the Petition Date because such relief is necessary to avoid immediate and irreparable harm to the Debtors' estates. *See* Fed. R. Bankr. Proc. 6003 (b) and (c). 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).

41. Because of the complexity of the Debtors' operations, any disruption to the Cash Management System would greatly harm the Debtors and their estates. Without the Cash Management System, the Debtors would be unable to track incoming receipts and make on-time payments, precluding the Debtors from determining their current liquidity. This, along with the possibility that third parties would refuse to provide essential services in the event the Debtors failed to remit payment, could cause a diminution in the value of the Debtors' estates to the detriment of all parties in interest. As a result, immediate and irreparable harm would result without the relief requested herein being granted on an interim basis. Accordingly, the Debtors respectively submit that they have satisfied the "immediate and irreparable harm" standard of Bankruptcy Rule 6003(b) and (c) and seek authority to continue to operate the Cash Management System.

Waiver of Bankruptcy Rules Regarding Notice and Stay of an Order

42. 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

43. 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

44. 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

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

[Remainder of page intentionally left blank.]

WHEREFORE, for the reasons set forth herein and in the First Day 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 (i) continue to operate the Cash Management System, (ii) maintain existing business forms and (iii) grant administrative priority for Intercompany Claims and perform under certain intercompany arrangements and historical practices and (b) granting such other and further relief as may be appropriate.

Dated: February 28, 2013
Wilmington, Delaware

/s/ Domenic E. Pacitti

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