Docket #2847 Date Filed: 1/11/2013

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	)	Chapter 11
EASTMAN KODAK COMPANY, *et al.*,[1]	)	Case No. 12-10202 (ALG)
Debtors.	)	(Jointly Administered)

ORDER AUTHORIZING (A) THE SALE OF PATENT ASSETS FREE AND CLEAR OF CLAIMS AND INTERESTS, (B) THE LICENSE OF PATENTS, (C) THE ASSUMPTION OF PATENT CROSS LICENSE AGREEMENTS WITH FUJIFILM AND (D) THE SETTLEMENT OF CLAIMS RELATED TO CERTAIN PATENTS

Upon (a) the motion (the "**Original Sale Motion**") of Eastman Kodak Company ("**Kodak**") dated June 11, 2012, pursuant to which this Court entered the Conditional Sale Order (as defined below) and (b) the supplemental motion (the "**Supplemental Sale Motion**"; together with the Original Sale Motion, the "**Motion**")[2] of Kodak, filed by Kodak on behalf of itself and its affiliated debtors and debtors in possession in these chapter 11 cases (collectively, the "**Debtors**"), for entry of an order (this "**Order**"), pursuant to sections 105(a), 107(b), 363(b), 363(f), 363(m), 363(n), 365, 502, 503, 507, 541 and 1141 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the "**Bankruptcy Code**"), rules 2002, 6004(h), 9007, 9014, 9018, and 9019 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**") and rules 6004-

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Eastman Kodak Company (7150); Creo Manufacturing America LLC (4412); Eastman Kodak International Capital Company, Inc. (2341); Far East Development Ltd. (2300); FPC Inc. (9183); Kodak (Near East), Inc. (7936); Kodak Americas, Ltd. (6256); Kodak Aviation Leasing LLC (5224); Kodak Imaging Network, Inc. (4107); Kodak Philippines, Ltd. (7862); Kodak Portuguesa Limited (9171); Kodak Realty, Inc. (2045); Laser-Pacific Media Corporation (4617); NPEC Inc. (5677); Pakon, Inc. (3462); and Qualex Inc. (6019). The location of the Debtors' corporate headquarters is: 343 State Street, Rochester, NY 14650.

[2] Capitalized terms not otherwise defined herein are to be given the meanings ascribed to them in the Sale Agreement or, if not defined in the Sale Agreement, are to be given the meanings ascribed to them in the Supplemental Sale Motion or, if not defined in the Supplemental Sale Motion, are to be given the meanings ascribed to them in the Conditional Sale Order.

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1(a) and 9013-1(a) of the Local Rules for the United States Bankruptcy Court for the Southern District of New York (the "**Local Rules**"), authorizing, among other things: (a) the granting of a license to the Licensed Patents (as defined in each of the Consortium Member License Agreements, collectively, the "**Licensed Patents**") to each Licensee (as defined below); (b) the sale (the "**Sale**") of the Assigned Assets (as defined in the Sale Agreement) free and clear of Claims and Interests[3] (except for and subject to Permitted Encumbrances (as defined in the Sale Agreement, which definition is incorporated by reference as though set forth in full herein) and subject to Paragraph 31 hereof), and conditional on entry into and subject to the Grant-Back License Agreements and the Bidco DC/KISS Patent License Agreements (each as defined below); (c) Kodak's entry into and consummation of the Grant-Back License Agreements; (d) the Debtors' entry into and consummation of the FlashPoint Agreements (as defined below); (e) the Debtors' entry into and consummation of the Fuji Letter Agreement (as defined below); (f) the assumption by Kodak of the Cross License Agreements (as defined in the Fuji Letter Agreement) pursuant to the Fuji Letter Agreement; and (g) the dismissal and release of certain patent claims pursuant to the Retained Patents License Agreements (as defined below); and this Court having held a hearing (the "**Conditional Sale Hearing**") on July 2, 2012 to consider the relief sought in the Original Sale Motion; and upon conclusion of and based on the evidence presented at the Conditional Sale Hearing, this Court having entered an *Order (A) Conditionally Authorizing the Sale of Patent Assets Free and Clear of Claims and Interests, (B) Establishing a Confidential Bidding Process and (C) Approving the Notice Procedures* [Docket No. 1590] (the "**Conditional Sale Order**"); and this Court having entered an *Order Clarifying Conditional Sale*

[3] For the avoidance of doubt, the term "**Interests**" has the meaning ascribed thereto in the Sale Agreement, and includes any and all successor liability claims or theories of any nature whatsoever, whether known or unknown and whether asserted or unasserted as of the Closing.

Order with Respect to Good Faith Deposits In Connection with the Sale of Patent Assets [Docket No. 1776] (the "**Clarifying Order**"); and a Bidding Process having been conducted in accordance with the Bidding Procedures; and at the conclusion of the Bidding Process, Intellectual Ventures Fund 83 LLC ("**IV**") having been chosen as the Successful Bidder in accordance with the Bidding Procedures; and those licensees (the "**Licensees**") identified in the Consortium Member License Agreements having been identified by the Debtors as additional parties to increase the overall value of the Sale to the Debtors' estates; and Kodak and IV having executed the Patent Sale Agreement, dated as of December 18, 2012, a redacted version of which is attached hereto as Exhibit A (together with all schedules, exhibits and annexes and joinders thereto, the "**Sale Agreement**"); and Kodak and each of the Licensees having agreed to enter into (a) the Bidco DC/KISS Patent License Agreements, which have been filed with this Court under seal, immediately prior to the Sale, with such Sale to be subject to such new licenses as Permitted Encumbrances and (b) the Retained Patents License Agreements, which have been filed with this Court under seal (together with the Bidco DC/KISS Patent License Agreements, the "**Consortium Member License Agreements**"); and Kodak and each Purchaser (as defined below) having agreed to enter into the Kodak DC/KISS Grant-Back License Agreement, each of which has been filed with this Court under seal immediately prior to the Sale and with such Sale to be subject to such license as a Permitted Encumbrance (each, a "**Grant-Back License Agreement**," and together with the Sale Agreement and the Consortium Member License Agreements, the "**Transaction Documents**"); and Kodak, IV, Apple Inc. ("**Apple**") and FlashPoint Technology, Inc. ("**FlashPoint**") having entered prior to the Sale into that certain Patent Ownership Rights Transfer and Assignment Agreement (the "**FlashPoint Settlement Agreement**"), and Kodak and FlashPoint having entered into that certain Stock Transfer and

Release Agreement (the "**Stock Transfer Agreement**") and Side Letter Release Agreements between Kodak and each of Hanei Corporation ("**Hanei**") and Modesmata Corporation ("**Modesmata**"), dated as of December 18, 2012 (together with the Stock Transfer Agreement, the "**FlashPoint Supplemental Settlement Agreements**," the FlashPoint Settlement Agreement and the FlashPoint Supplemental Settlement Agreements together, the "**FlashPoint Agreements**"), which have been filed with this Court under seal; and Kodak and FUJIFILM Corporation ("**FUJIFILM**") having entered into the letter agreement (the "**Fuji Letter Agreement**"), which has been filed with this Court under seal; and this Court having conducted a hearing on the Motion on January 11, 2013 (the "**Final Sale Hearing**"); and all parties in interest having been heard, or having had the opportunity to be heard, regarding the Transactions (as defined below), the Transaction Documents, the FlashPoint Agreements, the Fuji Letter Agreement and the other Ancillary Agreements and all other relief granted herein; and this Court having determined that the consummation of the transactions (the "**Transactions**") contemplated by the Transaction Documents, the FlashPoint Agreements, the Fuji Letter Agreement and the other Ancillary Agreements and the other relief granted herein is in the best interests of the Debtors, their estates, their creditors and other parties in interest; and this Court having found that proper and adequate notice of each of the Original Sale Motion and the Supplemental Sale Motion and the relief requested therein has been provided in accordance with the Conditional Sale Order, the Bankruptcy Code, the Bankruptcy Rules, the Local Rules and the Case Management Procedures (as amended), and no other or further notice being necessary; and upon consideration of the *Supplemental Declaration of David Descoteaux in Support of the Debtors' Motions for an Order Authorizing (A) the Sale of Patent Assets Free and Clear of Claims and Interests, (B) the License of Patents, (C) the Assumption of Patent Cross License Agreements*

With FUJIFILM and (D) the Settlement of Claims Related to Certain Patents [Docket No. 2613] (the "**Lazard Declaration**"); and upon consideration of the Declarations of each of Kenneth Lustig, Dana Rao, BJ Watrous, Kelly Jo MacArthur, Sam O'Rourke, Toshiaki Suzuki, Amar K. Mehta, Grace Lei, Ding Jianxin, Garrett Glanz, Sarah Guichard, Martin Roberts, Hosik Jang and Jeffrey Housenbold in Connection with the Sale and/or Licensing of Debtors' Digital Imaging Patent Assets and Other Intellectual Property Assets [Docket Nos. 2619 to 2632] (the "**Purchaser and Licensee Declarations**"); and upon the record made by the Debtors at the Conditional Sale Hearing and at the Final Sale Hearing, and the record of these chapter 11 cases; and the Court having reviewed and considered the Motion and the relevant record; and after due deliberation thereon; and good and sufficient cause appearing therefor;

IT IS HEREBY FOUND AND DETERMINED THAT:[4]

Jurisdiction, Notice and Statutory Predicates

A. This Court has jurisdiction over the Motion, the Transactions, the Transaction Documents, the FlashPoint Agreements, the Fuji Letter Agreement, the other Ancillary Agreements and any other ancillary documents and agreements related thereto pursuant to 28 U.S.C. §§ 157(b)(1) and 1334(b), and the Amended Standing Order of Reference from the United States District Court for the Southern District of New York dated as of February 1, 2012. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue of the above-captioned cases and the Motion in this Court and this District is proper under 28 U.S.C. §§ 1408 and 1409.

[4] The findings and conclusions set forth herein constitute this Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent that any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such. Findings of fact and conclusions of law contained in the Conditional Sale Order, including the record of the July 2, 2012 hearing, are incorporated herein by reference.

B. This Order is intended to be a final and appealable order as set forth in 28 U.S.C. § 158(a).

C. Notwithstanding Bankruptcy Rule 6004(h), this Court finds that there is no reason for delay in the implementation of this Order, and directs entry of this Order as set forth herein.

D. The statutory predicates for the relief sought in the Motion are sections 105(a), 107(b), 363(b), 363(f), 363(m), 363(n), 365, 502, 503, 507, 541 and 1141 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004(h), 9007, 9014, 9018, and 9019 and Local Rules 6004-1(a) and 9013-1(a).

E. As set forth below and as evidenced by the affidavits of service previously filed with this Court [Docket Nos. 1450, 1458, 1558, 1559, 1673, 2715, 2717, 2726, 2827], proper, timely, adequate and sufficient notice of the Motion, the Transactions, and the Final Sale Hearing and of the relief to be granted in this Order has been provided in accordance with sections 102(1) and 363 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004 and 9014, the Conditional Sale Order, applicable Local Rules and General Orders and the Case Management Procedures (as amended).

F. Actual written notice of the Motion, the Transactions, and the Final Sale Hearing and a reasonable opportunity to object or be heard with respect to the relief to be granted in this Order has been afforded to all known interested entities, including to the following parties: (i) the United States Trustee for the Southern District of New York; (ii) Milbank, Tweed, Hadley & McCloy LLP and Togut, Segal & Segal LLP, co-counsel to the Creditors' Committee; (iii) Arent Fox LLP and Haskell Slaughter Young & Rediker, LLC, co-counsel for the Official Committee of Retired Employees of the Debtors; (iv) Shearman & Sterling LLP, counsel to the agent under the prepetition revolving credit facility; (v) U.S. Bank, National

Association, as indenture trustee; (vi) Wilmington Trust, National Association, as indenture trustee; (vii) the Securities and Exchange Commission; (viii) attorneys general for all states in which the Assigned Assets are located, the Securities and Exchange Commission, the Internal Revenue Service, all applicable federal and state taxing authorities, the Environmental Protection Agency, and the Department of Labor; (ix) Davis Polk & Wardwell LLP, counsel to Citicorp North America, Inc., as agent for the Debtors' postpetition secured lenders (the "**DIP Agent**"); (x) Akin Gump Strauss Hauer & Feld LLP, counsel to the Ad Hoc Committee of the Second Lien Noteholders (the "**Second Lien Noteholders Committee**"); (xi) all parties requesting notice in these chapter 11 cases pursuant to Bankruptcy Rule 2002; (xii) all entities reasonably known by the Debtors to have expressed an interest in a transaction with respect to the Assigned Assets since July 2011; (xiii) all SSOs and counterparties to any licenses and contracts that, in each case, the Debtors reasonably believe may be affected by or have an interest in the relief requested in the Motion or by the Sale Agreement, including all parties to the agreements listed on Schedule 1.1(d) and 1.1(h) of the Sale Agreement; and (xiv) entities reasonably known by the Debtors to have asserted any Claim or Interest in the Assigned Assets.

G. The Debtors published notice of the Original Sale Motion in *The Wall Street Journal* (National Edition and Asia Edition) and *The Financial Times* (Worldwide Edition) on June 19, 2012, as evidenced by the affidavits of publication filed with this Court [Docket Nos. 1558 and 1559].

H. The Debtors published notice of the Final Sale Hearing in *The Wall Street Journal* (National Edition and Asia Edition) and *The Financial Times* (Worldwide Edition) on December 24, 2012, as evidenced by the affidavits of publication filed with this Court [Docket Nos. 2726 and 2827].

I. No further or other notice beyond that described in the foregoing Paragraphs E, F, G and H is required in connection with the relief provided in this Order.

Bidding Process

J. The Debtors exercised sound business judgment, consistent with their fiduciary duties, in conducting the Bidding Process.

K. The Debtors conducted the Bidding Process in compliance with the Bidding Procedures and the terms of the Conditional Sale Order and the Clarifying Order.

L. As demonstrated by (i) the testimony and other evidence proffered or adduced at the Final Sale Hearing and (ii) the representations of counsel made on the record at the Final Sale Hearing, the Debtors and their professionals marketed the Assigned Assets and conducted the marketing and sale process as set forth in and in accordance with the Original Sale Motion and as described in the Supplemental Sale Motion, the Lazard Declaration and the Purchaser and Licensee Declarations. Based upon the record of these proceedings, all creditors and other parties in interest and all prospective purchasers have been afforded a reasonable and fair opportunity to bid for the Assigned Assets.

M. The Bidding Procedures were substantively and procedurally fair to all parties, including all potential bidders. The Debtors (i) undertook substantial marketing efforts, and conducted the sale process without collusion in accordance with the Bidding Procedures, (ii) afforded interested potential purchasers a full, fair and reasonable opportunity to qualify as bidders and submit their highest or otherwise best offer to purchase the Assigned Assets (and, as applicable, license the Licensed Patents), (iii) provided potential purchasers, upon request, sufficient information to enable them to make an informed judgment on whether to bid on the Assigned Assets and (iv) considered any bids submitted on or before the Bid Deadline.

N. There are sound business reasons for the Debtors, pursuant to section 363(b) of the Bankruptcy Code, to consummate the Transactions, as justified by the compelling circumstances described in the Motion.

Good Faith Finding

O. The Transaction Documents, the FlashPoint Agreements, the Fuji Letter Agreement, the other Ancillary Agreements, each of their respective terms, and the Transactions were negotiated, proposed and entered into by the Debtors, IV, the Purchaser,[5] FlashPoint, FUJIFILM and the Licensees (as applicable) in good faith and from arm's-length bargaining positions without collusion or fraud, and constitute an integrated transaction. IV, FlashPoint, FUJIFILM and the Licensees have negotiated the Transactions and the Purchaser has participated in the Bidding Process in good faith in connection with these proceedings because, among other things: (i) the Debtors were free to deal with any other party in connection with the Transactions; (ii) the Purchaser and the Licensees complied with the terms of the Bidding Procedures, the Conditional Sale Order, the Clarifying Order, and the instructions of the Debtors and the Debtors' professionals during the Bidding Process; (iii) IV agreed to subject its bid to the competitive Bidding Process; (iv) the selection of IV as the Successful Bidder was the result of the competitive bidding process set forth in the Bidding Procedures; (v) during the Bidding Process, the Debtors (after discussion with the Reviewing Creditors[6]) determined that the value of the Transactions for the estate could be increased by entering into the Consortium Member

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[5] For purposes of this Order, "**Purchaser**" shall mean, with respect to any Assigned Asset, IV or IV's Designee that acquires such Assigned Asset at the Closing subject to and in accordance with the terms of the Sale Agreement. For all purposes of this Order and the Sale Agreement, IV has designated Apple a designee in accordance with Section 8.3 of the Sale Agreement with respect to the purchase of certain Assigned Assets it is acquiring.

[6] For the avoidance of doubt, the DIP Agent's participation as a Reviewing Creditor was not on behalf of any lender or group of lenders under the DIP Credit Agreement (as defined below).

License Agreements with the Licensees, the Grant-Back License Agreements with the Purchaser, the FlashPoint Agreements and the Fuji Letter Agreement, in addition to executing the Sale Agreement with IV; (vi) each Grant-Back License Agreement is an integral part of the Transactions, and the Debtors would not have entered into the Transactions and Sale unless each Purchaser acquired the Assigned Assets in accordance with the Sale Agreement and this Order, and entered into and consummated Grant-Back License Agreements, which agreements shall encumber the Assigned Assets in accordance with their terms; (vii) the Consortium Member License Agreements are an integral part of the Transactions and the parties to the Transactions would not have agreed to enter into and consummate the Transactions absent the Bidco DC/KISS Patent License Agreements and the Retained Patents License Agreements being entered into and approved by this Court in connection with the Transactions; (viii) the FlashPoint Agreements and the Fuji Letter Agreement are an integral part of the Transactions, and the parties to the Transactions would not have agreed to enter into and consummate the Transactions absent the FlashPoint Agreements and the Fuji Letter Agreement being entered into by all the parties thereto and approved by this Court in connection with the Transactions; (ix) neither the Purchaser nor the Licensees induced or caused the Sale or the filing of these cases; (x) all payments to be made by the Purchaser and the Licensees in connection with the Transactions have been disclosed to the Debtors, the Reviewing Creditors or this Court; and (xi) no common identity of directors or controlling stockholders exists between the Purchaser, the Licensees, and any of the Debtors, and neither the Purchaser nor any of the Licensees are an “insider” or “affiliate” of the Debtors as those terms are defined in the Bankruptcy Code.

P. Based on the foregoing, the Transactions were negotiated in good faith, and the Purchaser, FlashPoint, FUJIFILM and the Licensees satisfy the “good faith” requirement of

section 363(m) of the Bankruptcy Code, and, accordingly, the Purchaser, FlashPoint, FUJIFILM and the Licensees are entitled to all of the protections afforded by section 363(m) of the Bankruptcy Code.

Sale Agreement and the Transactions

Q. IV submitted a bid in accordance with the Conditional Sale Order. In accordance with the Conditional Sale Order, the Debtors, in consultation with their advisors, analyzed IV's bid and, after consultation with the Reviewing Creditors, determined that it was a Qualified Bid (as defined in the Bidding Procedures) and that IV was a Qualified Bidder (as defined in the Bidding Procedures). In accordance with the Conditional Sale Order, the Debtors determined, in consultation with their advisors and after consulting the Reviewing Creditors, in a valid and sound exercise of their business judgment, that the highest and best Qualified Bid was that of the Purchaser and that IV was the Successful Bidder.

R. Neither the Debtors, the Purchaser, FlashPoint, FUJIFILM, the Licensees, nor any of their respective affiliates, employees, advisors, or equityholders engaged in any conduct that would cause or permit the Transaction Documents, the FlashPoint Agreements, the Fuji Letter Agreement, the other Ancillary Agreements or the consummation of the Transactions to be avoided, or costs or damages to be imposed or awarded, under section 363(n) or any other section of the Bankruptcy Code. The Purchaser and the Licensees, with the support of the Debtors and with the knowledge of the Reviewing Creditors, formed a consortium of bidders during the Bidding Process for purposes of entering into and consummating the Transactions. The Purchaser would not have entered into the Sale Agreement and the Debtors would not have maximized the value of the Assigned Assets for the benefit of their estates without the participation of each member of such consortium, including each of the Licensees. The

Purchaser, the Licensees, their respective affiliates, and their respective equityholders have not acted in a collusive manner with any other person and the aggregate price agreed to be paid by the Purchaser and the Licensees under the Sale Agreement and the Consortium Member License Agreements was not controlled by any agreement among bidders.

S. All Net Cash Proceeds (as defined in the DIP Credit Agreement (as defined below)) received by the Debtors under the Consortium Member License Agreements shall constitute and be deemed and treated either as IP Settlement Proceeds or as Other Proceeds (as applicable) for purposes of the DIP Credit Agreement and Paragraph 14(d) of the DIP Order (as defined below). All proceeds received by the Debtors under the Sale Agreement shall constitute and be treated as IP Sale Proceeds for purposes of the DIP Credit Agreement and Paragraph 14(d) of the DIP Order.

T. Time is of the essence in consummating the Transactions. There is no legal or equitable reason to delay the Transactions. In order to maximize the value of the Debtors' estates, it is essential that the Transactions be consummated as soon as practicable in accordance with the timing set forth in the Sale Agreement. Accordingly, there is cause to waive the stay contemplated by Bankruptcy Rule 6004(h).

No Fraudulent Transfer or Successor Liability

U. The total consideration provided by the Purchaser pursuant to the Sale Agreement and the Licensees pursuant to the Consortium Member License Agreements: (i) is fair and reasonable; (ii) is the highest and best offer for the Assigned Assets; (iii) will provide a greater recovery to the Debtors' creditors than would be provided by any other available alternative; and (iv) constitutes reasonably equivalent value (as that term is defined in each of the Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act, and section 548 of the Bankruptcy Code). The consideration provided by the Purchaser pursuant to the Sale Agreement

and the Licensees pursuant to the Consortium Member License Agreements also constitutes fair consideration and fair value under the Bankruptcy Code, the Uniform Fraudulent Transfer Act and the Uniform Fraudulent Conveyance Act. No other person, entity, or group of persons or entities has offered to purchase and/or license the Assigned Assets and the Licensed Patents, respectively, for greater economic value to the Debtors than the Purchaser and the Licensees. The Debtors' determinations that the Transactions constitute the highest and best offer for the Assigned Assets were valid, sound and reasonable exercises of the Debtors' business judgment.

V. None of the Transaction Documents, the FlashPoint Agreements, the Fuji Letter Agreement or any of the other Ancillary Agreements was entered into or agreed to be entered into, as applicable, for the purpose of hindering, delaying or defrauding creditors. None of the Debtors, Purchaser, the Licensees, FlashPoint or FUJIFILM has entered into or has agreed to enter into, as applicable, any of the Transaction Documents, the FlashPoint Agreements, the Fuji Letter Agreement, or any of the other Ancillary Agreements with any fraudulent or otherwise improper purpose.

W. The Purchaser and the Licensees are not a mere continuation of or successor to the Debtors in any respect, and there is no continuity of enterprise between the Debtors, the Purchaser, or the Licensees. The Purchaser and the Licensees are not purchasing all or substantially all of the Debtors' assets. Upon the Closing (as defined below), the Purchaser shall have assumed only those liabilities that it agreed to assume in the Sale Agreement, and the Licensees shall be deemed to take licenses subject only to those restrictions contained in the applicable Consortium Member License Agreements.

Validity of Transfer

X. The Debtors (i) have full corporate power and authority to execute and deliver the Transaction Documents, the FlashPoint Agreements, the Fuji Letter Agreement and the other

Ancillary Agreements, and all other documents contemplated thereby, (ii) have all corporate authority necessary to consummate the Transactions and (iii) are authorized to take all corporate action necessary to authorize and approve and consummate the Transactions. No consents or approvals, other than those expressly provided for in the Sale Agreement, are required for the Debtors to consummate the Transactions.

Y. The Assigned Assets are property of Kodak's estate within the meaning of section 541(a) of the Bankruptcy Code. The transfer of the Assigned Assets to the Purchaser will be, as of the closing of the Sale Agreement (the "**Closing**"), a legal, valid and effective transfer of the Assigned Assets, which transfer will vest the Purchaser with all of Kodak's right, title and interest in the Assigned Assets free and clear of all (i) Claims and (ii) Interests, in each case relating to, accruing or arising any time prior to the Closing, and in each case except for and subject to the Permitted Encumbrances and Paragraph 31 of this Order, and in each case, as provided in the Sale Agreement and this Order. Each Consortium Member License Agreement between Kodak and each Licensee will be, as of the Closing, a legal, valid, and effective license, and shall vest such Licensee with the rights set forth therein. Notwithstanding the foregoing, (i) in the event that the Transactions are not consummated, then Apple shall be deemed to have reserved all of its applicable rights, (ii) in the event that the transactions contemplated by the FlashPoint Agreements are not consummated, then FlashPoint shall be deemed to have reserved all of its applicable rights, and (iii) in the event the Transactions are not consummated, then FUJIFILM shall be deemed to have reserved all of its applicable rights.

Z. This Order is and shall be binding upon and govern the acts of all persons and entities, including all filing agents, filing officers, administrative agencies or units (including the U.S. Patent and Trademark Office and similar patent agencies of any jurisdiction), governmental

departments, secretaries of state, federal, state and local officials and all other persons, institutions, agencies and entities who may be required by operation of law, the duties of their office or contract, to accept, file, register or otherwise record or release any documents or instruments; and each of the foregoing persons and entities is hereby directed to accept for filing any and all of the documents and instruments necessary and appropriate to consummate the Transactions.

AA. Following the Closing, a certified copy of this Order may be filed with the appropriate clerk and/or recorded with the recorder to cancel any Liens and other encumbrances of record on the Assigned Assets (but only with respect to the Assigned Assets), except for the Permitted Encumbrances.

BB. If any person or entity which has filed statements or other documents or agreements evidencing any Claim or Interest (other than the Permitted Encumbrances or with respect to Paragraph 31 of this Order) on all or any portion of the Assigned Assets shall not have delivered to the Debtors prior to the Closing, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, releases of Claims or Interests (other than the Permitted Encumbrances or with respect to Paragraph 31 of this Order) and any other documents necessary for the purpose of documenting the release of all Claims and Interests (other than the Permitted Encumbrances or with respect to Paragraph 31 of this Order) which the person or entity has or may assert with respect to all or any portion of the Assigned Assets, *provided* that such person or entity has not delivered any such necessary termination statements, instruments of satisfaction, releases or other documents promptly after receiving reasonable notice from the Debtors, then following the Closing, the Debtors shall be authorized and directed, and the Purchaser shall be authorized, on behalf of the Debtors and each of the

Debtors' creditors, to execute and file such statements, instruments, releases, and other documents on behalf of such person or entity solely with respect to the Assigned Assets without any further Order of this Court. Any such filings shall be limited to the Assigned Assets and, for the avoidance of doubt, notwithstanding anything to the contrary therein, shall not otherwise affect the liens granted pursuant to the DIP Order or any other order approving any financing in these chapter 11 cases. The Debtors and the Purchaser shall not be entitled or permitted, pursuant to Paragraph AA hereof, or this Paragraph BB, to (i) release any Claim or Interest on any asset other than the Assigned Assets or (ii) otherwise affect in any way any right or asset of any Debtor other than with respect to the conveyance and transfer of the Assigned Assets, notwithstanding any filing or action by any party to the contrary, and any such filing or action shall not have such effect.

CC. The license of the Licensed Patents and the assignment of the Assigned Assets outside of a plan of reorganization pursuant to the Sale Agreement and the Consortium Member License Agreements neither impermissibly restructures the rights of the Debtors' creditors nor impermissibly dictates the terms of a chapter 11 plan of the Debtors. The Transactions do not constitute a *sub rosa* chapter 11 plan.

DD. The appointment of a consumer privacy ombudsman pursuant to sections 363(b)(1) or 332 of the Bankruptcy Code is not required with respect to the relief requested in the Motion.

EE. The filing of certain portions of the Transaction Documents (including any Schedules or Exhibits to the Sale Agreement), the Fuji Letter Agreement and the other Ancillary Agreements under seal as "Bidder Confidential Information," and the filing of the FlashPoint Agreements under seal, is consistent with the Bidding Procedures approved in the Conditional

Sale Order, because those portions contain substantial sensitive commercial information, which would be damaging to the Debtors, the Purchaser, FlashPoint, FUJIFILM and/or the Licensees if such information were to be disclosed. The filing of such documents and portions under seal is in the best interests of the Debtors, their estates, their creditors, and other parties-in-interest.

Sale Free and Clear of Claims and Interests

FF. The conditions of section 363(f) of the Bankruptcy Code have been satisfied in full and, upon entry of this Order, the Debtors may sell the Assigned Assets free and clear of all Claims and Interests (except for and subject to the Permitted Encumbrances and Paragraph 31 of this Order) as provided in the Sale Agreement and this Order. IV would not have entered into the Sale Agreement and would not consummate the Sale, if the Sale were not free and clear of Claims and Interests (except for and subject to the Permitted Encumbrances and Paragraph 31 of this Order) as provided in the Sale Agreement and this Order.

GG. Upon entry of this Order, Kodak may sell the Assigned Assets free and clear of all Claims and Interests (except for and subject to the Permitted Encumbrances and Paragraph 31 of this Order) against the Debtors or the Assigned Assets because (a) the sale of the Assigned Assets is subject to the Permitted Encumbrances and Paragraph 31 of this Order, or (b) one or more of the provisions set forth in section 363(f)(1)-(5) of the Bankruptcy Code has been satisfied, including that, except as otherwise expressly provided in the Sale Agreement or this Order, such Claims and Interests shall attach to the proceeds generated from the sale of the Assigned Assets in their order of priority, with the same validity, force and effect which they now have against the Assigned Assets. Those holders of Claims or Interests against the Debtors or any of the Assigned Assets who did not object or who withdrew their objections to the Sale or the Motion are deemed to have consented pursuant to section 363(f)(2) of the Bankruptcy Code.

HH. The Purchaser and the Licensees have given substantial consideration under the Sale Agreement and the Ancillary Agreements for the benefit of the Debtors and their creditors. The consideration given by the Purchaser shall constitute valid and valuable consideration for the releases of any potential Claims and Interests against the Assigned Assets (except for and subject to Permitted Encumbrances and Paragraph 31 of this Order) pursuant to this Order, which releases shall be deemed to have been given in favor of the Purchaser by all holders of Claims and Interests against the Assigned Assets (except for and subject to the Permitted Encumbrances and Paragraph 31 of this Order).

Approval of Settlements

II. The FlashPoint Agreements, the Fuji Letter Agreement and the dismissal and release of patent claims between Kodak and the Licensees pursuant to the Retained Patents License Agreements (collectively, the "**Licensee Settlements**"), are necessary conditions to the Transactions.

JJ. The Fuji Letter Agreement, including the modifications to the Cross License Agreements (as defined in the Fuji Letter Agreement), the assumption of the Cross License Agreements, and the mutual agreement not to assert Patent Infringement Claims (as defined in the Fuji Letter Agreement) during the Standstill Period (as defined in the Fuji Letter Agreement) pursuant to paragraph 3 of the Fuji Letter Agreement (the "**FUJIFILM/Kodak Standstill**"), together with the Retained Patents License Agreement between Kodak and FUJIFILM, constitutes a global settlement of multiple litigable issues on an integrated basis, is the result of good faith arm's-length negotiations, and represents the Debtors' exercise of their reasonable business judgment in resolving the disputes and potential disputes between the Debtors and FUJIFILM addressed in the Fuji Letter Agreement and such Retained Patents License Agreement on the terms set forth therein. The allowance of the FUJI POC (as defined below) as

a general unsecured prepetition claim against Kodak's estate in the amount of $70 million pursuant to the Fuji Letter Agreement and this Order avoids the risks and delay of litigation and constitutes a fair and equitable settlement of such claim against the Debtors' estates in an amount that is within the reasonable range of potential outcomes of litigation with respect to such claim. The consummation of the transactions contemplated by the Fuji Letter Agreement will not result in a breach or violation by Kodak of, or a default by Kodak under, any of the Cross License Agreements.

KK. The standards of Bankruptcy Rule 9019 have been satisfied with respect to each of the FlashPoint Agreements, the Licensee Settlements, and the Fuji Letter Agreement.

LL. The entry of this Order is in the best interests of the Debtors and their estates, creditors, interest holders and all other parties in interest.

MM. Each Objector (as defined below) has objected and expressly withheld its consent to the sale of the Assigned Assets free and clear of such Objector's alleged Claims or Interests in and to the Assigned Asset arising under the Scheduled Agreements to which such Objector is a party (each an "**Alleged Interest**"; provided that an Alleged Interest shall not include any ownership, co-ownership, inventorship or co-inventorship Claim or Interest in any of the Assigned Assets). In addition, the sale of the Assigned Assets free and clear of an Alleged Interest (x) may not be permitted under applicable nonbankruptcy law and (y) an Objector might not be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such Alleged Interest.

NN. Each Objector has requested in writing that the Debtors comply with section 365(n)(4) of the Bankruptcy Code.

OO. Each Objector is adequately protected under section 363(e) of the Bankruptcy Code as a result of the definition of Permitted Encumbrances and Paragraph 31 of this Order; and therefore

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED as set forth herein.

2. All objections to the Motion or the relief requested therein that have not been withdrawn, waived, settled (by inclusion of Paragraph 31 and other provisions hereof) or otherwise resolved, and all reservations of rights included therein, are hereby overruled on the merits, with prejudice. All persons and entities that failed to timely object to the Motion are deemed to have consented to the relief sought therein. The objection of David J. Ollila [Docket No. 2748] is hereby overruled on the merits, with prejudice. The Debtors shall schedule a hearing to determine the extent to which Mr. Ollila may have a Claim or Interest that attaches to the sale proceeds under paragraph 5 of this Order, unless the parties otherwise agree.

3. Amounts, if any, to be paid by the Debtors to the Purchaser or the Licensees under the Transaction Documents shall (i) constitute allowed administrative expenses of the estates pursuant to sections 503(b) and 507(a)(2) of the Bankruptcy Code, (ii) not be altered, amended, discharged or affected by any plan confirmed in these cases without the prior written consent of the Purchaser and the Licensees, and (iii) be due and payable if and when the Debtors' obligations arise under the Transaction Documents without further order of this Court.

4. Pursuant to sections 105 and 363 of the Bankruptcy Code, the Transaction Documents, the FlashPoint Agreements, the Fuji Letter Agreement and the Ancillary Agreements, and all terms and conditions of the Transaction Documents, the FlashPoint Agreements, the Fuji Letter Agreement, the Ancillary Agreements, and the Transactions are

hereby approved. The FlashPoint Agreements and the Licensee Settlements are hereby also approved pursuant to section 363 of the Bankruptcy Code and Bankruptcy Rule 9019, and the Fuji Letter Agreement is hereby also approved pursuant to sections 365 and 502 of the Bankruptcy Code and Bankruptcy Rule 9019. The Debtors are authorized to consummate the Transactions with the Purchaser, FlashPoint, FUJIFILM and the Licensees pursuant to the Transaction Documents, the FlashPoint Agreements, the Fuji Letter Agreement and the other Ancillary Agreements. The Debtors are authorized, without further Order of this Court, to execute and deliver all documents and instruments of assignment, transfer and sale contemplated by the Transaction Documents, the FlashPoint Agreements, the Fuji Letter Agreement and the other Ancillary Agreements; to comply with the Transaction Documents, the FlashPoint Agreements, the Fuji Letter Agreement and the other Ancillary Agreements; and to take and perform all other actions necessary or desirable to consummate or implement the Transactions and implement and effectuate the relief granted in this Order.

5. Upon the Closing, the Sale to the Purchaser shall constitute a legal, valid and effective transfer of Kodak's right, title and interest in the Assigned Assets notwithstanding any requirement for approval or consent by any person or entity and shall vest the Purchaser with any and all right, title and interest of Kodak in and to the Assigned Assets free and clear of all Claims and Interests (except for and subject to the Permitted Encumbrances and Paragraph 31 of this Order) pursuant to section 363(f) of the Bankruptcy Code, as provided in the Sale Agreement and this Order, with such Claims and Interests (except as set forth in Paragraph 31 of this Order) attaching to the proceeds generated from the sale of the Assigned Assets in the order of their priority, with the same validity, force and effect which they now have against the Assigned Assets.

6. Upon the Closing, all holders of Claims and Interests (except for holders of Permitted Encumbrances or as provided in Paragraph 31 of this Order) against (i) the Debtors in respect of the Assigned Assets or (ii) the Assigned Assets are permanently and forever barred, restrained and enjoined from asserting such Claims and Interests in respect of the Assigned Assets or enforcing remedies, or commencing or continuing in any manner any action or other proceeding of any kind, against the Purchaser (in respect of the Assigned Assets) or the Assigned Assets. Notwithstanding the preceding sentence, nothing in this Order shall bar, restrain or enjoin any party to any of the Transaction Documents from enforcing such Transaction Document.

7. Upon the Closing, all persons are permanently and forever barred, restrained and enjoined from (x) asserting against the Purchaser or the Assigned Assets any Claim or Interest arising under any theory of successor liability and (y) enforcing any such Claim or Interest with respect to the Assigned Assets against the Purchaser or the Assigned Assets (in each case, to the extent that such Claim or Interest does not constitute a Permitted Encumbrance or with respect to the Objectors, is not reserved by Paragraph 31 hereof or any other provision of this Order).

8. Pursuant to the FlashPoint Settlement Agreement, the Purchaser shall take its right, title, and interest in and to the Assigned Assets free and clear of any Disputed Interests as they relate to any assertion made by FlashPoint.

9. The terms and provisions of the Transaction Documents, the FlashPoint Agreements, the Fuji Letter Agreement, the other Ancillary Agreements, and this Order shall be binding in all respects upon, and shall inure to the benefit of, the Purchaser, the Licensees, the Debtors, FlashPoint, FUJIFILM, the Debtors' estates and each of their respective successors and

assigns. This Order shall be binding in all respects upon all holders of Claims and Interests (except for holders of Permitted Encumbrances or as set forth in Paragraph 31 of this Order) in the Assigned Assets and the Licensed Patents and any trustees, examiners, "responsible persons" or other fiduciaries appointed in these cases or upon a conversion to chapter 7 under the Bankruptcy Code.

10. From and after the Closing, this Order shall be construed and shall constitute for any and all purposes a full and complete general assignment, conveyance, and transfer of all of the Kodak's right, title, and interest in the Assigned Assets to the Purchaser at the Closing subject and pursuant to the terms of the Sale Agreement, free and clear of all Claims and Interests (except for and subject to the Permitted Encumbrances and Paragraph 31 of this Order), as provided in the Sale Agreement and this Order.

11. Notwithstanding anything set forth herein, the Purchaser shall acquire the Assigned Assets subject to each Grant-Back License Agreement and each Bidco DC/KISS Patent License Agreement, and the Assigned Assets shall be encumbered by the Grant-Back License Agreements and the Bidco DC/KISS Patent License Agreements in accordance with their terms. Each Grant-Back License Agreement between Kodak and the Purchaser will be, as of the Closing, a legal, valid, and effective license, and shall vest Kodak with the rights as set forth therein. Each Consortium Member License Agreement between Kodak and each Licensee will be, as of the Closing, a legal, valid, and effective license, and shall vest such Licensee with the rights set forth therein.

12. Any Assigned Assets in the possession or control of any person or entity shall be transferred to the Purchaser free and clear of all Claims and Interests (except for and

subject to the Permitted Encumbrances and Paragraph 31 of this Order) as provided in the Sale Agreement and this Order.

13. The Transactions have been undertaken by the Purchaser, FlashPoint, FUJIFILM and the Licensees in good faith. The Purchaser, FlashPoint, FUJIFILM and the Licensees satisfy the good faith requirement of section 363(m) of the Bankruptcy Code and, accordingly, the Purchaser, FlashPoint, FUJIFILM, the Licensees, and the Transactions are entitled to all of the protections afforded by section 363(m) of the Bankruptcy Code.

14. The Transactions may not be avoided and no damages may be awarded under section 363(n) of the Bankruptcy Code or any other section of the Bankruptcy Code or applicable nonbankruptcy law as a result of the Transactions. The Transaction Documents, the FlashPoint Agreements, the Fuji Letter Agreement, the Cross License Agreements and the other Ancillary Agreements shall not be subject to rejection under section 365 of the Bankruptcy Code, and the Transactions shall not be subject to avoidance under chapter 5 of the Bankruptcy Code.

15. All proceeds from the consummation of the Sale (including the Deposit) and the Consortium Member License Agreements, and any other proceeds received in connection with the Transactions, shall be treated in accordance with that certain (A) Debtor-in-Possession Credit Agreement, dated as of January 20, 2012, among the Debtors, the DIP Agent and the other parties thereto (as amended from time to time, the "**DIP Credit Agreement**") (including, but not limited to, the mandatory prepayment obligations contained in Section 2.10(b) of the DIP Credit Agreement), and (B) Final Order (I) Authorizing Debtors to (A) Obtain Post-Petition Financing Pursuant to 11 U.S.C. §§ 105, 361, 362, 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1) and 364(e) and (B) to Utilize Cash Collateral Pursuant to 11 U.S.C. § 363 and (II)

Granting Adequate Protection to Pre-Petition Secured Parties Pursuant to 11 U.S.C. §§ 361, 362, 363 and 364 [Docket No. 375] (the "**DIP Order**") (including, but not limited to, Paragraph 14(d) thereof). The Debtors shall cause the IP Sale Proceeds (as defined in the DIP Credit Agreement) and the Applicable Prepayment Percentage of IP Settlement Proceeds or Other Proceeds (each as defined in the DIP Credit Agreement) to be deposited directly upon receipt in a certain segregated Cash Collateral Account (as provided for and as defined in the DIP Credit Agreement) for application in accordance with the terms of the DIP Credit Agreement (including Section 2.10(b)(iii) thereof) and the DIP Order (including Paragraph 14(d) thereof), without further order by this Court, in compliance with their obligations under the DIP Credit Agreement and the DIP Order. Notwithstanding anything to the contrary herein, nothing in this Order, nor the participation of the DIP Agent in the Bidding Process (as defined in the Bidding Procedures), shall be deemed a waiver of the rights and remedies of the DIP Agent under, or any term of, the DIP Credit Agreement or any documents or orders relating thereto (together, the "**DIP Documents**") or the rights and remedies of any of the Lenders (as defined in the DIP Credit Agreement) under the DIP Documents.

16. The Transaction Documents, the FlashPoint Agreements, the Fuji Letter Agreement, the other Ancillary Agreements and any related agreements, documents or other instruments may only be modified, amended or supplemented through a written document signed by the parties thereto in accordance with the terms thereof; provided, that, (i) an order of this Court has approved such modification, amendment, or supplement; or (ii) such modification, amendment or supplement is not material; *provided* that in the case of clause (ii), the Debtors promptly notify the Reviewing Creditors in advance of such modification, amendment or supplement. The Debtors are hereby authorized to perform each of their

covenants and undertakings as provided in the Transaction Documents, the FlashPoint Agreements, the Fuji Letter Agreement and the other Ancillary Agreements prior to or after the Closing without further order of this Court.

17. The Transactions shall be of full force and effect, regardless of any Debtor's lack of good standing in any jurisdiction in which such Debtor is formed or authorized to transact business.

18. No bulk sales law or any similar law of any state or other jurisdiction shall apply in any way to the Transactions.

19. Pursuant to the Sale Agreement, the Deposit shall be credited against the Closing Amount and/or License Fees, as applicable, at the Closing.

20. This Order shall not be modified by any subsequent chapter 11 plan confirmed in Debtors' chapter 11 cases, by any dismissal or conversion of these chapter 11 cases, by appointment of or any action or inaction by any trustee, examiner, responsible person, or foreign representative, or otherwise by any subsequent order of this Court unless expressly consented to in writing by the Purchaser and the Licensees or, as applicable, FUJIFILM.

21. In the event there is a conflict between this Order and the Transaction Documents, the FlashPoint Agreements, the Fuji Letter Agreement, the other Ancillary Agreements or the Conditional Sale Order, this Order shall control and govern.

22. The requirements set forth in Local Rule 9013-1(b) are satisfied.

23. The dismissals of the Pending Claims contemplated by the Bidco DC/KISS Patent License Agreements and the Retained Patents License Agreement are hereby approved. Kodak (as Licensor), Apple and each Licensee are authorized and directed to dismiss

such Pending Claims in accordance with the procedures outlined in the Bidco DC/KISS Patent License Agreements and the Retained Patents License Agreements (as applicable).

24. The failure specifically to include or make reference to any particular provisions of the Transaction Documents, the FlashPoint Agreements or the Fuji Letter Agreement in this Order shall not impair the effectiveness of such provision, it being the intent of this Court that the Transaction Documents, the FlashPoint Agreements and the Fuji Letter Agreement are authorized and approved in their entirety.

25. Following the Closing, the Debtors and Apple, in accordance with the applicable Retained Patents License Agreement, shall cause the following actions to be dismissed with prejudice:

i. *Eastman Kodak Co.* v. *Apple Inc.*, United States District Court for the Western District of New York (Case No. 6:10-CV-06021);

ii. *Eastman Kodak Co.* v. *Apple Inc.*, United States District Court for the Western District of New York (Case No. 6:12-CV-06020);

iii. *Apple Inc.* v. *Eastman Kodak Co.*, United States District Court for the Northern District of California (Case No. 5:10-CV-01609);

iv. *Eastman Kodak Company* v. *ITC, Research In Motion Ltd. and Research in Motion Corp., and Apple Inc.*, United States Court of Appeals for the Federal Circuit (Case No. 2012-1588), on appeal from *In the Matter of Certain Mobile Telephones and Wireless Communication Devices Featuring Digital Cameras, and Components Thereof*, ITC Inv. No. 337-TA-703;

v. *In the Matter of Certain Electronic Devices for Capturing and Transmitting Images and Components Thereof*, ITC Inv. No. 337-TA-831;

vi. *Eastman Kodak Co.* v. *Apple Inc., et al.*, United States District Court for the Southern District of New York (Case No. 12-CV-5047)

vii. *Apple Inc.* v. *ITC and Eastman Kodak Company*, United States Court of Appeals for the Federal Circuit (Case No. 2011-1592), on appeal from *In the Matter of Certain Digital Imaging Devices and Related*

Software, ITC Inv. No. 337-TA-717;

viii. *Eastman Kodak Company* v. *Apple Inc. and FlashPoint Technology, Inc.*, United States Bankruptcy Court for the Southern District of New York (Adv. Proc. No. 12-01720)

ix. *Eastman Kodak Co.* v. *Apple Inc.*, United States District Court for the Western District of New York (Case No. 10-cv-06022); and

x. *Eastman Kodak Co.* v. *Apple Inc. (In re Eastman Kodak Co.)*, United States District Court for the Southern District of New York (Case No. 1:12-CV-04881).

26. Following the Closing, the Debtors and each Licensee set forth below, in accordance with the Retained Patents License Agreement applicable to such Licensee, shall cause the following actions to be dismissed with prejudice:

i. *Eastman Kodak Company* v. *Fujifilm Corp, et. al.*, United States District Court for the Western District of New York (Case No. 12-CV-06025);

ii. *In the Matter of Certain Electronic Devices For Capturing and Transmitting Images, and Components Thereof*, ITC Inv. No. 337-TA-831;

iii. *Eastman Kodak Company* v. *HTC Corporation, HTC America, Inc. and Exedea, Inc.*, United District Court for the Western District of New York (Case No. 6:12-CV-06021);

iv. *Research In Motion Limited, et al.* v. *Eastman Kodak Company*, United States District Court for the Northern District of Texas (Case No. 3:08-CV-02075);

v. *Eastman Kodak Company* v. *ITC, Research In Motion Ltd. and Research in Motion Corp., and Apple Inc.*, United States Court of Appeals for the Federal Circuit (Case No. 2012-1588), on appeal from *In the Matter of Certain Mobile Telephones and Wireless Communication Devices Featuring Digital Cameras, and Components Thereof*, ITC Inv. No. 337-TA-703;

vi. *Eastman Kodak Company* v. *Samsung Electronics Co., Ltd., Samsung Electronics America, Inc. and Samsung Telecommunications America, LLC*, United States District Court for the Western District of New York (Case No. 6:12-CV-06036);

vii. *Eastman Kodak Company* v. *Shutterfly Inc.*, United States District Court for the District of Delaware (Case No. 1:10-CV-01079); and

viii. *Shutterfly, Inc.* v. *Eastman Kodak Company*, United States District Court for the District of Delaware (Case No. 1:11-CV-00099).

27. Following consummation of the transactions contemplated by the FlashPoint Agreements, FlashPoint shall cause all the claims asserted in the *Eastman Kodak Company* v. *Apple Inc. and FlashPoint Technology, Inc.*, United States Bankruptcy Court for the Southern District of New York (Adv. Proc. No. 12-01720) proceeding filed June 18, 2012 to be dismissed with prejudice.

28. Upon consummation of the transactions contemplated by the FlashPoint Agreements, any proofs of claim filed against any Debtor by FlashPoint (or any of FlashPoint's affiliates) shall be deemed amended to reflect the release and settlement of claims against the Debtors by FlashPoint on the terms set forth in the FlashPoint Agreements. FlashPoint shall promptly take such steps as necessary to amend the relevant proofs of claim to reflect the foregoing. FlashPoint and its affiliates shall not otherwise amend or supplement any proof of claim filed against any Debtor.

29. Upon consummation of the transactions contemplated by each Retained Patents License Agreement, any proofs of claim filed against any Debtor by the Licensee (or any affiliate of such Licensee) party thereto, other than the FUJI POC (as defined below), shall be deemed amended to reflect the release and settlement of claims against the Debtors by such Licensee (or any affiliate of such Licensee) on the terms set forth in the applicable Retained Patents License Agreement. Each Licensee shall promptly take such steps as necessary to amend the relevant proofs of claim to reflect the foregoing.

30. The Debtors are authorized to enter into the Fuji Letter Agreement and the Fuji Letter Agreement is hereby approved in all respects, and in accordance therewith and following the Effective Date (as defined in the Fuji Letter Agreement): (i) the Debtors are authorized to modify the Cross License Agreements (as defined in the Fuji Letter Agreement) as provided therein, and such modifications are hereby approved; (ii) the Debtors are authorized to assume the Cross License Agreements pursuant to section 365 of the Bankruptcy Code, and such assumption is hereby approved in all respects; (iii) no cure costs or other amounts are required to be paid in connection with the assumption of the Cross License Agreements and none of the Transactions shall result in a breach or violation of or default under the Cross License Agreements (either prior to or following the Effective Date); (iv) the FUJIFILM/Kodak Standstill is hereby approved and, notwithstanding any other order of this Court, FUJIFILM shall not be barred from asserting, and the confirmation of a chapter 11 plan in these chapter 11 cases shall not discharge the Debtors from, any patent claims subject to the FUJIFILM/Kodak Standstill, and (v) the proof of claim number 5841 (the "**FUJI POC**") filed by FUJIFILM in these chapter 11 cases is hereby allowed pursuant to section 502 of the Bankruptcy Code as a general unsecured prepetition claim against Kodak in the amount of $70 million (the "**Stipulated Claim**"). Following the Effective Date, the Stipulated Claim shall not be subject to further review, disallowance, setoff or reduction, in whole or in part, for any reason or upon any ground, including without limitation section 502(d) of the Bankruptcy Code. Following the Effective Date, the Debtors and FUJIFILM shall promptly: (i) cause all claims asserted in *Fujifilm Corp.* v. *Eastman Kodak Co.*, pending in the United States District Court for the Southern District of New York (Case No. 11-CV-7247) to be dismissed with prejudice, with all parties to bear their own costs; (ii) execute and deliver the Cross License Terms (as defined in the Fuji Letter

Agreement), and evidence the Debtors' assumption of the Cross License Agreements as modified in accordance with the Fuji Letter Agreement; (iii) execute such other documents as either FUJIFILM or Kodak reasonably requires to evidence the FUJIFILM/Kodak Standstill; and (iv) cause the FUJI POC, along with proof of claim numbers 5843 and 5845 filed by FUJIFILM in these chapter 11 cases, to be amended to reflect the terms of the Fuji Letter Agreement and, as applicable, the Retained Patents License Agreement between Kodak and FUJIFILM.

31. (a) Nothing in this Order or in the Sale Agreement, including the provisions relating to the sale of any Assigned Assets free and clear of Claims and Interests shall limit, restrict or compromise, in any respect (including on the basis of collateral estoppel, *res judicata*, waiver or section 363(f) of the Bankruptcy Code), any Objector's (as defined below) affirmative defenses, defenses, counter- or cross- complaints or complaints for declaratory relief (other than affirmative defenses, defenses, counter- or cross-complaints or complaints for declaratory relief based on ownership, inventorship or co-inventorship of any Assigned Patent) in connection with any action, litigation or proceeding commenced or that may be commenced by or against any Objector. "**Objector**" means each person identified as such in Paragraph 31(b) of the Conditional Sale Order and Global OLED Technology, LLC.

(b) Nothing in this Order or in the Sale Agreement (including, without limitation, Section 2.2 thereof) (in each case, other than the last line of this clause (b)) shall have any collateral estoppel, res judicata, waiver or other adverse effect in connection with, nor shall be deemed to be an assumption, assignment or rejection of any agreement listed on Schedule 1.1(d) or 1.1(h) of the Sale Agreement. To the extent the Debtors seek to assume, assign or reject any agreement listed on Schedule 1.1(d) or 1.1(h) of the Sale Agreement, nothing in this Order (other than the last line of this clause (b)) shall impair, prejudice, waive or otherwise affect

any party's rights with respect to such proposed assumption, assignment or rejection thereof (including under 365(n) of the Bankruptcy Code). For greater certainty, nothing in this paragraph 31(b) shall affect the Debtors' assumption of the Cross License Agreements with FUJIFILM as provided in Paragraph 30 of this Order.

(c) Notwithstanding anything herein to the contrary, the requirements of section 363(f) of the Bankruptcy Code with respect to the sale of the Assigned Assets free and clear of any Alleged Interest validly existing on the Closing Date may not have been satisfied. Accordingly, each Alleged Interest shall constitute a Permitted Encumbrance under subparagraph (e) of the definition of Permitted Encumbrances to the extent that such Alleged Interest (a) is determined to have been validly existing on the Closing Date, and (b) for which the requirements of section 363(f) of the Bankruptcy Code have not been satisfied for a sale free and clear (each such Alleged Interest, a **"Valid Interest"**). A holder of a valid Permitted Encumbrance shall be entitled to assert such valid Permitted Encumbrance against any owner of the Assigned Assets.

32. The requirements set forth in Bankruptcy Rule 6004(a) are satisfied.

33. The stay otherwise imposed by Bankruptcy Rule 6004(h) is hereby waived. This Order is immediately effective and enforceable, notwithstanding anything set forth in the Bankruptcy Rules or Local Rules or otherwise. The Debtors are not subject to any stay in the implementation, enforcement, or realization of the relief granted in this Order and the Debtors shall, without further delay, take all actions and perform all acts authorized under this Order.

34. The Purchaser is not and will not become obligated to pay any fee, commission, or like payment to any broker, finder, or financial advisor as a result of the

consummation of the Transactions contemplated by the Sale Agreement based upon any arrangement made by or on behalf of the Debtors.

35. This Court retains jurisdiction with respect to all matters arising from or related to the enforcement of this Order (provided that such jurisdiction shall be non-exclusive with respect to any disputes regarding the extent to which an Alleged Interest is a Valid Interest pursuant to Paragraph 31 hereof, and nothing herein shall be deemed to determine that any such disputes with Objectors are or are not core proceedings under 28 U.S.C. § 157 or otherwise), including the authority to: (i) interpret, implement, and enforce the terms and provisions of this Order (including the injunctive relief provided in this Order) and the terms of the Transaction Documents, the FlashPoint Agreements, the Fuji Letter Agreement, the other Ancillary Agreements, all amendments to any of the foregoing, and any waivers and consents thereunder; (ii) protect the Purchaser and the Licensees, or the Assigned Assets from and against any Claims; (iii) compel delivery of all Assigned Assets to the Purchaser; (iv) compel IV and the Debtors to perform all of their obligations under the Sale Agreement; (v) resolve any disputes arising under or related to the Transaction Documents, the FlashPoint Agreements, the Fuji Letter Agreement, the other Ancillary Agreements, the Sale, or the Transactions; and (vi) provide any further relief that is necessary or appropriate in furtherance of this Order or the Transactions.

36. The unredacted versions of the Sale Agreement, including Schedules or Exhibits thereto, the Consortium Member License Agreements, the Grant-Back License Agreements, the FlashPoint Agreements, the Fuji Letter Agreement and the other Ancillary Agreements delivered to this Court shall be kept segregated and under seal by the Clerk of Court and shall not be made publicly available pursuant to sections 105(a) and 107(b) of the Bankruptcy Code and Bankruptcy Rule 9018; provided that the party filing such documents shall

remove such documents from the Bankruptcy Court within one year after the date of this Order and shall thereafter maintain such documents in such party's files.

Dated: January 11, 2013
New York, New York

s/Allan L. Gropper
Allan L. Gropper
United States Bankruptcy Judge