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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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	In re:)	Chapter 11)	
		EASTMAN KODAK COMPANY, <i>et al.</i> , ¹)	Case No. 12-_____ (_____))	
		Debtors.)	(Joint Administration Requested))	

**DEBTORS’ MOTION FOR INTERIM AND FINAL ORDERS (A) AUTHORIZING,
BUT NOT DIRECTING, THE DEBTORS TO PAY TAXES AND FEES AND
(B) AUTHORIZING, BUT NOT DIRECTING, ALL FINANCIAL INSTITUTIONS
TO HONOR ALL RELATED PAYMENT REQUESTS**

Eastman Kodak Company (“**Kodak**”), on behalf of itself and its affiliated debtors and debtors in possession in these chapter 11 cases (collectively, the “**Debtors**”), hereby submits this motion (the “**Motion**”) for entry of interim and final orders, substantially in the forms attached hereto as Exhibit A (the “**Proposed Interim Order**”) and Exhibit B (the “**Proposed Final Order**”), together with the Proposed Interim Order, the “**Proposed Orders**”), respectively, (a) authorizing, but not directing, the Debtors, to the extent permitted by the terms of the DIP

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.



Financing (as defined below), to pay certain income, sales, use, franchise and property taxes and other taxes, assessments, fees (including intellectual property fees) and similar charges and (b) authorizing, but not directing, financial institutions to receive, process, honor, and pay all related checks and electronic payment requests, solely to the extent the Debtors have sufficient funds standing on their credit with such financial institutions. In support of this Motion, the Debtors respectfully represent and set forth as follows:

Background

1. On the date hereof (the “**Petition Date**”), each of the Debtors filed a voluntary petition in this Court for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “**Bankruptcy Code**”). The Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No request for appointment of a trustee or examiner has been made in these chapter 11 cases. No committees have been appointed or designated.

2. Founded in 1880 and long one of the world’s leading material science companies, the Debtors and their non-Debtor affiliates operate an integrated global business involving a diverse collection of mature and growth businesses and an array of valuable intellectual property. In order to address a shortfall in liquidity in the United States, monetize non-strategic intellectual property, fairly resolve legacy liabilities and focus on their most valuable business lines, the Debtors commenced these chapter 11 cases.

3. Additional factual background relating to the Debtors’ businesses and the commencement of these chapter 11 cases is set forth in detail in the Declaration of Antoinette P. McCorvey Pursuant to Rule 1007-2 of the Local Bankruptcy Rules for the Southern District of New York in Support of First Day Pleadings dated January 18, 2012 (the “**First Day Declaration**”), filed contemporaneously with this Motion and incorporated herein by reference.

Facts Specific to the Relief Requested

4. In the ordinary course of operating their businesses, the Debtors collect and/or incur income taxes, sales taxes, use taxes, franchise taxes and fees, property taxes and other taxes, assessments, fees (including intellectual property fees) and similar charges (collectively, the “**Taxes and Fees**”).² The Debtors remit the Taxes and Fees to various federal, state, local and foreign taxing, licensing and other governmental authorities (collectively, the “**Authorities**”). The Debtors pay the Taxes and Fees monthly, quarterly, annually or biennially to the respective Authorities, in accordance with any applicable laws and regulations.

5. The Debtors believe that many of the Taxes and Fees collected prepetition are not property of the Debtors’ estates, and must for that reason be turned over to the Authorities. In any event, even if certain Taxes and Fees are not actually the property of the Authorities, they may give rise to priority claims. Moreover, failure to pay the Taxes and Fees could result in Authorities taking actions that might interfere with the Debtors’ successful reorganization, including possibly bringing personal liability actions against directors, officers and other employees, which likely would distract key personnel, whose full-time attention to the Debtors’ reorganization efforts is essential at this juncture. Any such business disruptions would likely erode the Debtors’ customer base and negatively impact these chapter 11 cases. Each of the following Debtors – Kodak Philippines, Ltd., Kodak Portuguesa Limited, Kodak (Near East), Inc., and Kodak Americas, Ltd. – operates a foreign branches in one or more of the following jurisdictions: Philippines, Dubai, Turkey, Greece, Peru, Uruguay and Columbia (collectively, the “**Foreign Branches**”). These Debtors’ primary assets consist of the Foreign Branches. These

² The Debtors do not seek authority to collect and pay state and federal employee withholding taxes under this Motion, but rather request such authority as part of the Debtors’ Motion for Entry of Interim and Final Orders Authorizing, But Not Directing, the Debtors to (A) Pay Certain Prepetition Wages and Reimbursable Employee Expenses, (B) Pay and Honor Employee Medical and Other Benefits and (C) Continue Employee Benefits Programs, filed concurrently herewith.

Debtors intend to continue to pay taxes in the ordinary course of business, consistent with past practice, in each jurisdiction in which it operates.

A. Sales and Use Taxes

6. The Debtors collect and remit sales taxes to the Authorities in connection with the sale of their various products and other merchandise in certain jurisdictions. The Debtors also are responsible for remitting use taxes on account of the purchase of various inventory, supplies or other goods used in their businesses. Use taxes typically arise if a supplier does not have business operations in the jurisdiction in which it is supplying goods and therefore does not charge sales tax, but the goods are otherwise taxable to the purchaser. The Debtors also have an obligation to withhold taxes on certain payments to foreign persons, primarily certain federal withholding taxes required to be withheld on royalty payments to foreign persons.

7. The Debtors remit sales and use taxes on a monthly, quarterly and annual basis. Recently, the Debtors have divested certain businesses that paid sales and use tax. With respect to those businesses that remain part of the Debtors' enterprise as of the Petition Date, the Debtors historically have remitted approximately \$26 million annually in sales and use taxes. As of the Petition Date, the Debtors estimate that they paid Thomson Reuters (as defined below) all sales and use taxes that have incurred or collected. Thomson Reuters is in the process of paying those fees to the relevant taxing authorities on behalf of the Debtors. However, there might be some sales and use taxes owing that the Debtors are not currently aware of and that have not been remitted to Thomson Reuters for payment to the Authorities. The Debtors estimate that these taxes should not exceed \$350,000 (which also includes the fees to Thomson Reuters as described below), and that such Taxes and Fees will become due and owing within the 21-day period following the Petition Date.

8. To coordinate and streamline the payment of sales and use taxes across multiple jurisdictions, the Debtors used Thomson Reuters (Tax & Accounting) Services, Inc., to provide ministerial tax-outsourcing services for most of the Debtors' filings.³ All sales tax audits, use tax audits and use tax returns were handled by the Debtors' tax department, with assistance, where necessary, from Thomson Reuters.⁴ Generally, the Debtors prepared and forwarded various data to Thomson Reuters that captured all of the pertinent information⁵ to allow Thomson Reuters to prepare monthly, quarterly, semiannual or annual sales tax returns for various entities. Thomson Reuters then provided the Debtors with detailed information on the tax returns—including the amount of the tax currently payable by each entity on a jurisdiction-by-jurisdiction basis—and a breakdown of Thomson Reuters' fees for preparing the returns. The Debtors' tax department reviewed the calculations and sent Thomson Reuters a request for an automated clearing house payment to cover the applicable amounts. Once Thomson Reuters received this transfer, it made the required payments to each of the jurisdictions in which the Debtors owed sales and use taxes and submitted the tax returns on the Debtors' behalf. The Debtors intend to continue such practices in the postpetition period. As of the Petition Date, the Debtors estimate that they owe Thomson Reuters approximately \$24,000 plus any amount owed with respect to the last payment of taxes, and seek authorization to pay this amount pursuant to this Motion as part of the sales and use taxes described above.

B. Real and Personal Property Taxes

³ The Debtors understand that Thomson Reuters (Tax & Accounting) Services, Inc. sales and use tax services were recently acquired by KPMG and Anybill, and the Debtors expect to use their services going forward (Thomson Reuters (Tax & Accounting) Services, Inc., KPMG and Anybill collectively, "**Thomson Reuters**").

⁴ The services that will be performed by KPMG and Anybill are ministerial and non-professional in nature and, therefore, the Debtors do not seek to retain KPMG and Anybill as professionals of the Debtors' estates under the Bankruptcy Code in these chapter 11 cases.

⁵ This includes state, county and zip code information of each purchasing entity, along with the Debtors' gross sales, exempt sales and sales tax collected for the applicable period.

9. State and local laws in many of the jurisdictions where the Debtors operate generally grant Authorities the power to levy property taxes against the Debtors' real and personal property. Additionally, the Debtors pay taxes for property they lease in, for example, New York City, which are calculated based on a percentage of the rent paid. To avoid the imposition of statutory liens on their real, personal and leased properties, the Debtors typically pay these taxes in the ordinary course of business on a monthly, quarterly and annual basis. The Debtors pay approximately \$10 million annually in real and personal property taxes. The Debtors believe that they are current on all personal and real property taxes due and owing as of the Petition Date. The Debtors estimate that, as of January 9, 2012, they may owe approximately \$1,710,000 to the Authorities on account of prepetition real and personal property taxes that will be due and owing within the 21-day period following the Petition Date. To coordinate and streamline the payment of real and personal property taxes across multiple jurisdictions, the Debtors use Ernst & Young LLP to provide ministerial tax-outsourcing services for the Debtors' property tax filings.

C. Income Taxes, Franchise Taxes and Fees and Similar Charges

10. The Debtors pay state, local and foreign income and franchise taxes to certain of the Authorities to operate their businesses in the applicable taxing jurisdictions. In this Motion, the Debtors are not seeking authority to pay any United States federal income taxes. States assess franchise taxes in one of the following manners: (a) a flat franchise tax on all businesses; (b) a franchise tax based on gross receipts, gross margin or net operating income; or (c) a franchise tax on an entity's total capital/equity or *pro forma* calculation thereof. The Debtors pay income and franchise taxes in most jurisdictions on an annual basis, with the requirement to remit quarterly estimated tax payments in some cases. While the Debtors have recently divested themselves of certain businesses that paid income and franchise taxes, with

respect to those businesses that remain part of the Debtors' enterprise as of the Petition Date, the Debtors historically have remitted approximately \$3 million in income and franchise taxes annually to certain of the Authorities. The Debtors estimate that, as of January 9, 2012, they may owe approximately \$300,000 to the Authorities on account of prepetition income and franchise taxes, not including potential audit settlement payments. The Debtors estimate that approximately \$25,000 of this amount is or will become due and owing within the 21-day period following the Petition Date on account of income and franchise taxes. With respect to adjustments to prepetition income and franchise taxes (*e.g.*, as a result of an audit or the filing of an amended return), the Debtors are seeking authorization to pay an aggregate amount that shall not exceed \$1 million.

11. Additionally, many states and certain local taxing jurisdictions require the payment of fees for the Debtors to maintain authority to conduct business within their jurisdictions. The fees are typically for licenses, annual reports, permits, business and occupational and other similar charges and assessments. The Debtors remit these fees on a monthly, quarterly, semiannual, annual or biennial basis. In 2011, the Debtors remitted approximately \$900,000 to the applicable Authorities in respect of such fees. The Debtors estimate that, as of January 9, 2012, they may owe approximately \$410,000 to the Authorities on account of prepetition fees. The Debtors estimate that less than \$350,000 of this amount is or will become due and owing within the 21-day period following the Petition Date.

D. Intellectual Property Fees

12. The Debtors have approximately 13,100 foreign patents and trademark registrations or pending registration in approximately 160 countries. The Debtors rely on intellectual property associates in-house and abroad to monitor and maintain the value of their intellectual property, by, among other things, paying regulatory and filing fees on behalf of the

Debtors and other subsidiaries to regulatory agencies and governmental Authorities. The Debtors spend approximately \$800,000 per month for these out of pocket services and fees, a substantial portion of which goes to reimburse the firms for fees paid on behalf of the Debtors and other subsidiaries to the applicable regulatory agencies and governmental Authorities, and estimate that approximately \$9.6 million will be payable within the next 12 months.

Additionally, the Debtors have approximately 8,900 patent and trademark registrations and applications in the United States, which the Debtors handle in-house. The Debtors spend approximately \$420,000 per month for fees paid on behalf of the Debtors and other subsidiaries to the applicable U.S. regulatory agencies and governmental Authorities, and estimate that approximately \$5.0 million will be payable within the next 12 months. Additionally, the Debtors estimate that approximately \$3 million of these domestic and foreign intellectual property fees is or will become due and owing within the 21-day period following the Petition Date, less any payments made by the Debtors during the two-week period leading to the Petition Date.

Jurisdiction

13. The Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b). The statutory predicates for the relief requested herein are sections 105(a), 363(b), 507(a)(8), 541, 1107(a) and 1108 of the Bankruptcy Code, rule 6003 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and rule 9013-1(a) of the Local Bankruptcy Rules for the Southern District of New York (the “**Local Rules**”).

Relief Requested

14. By this Motion, the Debtors seek entry of the Proposed Orders authorizing, but not directing, the payment of Taxes and Fees in the ordinary course of business,

without regard to whether such obligations accrued or arose before or after the Petition Date. The Debtors estimate that payments made pursuant to the Proposed Interim Order will not exceed \$6 million; however, if payments exceed that amount, the Debtors will promptly notify the United States Trustee for the Southern District of New York (the “**U.S. Trustee**”) and counsel for the agent for the DIP Financing. The Debtors further request that the Court authorize, but not direct, financial institutions to receive, process, honor and pay all related checks and electronic payment requests, solely to the extent the Debtors have sufficient funds standing to their credit with such financial institutions, and such financial institution may rely on the representations of such Debtors as to which checks are issued and authorized or wire transfers are made authorized to be paid in accordance with this Motion without any duty of further inquiry and without liability for following the Debtors’ instructions.

Basis for Relief

A. Certain of the Taxes and Fees May Not Be Property of the Debtors’ Estates.

15. Section 541(d) of the Bankruptcy Code provides, in relevant part, that “[p]roperty in which the debtor holds, as of the commencement of the case, only legal title and not an equitable interest . . . becomes property of the estate under subsection (a)(1) or (2) of this section only to the extent of the debtor’s legal title to such property, but not to the extent of any equitable interest in such property that the debtor does not hold.” 11 U.S.C. § 541(d).

16. Many of the Taxes and Fees constitute “trust fund” taxes, which the Debtors are required to collect from their customers and hold in trust for payment to the Authorities. As a result, courts have held that such taxes are not part of a debtor’s estate. *See, e.g., Begier v. Internal Revenue Serv.*, 496 U.S. 53, 57-60 (1990) (holding that any prepetition payment of trust fund taxes is not a transfer subject to avoidance because such funds are not the debtor’s property); *Al Copeland Enters., Inc. v. Texas (In re Al Copeland Enters.)*, 991 F.2d 233,

235 (5th Cir. 1993) (finding that debtors' prepetition collection of sales taxes and interest thereon were held subject to trust and were not property of the estate); *Shank v. Wash. State Dep't. of Revenue (In re Shank)*, 792 F.2d 829, 833 (9th Cir. 1986) (sales tax required by state law to be collected by sellers from their customers is a "trust fund" tax and not released by bankruptcy discharge); *DeChiaro v. N.Y. State Tax Comm'n*, 760 F.2d 432, 435-36 (2d Cir. 1985) (same). To the extent these "trust fund" taxes are collected, they are not property of the Debtors' estates under section 541(d). *See, e.g., In re Am. Int'l Airways, Inc.*, 70 B.R. 102, 104-5 (Bankr. E.D. Pa. 1987); *Old Republic Nat'l Title Ins. Co. v. Tyler (In re Dameron)*, 155 F.3d 718, 721-22 (4th Cir. 1998) (funds from various lenders held by closing agent in trust for designated third parties not property of debtor's estate). The Debtors, therefore, generally do not have an equitable interest in funds held on account of such "trust fund" taxes, and the Debtors should be permitted to pay those funds to the Authorities as they become due and payable.

17. Additionally, a constructive trust may be imposed on collected taxes where there exists a reasonable nexus between the funds and the taxes in question. *See Integrated Health Servs., Inc.*, 344 B.R. 262, 270 (Bankr. D. Del. 2006). The Debtors, therefore, may not have a legally cognizable interest in funds held on account of such "trust fund" taxes and, accordingly, such taxes, which generally consist of sales taxes, would not constitute "property of the [Debtors'] estate[s]" as such term is defined in section 541 of the Bankruptcy Code. Accordingly, the Debtors should be permitted to pay such funds to the Authorities as they become due and payable.

B. Certain of the Taxes and Fees May Constitute Secured or Priority Claims Entitled to Special Treatment.

18. Claims for some or all of the Taxes and Fees, including the sales, use, income and franchise taxes, owed by the Debtors are or may be entitled to priority status under

section 507(a)(8) of the Bankruptcy Code. Section 507(a)(8) of the Bankruptcy Code provides that claims entitled to priority status include unsecured claims of governmental units for:

(a) taxes on or measured by income or gross receipts for a taxable year ending on or before the Petition Date, for which a return, if required, is last due after three years prior to the Petition Date, and which is assessed within 240 days before the Petition Date, *see* 11 U.S.C.

§ 507(a)(8)(A); (b) property taxes incurred before the Petition Date and last payable without penalty after one year before the Petition Date, *see* 11 U.S.C. § 507(a)(8)(B); and (c) taxes required to be collected or withheld and for which the debtor is liable in whatever capacity, *see* 11 U.S.C. § 507(a)(8)(C).

19. Moreover, to the extent that the Taxes and Fees are entitled to priority treatment under section 507(a)(8)(B) of the Bankruptcy Code, the governmental unit also may attempt to assess penalties. *See* 11 U.S.C. § 507(a)(8)(G) (granting eighth priority status to “a penalty related to a claim of a kind specified in [section 507(a)(8)] and in compensation for actual pecuniary loss”).

20. Because certain of the Taxes and Fees likely would be entitled to priority treatment, the Debtors’ postpetition payment of prepetition Taxes and Fees will give the Authorities no more than that to which they otherwise would be entitled under a chapter 11 plan, and will save the Debtors potential interest expense, legal expense and penalties that otherwise might accrue on the Taxes and Fees during these chapter 11 cases.

21. In addition, certain of the Taxes and Fees may be the subject of tax liens. Arguably, the relation back of a tax lien to the assessment or tax status date generally does not affect the enforceability of the tax lien against a debtor or violate the automatic stay imposed by section 362(a) of the Bankruptcy Code. *See* 11 U.S.C. § 362(b)(3). In fact, the creation and

perfection of such a lien may not violate the automatic stay—even if the lien arises under applicable law for taxes due after the Petition Date. *See* 11 U.S.C. § 362(b)(18) (automatic stay does not apply to “the creation or perfection of a statutory lien for an ad valorem property tax, or a special tax or special assessment on real property whether or not ad valorem, imposed by a governmental unit, if such tax or assessment comes due after the date of the filing of the petition.”); *see also In re Gifaldi*, 207 B.R. 54, 56 n.1 (Bankr. W.D.N.Y. 1997) (noting that section 362(b)(18) reversed case law that had held that the creation of a statutory lien for ad valorem property taxes violated the automatic stay). Thus, the Debtors’ failure to pay their property taxes, for example, may inadvertently increase the scope of administrative priority claims held against the Debtors’ estates.

22. Absent the granting of the relief requested herein, many Authorities may hold oversecured claims against the Debtors’ estates related to the Taxes and Fees. The Bankruptcy Code provides that oversecured claims accrue interest during the pendency of a chapter 11 case. *See* 11 U.S.C. § 506(b); *U.S. v. Ron Pair Enters., Inc.*, 489 U.S. 235, 241-43 (1989) (nonconsensual lienholders may receive interest on their claims under section 506(b) of the Bankruptcy Code); *see also Lincoln Sav. Bank v. Suffolk County Treasurer (In re Parr Meadows Racing Ass’n, Inc.)*, 880 F.2d 1540, 1549 (2d Cir. 1989) (citing *Ron Pair* and holding that oversecured liens entitled a tax authority to postpetition interest). If the Debtors are required to pay interest on such tax claims, section 511 of the Bankruptcy Code provides that “the rate of interest shall be the rate determined under applicable nonbankruptcy law.” *See* 11 U.S.C. § 511(a). Accordingly, prompt payment of the Taxes and Fees may eliminate claims for interest for any secured claims.

23. In addition, claims entitled to priority status pursuant to section 507(a)(8) of the Bankruptcy Code must be paid in full pursuant to a confirmed plan of reorganization under section 1129(a)(9)(c) of the Bankruptcy Code. Thus, payment of the Taxes and Fees at this time only affects the timing of the payment for the vast majority of the amounts at issue and therefore should not unduly prejudice the rights of other creditors.

C. Payment of the Taxes and Fees May Eliminate Unnecessary Distractions from Reorganization Efforts.

24. If the Debtors fail to pay the Taxes and Fees in a timely manner, the Authorities may assert that the Debtors' directors and officers are personally liable for payment of the Taxes and Fees. *See, e.g., Raleigh v. Ill. Dept. of Revenue*, 530 U.S. 15, 20-21 (2000) (burden of proof with respect to corporate officer's liability when corporation fails to pay use tax to state is not altered by virtue of the corporation's filing for bankruptcy); *U.S. v. Energy Res. Co., Inc.*, 495 U.S. 545 (1990) (to the extent that an employer fails to pay income taxes or social security taxes, I.R.C. § 6672 authorizes the government to collect an equivalent sum directly from the employer's officers or employees who are responsible for collecting the tax); *Matter of A&B Heating & Air Conditioning*, 861 F.2d 1538, 1539 n.2 (11th Cir. 1988) ("The Internal Revenue Code imposes personal liability on responsible corporate officers who fail to remit trust fund taxes to the government"). This is the case even if a failure to pay such Taxes and Fees was not a result of malfeasance on their part. Any litigation related to the failure to pay Taxes and Fees would prove distracting for the Debtors, their named directors and officers, as well as the Court, which may be asked to entertain various motions seeking injunctions relating to potential court actions. As such, it is in the best interest of the Debtors' estates to eliminate the possibility of these distractions and to enable the Debtors to continue operating without interruption.

D. Applicable Authority Supports the Preplan Payment of the Taxes and Fees.

25. In order to protect against diminution in the value of a debtor's estate and going-concern enterprise, bankruptcy courts in the Southern District of New York (and elsewhere) commonly authorize the payment of prepetition obligations in advance of a confirmed chapter 11 plan (“**Preplan Payments**”) in large complex chapter 11 cases. *In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002); *see also In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) (Preplan Payment of prepetition wages authorized); *Armstrong World Indus., Inc. v. James A. Phillips, Inc. (In re James A. Phillips, Inc.)*, 29 B.R. 391, 398 (S.D.N.Y. 1983) (Preplan Payment of suppliers' claims authorized). In reaching a determination that Preplan Payments are both necessary and appropriate, courts traditionally have relied on legal theories premised on sections 105(a), 363(b), 1107(a) and 1108 of the Bankruptcy Code.

26. It is well established that a debtor in possession is a fiduciary for the bankruptcy estate, and as such, is duty-bound to maximize recoveries for its creditors, and if justified by the facts and circumstances of its case, holders of its equity interests. *CoServ, L.L.C.*, 273 B.R. at 497. In light of this duty, in situations where a debtor can demonstrate a sound business justification for Preplan Payments, courts have authorized such payments pursuant to section 363(b) of the Bankruptcy Code. *Ionosphere Clubs*, 98 B.R. at 175 (courts have “broad flexibility” under section 363(b) of the Bankruptcy Code to permit a debtor to expend funds outside the ordinary course so long as the debtor articulates a business justification to do so, including making Preplan Payments).

27. Section 363(b) of the Bankruptcy Code provides that a debtor in possession, “after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). A court must find that a “good

business reason” exists prior to authorizing a debtor’s use of estate property other than in the ordinary course. *See, e.g., Official Comm. of Unsecured Creditors v. Enron Corp. (In re Enron Corp.)*, 335 B.R. 22, 27-28 (S.D.N.Y. 2005) (quoting *In re Lionel Corp.*, 722 F.2d 1063, 1071 (2d Cir. 1983)). In circumstances “where the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor’s conduct.” *Comm. of Asbestos-Related Litigants v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986). The Debtors respectfully submit that under the circumstances presented herein, there are numerous good business justifications for granting the requested relief.

28. In addition to the authority granted under section 363 of the Bankruptcy Code, bankruptcy courts have granted relief consistent with the Debtors’ request herein under the longstanding “doctrine of necessity” – first articulated in *Miltenberger v. Longansport Ry. Co.*, 106 U.S. 286 (1882). Modern application of the doctrine of necessity is derived from the inherent equitable powers granted to the bankruptcy court under section 105(a) of the Bankruptcy Code, which empowers the court to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). *See Schwartz v. Aquatic Dev. Group, Inc. (In re Aquatic Dev. Group, Inc.)*, 352 F.3d 671, 680 (2d Cir. 2003) (“it is axiomatic that bankruptcy courts are ‘courts of equity, empowered to invoke equitable principles to achieve fairness and justice in the reorganization process’”) (quoting *In re Momentum Mfg. Corp.*, 25 F.3d 1132, 1136 (2d Cir. 1994)).

29. In situations where Preplan Payments are important to a debtor’s reorganization efforts, bankruptcy courts in this district have permitted such payments under the doctrine of necessity. *In re Ionosphere Clubs*, 98 B.R. at 175-76 (Bankr. S.D.N.Y. 1989) (stating

that the authorization of Preplan Payments is not a novel concept for facilitating a debtor's rehabilitation efforts). Moreover, some courts have recognized that there are situations that *require* "the preplan satisfaction of a prepetition claim" in order for the debtor to satisfy its duty to the estate. *CoServ, L.L.C.*, 273 B.R. at 497 (on such occasions "it is only logical that the bankruptcy court be able to use § 105(a) of the Bankruptcy Code to authorize satisfaction of the prepetition claim in aid of preservation or enhancement of the estate.").

30. It is the Debtors' business judgment that payment of outstanding Taxes and Fees will result in enhanced creditor recoveries through the preservation of the Debtors' going-concern value. Furthermore, permitting the Debtors to make Preplan Payments in the amount and manner described herein satisfies "two recognized policies" of chapter 11 – namely, maximizing recoveries for a debtor's creditors and preserving the going-concern value of the debtor's enterprise. *See Bank of Am. Nat'l Trust & Sav. Assoc. v. 203 N. LaSalle St. P'Ship*, 526 U.S. 434, 453 (1999).

31. Courts in this district historically have granted relief consistent with the Debtors' request on the basis that payment of prepetition Taxes and Fees is essential to maximizing recoveries for creditors and preserving the debtor's estate. *See, e.g., In re Hostess Brands, Inc.*, Case No. 12-22052 (Bankr. S.D.N.Y. Jan. 13, 2012); *In re AMR Corp.*, Case No. 11-15463 (Bankr. S.D.N.Y. Dec. 23, 2011); *In re Dynegy Holdings LLC*, Case No. 11-38111 (Bankr. S.D.N.Y. Dec. 6, 2011); *In re Borders Group Inc.*, Case No. 11-10614 (Bankr. S.D.N.Y. Mar. 15, 2011); *In re The Great Atlantic & Pacific Tea Co., Inc.*, Case No. 10-24549 (Bankr. S.D.N.Y. Jan. 12, 2011); *In re InSight Health Servs. Holdings Corp.*, 10-16564 (Bankr. S.D.N.Y. Jan. 4, 2011); *In re Blockbuster, Inc.*, Case No. 10-14997 (Bankr. S.D.N.Y. Oct. 20, 2010); *In re Innkeepers USA Trust*, Case No. 10-13800 (Bankr. S.D.N.Y. Aug. 12, 2010); *In re NR*

Liquidation III Co. (f/k/a Neff Corp.), Case No. 10-12610 (Bankr. S.D.N.Y. June 9, 2010); *In re Uno Rest. Holdings Corp.*, Case No. 10-10209 (Bankr. S.D.N.Y. Feb. 17, 2010); *In re Citadel Broad. Corp.*, Case No. 09-17442 (Bankr. S.D.N.Y. Feb. 3, 2010); *Reader's Digest Ass'n., Inc.*, Case No. 09-23529 (Bankr. S.D.N.Y. Aug. 26, 2009); *In re Chemtura Corp.*, Case No. 09-11233 (Bankr. S.D.N.Y. Apr. 13, 2009). The Debtors submit that the present circumstances warrant similar relief in these chapter 11 cases.

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

32. The Debtors represent that cash reserves, cash flows from operations and borrowings under the proposed debtor-in-possession financing (the "**DIP Financing**"), will be sufficient to pay postpetition obligations in respect of the Taxes and Fees. Also, under the Debtors' existing cash management system, the Debtors represent that checks or wire transfer requests can be readily identified as relating to an authorized payment made on account of the Taxes and Fees. Accordingly, the Debtors believe that checks or wire transfer requests, other than those relating to authorized payments, will not be honored inadvertently and that all applicable financial institutions should be authorized, but not directed, when requested by the Debtors, to receive, process, honor and pay any and all checks or wire transfer requests in respect of the Taxes and Fees, solely to the extent the Debtors have sufficient funds standing to their credit with such financial institutions, and such financial institution may rely on the representations of such Debtors as to which checks are issued and authorized or wire transfers are made authorized to be paid in accordance with this Motion without any duty of further inquiry and without liability for following the Debtors' instructions.

Bankruptcy Rule 6003 Is Satisfied

33. In order for a debtor to obtain relief to make Preplan Payments within 21 days of the Petition Date, it must establish that making such payments satisfies the requirements mandated by Bankruptcy Rule 6003 – namely, the relief requested is necessary to avoid “immediate and irreparable harm”. If a debtor’s prospect of reorganizing is threatened, or swift diminution in value of the debtor’s estate is likely absent the granting of the requested relief, immediate and irreparable harm likely exists. *See In re Ames Dep’t Stores, Inc.*, 115 B.R. 34, 36 n.2 (Bankr. S.D.N.Y. 1990) (finding that “immediate and irreparable harm” exists where loss of the business threatens ability to reorganize).

34. Immediate and irreparable harm would result if the relief requested herein is not granted. As stated herein, paying the Taxes and Fees will benefit the Debtors’ estates and their creditors by allowing the Debtors’ operations to continue without interruption and by reducing both the amount and priority of claims that could be asserted against the Debtors’ estates. Moreover, failure to pay some of the Taxes and Fees, such as those related to maintaining the value of the Debtors’ intellectual property, may result in a loss or diminution in value of the intellectual property, which is a valuable asset of these estates. Accordingly, the Debtors respectfully submit that they have satisfied Bankruptcy Rule 6003 as it relates to the relief requested herein.

Waiver of Bankruptcy Rules 6004(a) and 6004(h)

35. Given the nature of the relief requested herein, the Debtors respectfully request a waiver of (a) the notice requirements under Bankruptcy Rule 6004(a) and (b) the 14-day stay under Bankruptcy Rule 6004(h).

Debtors' Reservation of Rights

36. 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, contract or lease under section 365 of the Bankruptcy Code. The Debtors expressly reserve their rights to contest any claim related to the Taxes and Fees under applicable non-bankruptcy law. Likewise, if the 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 dispute such claim subsequently.

Notice

37. Notice of this Motion has been provided to: (a) the U.S. Trustee; (b) the entities listed on the Consolidated List of Creditors Holding the 50 Largest Unsecured Claims; (c) the agent under the prepetition revolving credit facility; (d) the indenture trustee for the prepetition 9.2% Senior Notes due June 1, 2021; (e) the indenture trustee for the prepetition 10.625% Senior Secured Notes due March 15, 2019; (f) the indenture trustee for the prepetition 9.95% Senior Notes due July 1, 2018; (g) the indenture trustee for the prepetition 9.75% Senior Secured Notes due March 1, 2018; (h) the indenture trustee for the prepetition 7.00% Convertible Senior Notes due April 1, 2017; (i) the Securities and Exchange Commission; (j) the United States Attorney for the Southern District of New York; (k) the Internal Revenue Service; (l) the Environmental Protection Agency; (m) the Pension Benefit Guaranty Corporation; (n) counsel to KPP Trustees Limited, the trustee of the Kodak Pension Plan; (o) counsel to the Ad Hoc Committee of Holders of Senior Secured Notes; and (p) counsel to the agent under the proposed Debtor-In-Possession Credit Agreement. Due to the urgency of the circumstances surrounding

this Motion and the nature of the relief requested herein, the Debtors respectfully submit that further notice of this Motion is neither required nor necessary.

No Prior Request

38. The Debtors have not previously sought the relief requested herein from this or any other court.

WHEREFORE, the Debtors respectfully request that the Court (a) enter the Proposed Interim Order granting the relief requested in the Motion and such other and further relief as may be just and proper and (b) schedule a final hearing on the Motion within 30 days of the Petition Date or as soon as is otherwise practicable.

Dated: January 19, 2012
New York, New York

/s/ Andrew G. Dietderich

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Proposed Counsel to the Debtors and Debtors in
Possession

EXHIBIT A

Proposed Interim Order

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

)		
In re:)	Chapter 11	
EASTMAN KODAK COMPANY, <i>et al.</i> , ¹)	Case No. 12-_____ (_____)	
Debtors.)	(Jointly Administered)	
)		

INTERIM ORDER (A) AUTHORIZING, BUT NOT DIRECTING, THE DEBTORS TO PAY TAXES AND FEES AND (B) AUTHORIZING, BUT NOT DIRECTING, ALL FINANCIAL INSTITUTIONS TO HONOR ALL RELATED PAYMENT REQUESTS

Upon the motion (the “**Motion**”)² of Eastman Kodak Company, on behalf of itself and its affiliated debtors and debtors in possession in these chapter 11 cases (collectively, the “**Debtors**”), for entry of interim and final orders (a) authorizing, but not directing, the Debtors to pay certain income, sales, use, franchise and property taxes and other taxes, assessments, fees (including intellectual property fees) and similar charges and (b) authorizing, but not directing financial institutions to receive, process, honor, and pay all related checks and electronic payment requests, solely to the extent the Debtors have sufficient funds standing to their credit with such financial institutions; and upon consideration of the First Day Declaration; and it appearing that this Court has jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 157 and 1334; and it appearing that venue of these chapter 11 cases and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that this matter is a core

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 All capitalized terms used but otherwise not defined herein shall have the meanings set forth in the Motion.

proceeding pursuant to 28 U.S.C. § 157(b); and this Court having determined that the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors and other parties in interest; and it appearing that proper and adequate notice of the Motion has been given and that, except as otherwise ordered herein, no other or further notice is necessary; and after due deliberation thereon; and good and sufficient cause appearing therefor;

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED as set forth herein.
2. The Final Hearing shall be held on February [•], 2012 at _____:_____ a.m./p.m. prevailing Eastern Time. Any objections or responses to the Motion shall be filed on or before February [•], 2012 at 4:00 p.m. and served on parties in interest as required by the Local Rules.
3. The Debtors are authorized, but not directed, in their discretion, to pay certain prepetition income, sales, use, franchise and property taxes and other taxes, assessments, fees (including intellectual property fees) and similar charges (as more fully described in the Motion, and collectively, the “**Taxes and Fees**”), including, but not limited to, all of those Taxes and Fees subsequently determined upon audit or otherwise to be owed for periods prior to the Petition Date; *provided, however*, that the Debtors are authorized, but not required, to pay only amounts due and payable as of the Petition Date and amounts that are or become due and payable between the Petition Date and the date that a Final Order is entered, unless otherwise ordered by this Court; *provided, further* that the aggregate amount so paid due to adjustments to prepetition income and franchise taxes shall not exceed \$1 million. Each Debtor that operates a Foreign Branch (as defined in the Motion) is authorized, but not directed, to continue to pay taxes in the ordinary course of business, consistent with past practice, in each jurisdiction in

which it operates. If the Debtors' payments on account of the Taxes and Fees exceed \$6 million, prompt notice shall be given to the U.S. Trustee and counsel for the agent for the DIP Financing.

4. The Debtors are authorized and empowered to take all actions necessary to implement the relief granted in this Order.

5. In accordance with this Order (or other order of this Court), each of the financial institutions at which the Debtors maintain their accounts relating to the payment of the obligations described in the Motion is authorized, but not directed, to (a) receive, process, honor and pay all checks presented for payment and to honor all fund transfer requests made by the Debtors related thereto, to the extent that sufficient funds are on deposit in those accounts and (b) accept and rely on all representations made by the Debtors with respect to which checks, drafts, wires or automated clearing house transfers should be honored or dishonored in accordance with this or any other order of this Court, whether such checks, drafts, wires, or transfers are dated prior to, on or subsequent to the Petition Date, and shall have no duty of further inquiry nor any liability for relying on such representations or following the Debtors' instructions.

6. Nothing in the Motion or this Order, nor as a result of any payment made pursuant to this Order, shall be deemed or construed as an admission as to the validity or priority of any claim against the Debtors, an approval or assumption of any agreement, contract or lease pursuant to section 365 of the Bankruptcy Code or a waiver of the right of the Debtors, or shall impair the ability of the Debtors, to contest the validity and amount of any payment made pursuant to this Order.

7. To the extent that there is any inconsistency between the terms of the interim or final order approving the DIP Financing, if and when entered, and this Order, the terms of the interim or final order approving the DIP Financing, as applicable, shall govern.

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

9. The requirements set forth in Bankruptcy Rule 6003(b) are satisfied.

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

11. This Order is immediately effective and enforceable, notwithstanding the possible applicability of Bankruptcy Rule 6004(h) or otherwise.

12. This Court retains jurisdiction with respect to all matters arising from or related to the enforcement of this Order.

Dated: January [•], 2012
New York, New York

United States Bankruptcy Judge

EXHIBIT B

Proposed Final Order

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

)		
In re:)	Chapter 11	
EASTMAN KODAK COMPANY, <i>et al.</i> , ¹)	Case No. 12-_____ (_____)	
Debtors.)	(Jointly Administered)	
)		

FINAL ORDER (A) AUTHORIZING, BUT NOT DIRECTING, THE DEBTORS TO PAY TAXES AND FEES AND (B) AUTHORIZING, BUT NOT DIRECTING, ALL FINANCIAL INSTITUTIONS TO HONOR ALL RELATED PAYMENT REQUESTS

Upon the motion (the “**Motion**”)² of Eastman Kodak Company, on behalf of itself and its affiliated debtors and debtors in possession in these chapter 11 cases (collectively, the “**Debtors**”), for entry of interim and final orders (a) authorizing, but not directing, the Debtors to pay certain income, sales, use, franchise and property taxes and other taxes, assessments, fees (including intellectual property fees) and similar charges and (b) authorizing, but not directing financial institutions to receive, process, honor, and pay all related checks and electronic payment requests, solely to the extent the Debtors have sufficient funds standing to their credit with such financial institutions; and upon consideration of the First Day Declaration; and it appearing that this Court has jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 157 and 1334; and it appearing that venue of these chapter 11 cases and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that this matter is a core

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 All capitalized terms used but otherwise not defined herein shall have the meanings set forth in the Motion.

proceeding pursuant to 28 U.S.C. § 157(b); and this Court having determined that the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors and other parties in interest; and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and after due deliberation thereon; and good and sufficient cause appearing therefor;

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED as set forth herein.
2. The Debtors are authorized, but not directed, in their discretion, to pay certain prepetition income, sales, use, franchise and property taxes and other taxes, assessments, fees (including intellectual property fees) and similar charges (as more fully described in the Motion, and collectively, the “**Taxes and Fees**”), including, but not limited to, all of those Taxes and Fees subsequently determined upon audit or otherwise to be owed for periods prior to the Petition Date, *provided*, that the aggregate amount so paid due to adjustments to prepetition income and franchise taxes shall not exceed \$1 million. Each Debtor that operates a Foreign Branch (as defined in the Motion) is authorized, but not directed, to continue to pay taxes in the ordinary course of business, consistent with past practice, in each jurisdiction in which it operates.
3. The Debtors are authorized and empowered to take all actions necessary to implement the relief granted in this Order.
4. In accordance with this Order (or other order of this Court), each of the financial institutions at which the Debtors maintain their accounts relating to the payment of the obligations described in the Motion is authorized, but not directed, to (a) receive, process, honor and pay all checks presented for payment and to honor all fund transfer requests made by the

Debtors related thereto, to the extent that sufficient funds are on deposit in those accounts and (b) accept and rely on all representations made by the Debtors with respect to which checks, drafts, wires or automated clearing house transfers should be honored or dishonored in accordance with this or any other order of this Court, whether such checks, drafts, wires, or transfers are dated prior to, on or subsequent to the Petition Date, and shall have no duty of further inquiry nor any liability for relying on such representations or following the Debtors' instructions.

5. Nothing in the Motion or this Order, nor as a result of any payment made pursuant to this Order, shall be deemed or construed as an admission as to the validity or priority of any claim against the Debtors, an approval or assumption of any agreement, contract or lease pursuant to section 365 of the Bankruptcy Code or a waiver of the right of the Debtors, or shall impair the ability of the Debtors, to contest the validity and amount of any payment made pursuant to this Order.

6. To the extent that there is any inconsistency between the terms of the interim or final order approving the DIP Financing, if and when entered, and this Order, the terms of the interim or final order approving the DIP Financing, as applicable, shall govern.

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

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

9. This Order is immediately effective and enforceable, notwithstanding the possible applicability of Bankruptcy Rule 6004(h) or otherwise.

10. This Court retains jurisdiction with respect to all matters arising from or related to the enforcement of this Order.

Dated: February [•], 2012
New York, New York

United States Bankruptcy Judge