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

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

**DEBTORS’ MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS  
(A) AUTHORIZING, BUT NOT DIRECTING, THE DEBTORS TO (I) MAINTAIN AND  
ADMINISTER CUSTOMER PROGRAMS AND (II) HONOR RELATED PREPETITION  
OBLIGATIONS TO CUSTOMERS 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 (this “**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,

<sup>1</sup> 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.



(a) authorizing, but not directing, the Debtors to (i) continue to maintain and administer prepetition customer programs, promotions and practices and pay and otherwise honor their obligations to customers relating thereto in the ordinary course of business consistent with past practice and (ii) continue to develop and/or maintain and implement their customer programs postpetition in the ordinary course of business consistent with past practice, as the Debtors determine is necessary in the exercise of the Debtors' business judgment 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. 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. The Debtors have been at the forefront of highly competitive industries for more than 100 years, including film, digital imaging and printing, and have achieved this by engendering strong brand loyalty among their end-user consumers and establishing substantial credibility among distributors, merchants and competitors. To develop and sustain their positive reputation in the marketplace, the Debtors have dedicated extensive time and resources to creating and implementing a wide variety of programs and practices designed to acquire and retain customers, grow market share and, ultimately, generate sales and enhance long-term viability. The Debtors believe such programs and practices have been successful business strategies that play an important role in the purchasing decisions of customers within the Debtors' markets and distribution channels.

5. The Debtors market and sell their products both directly to retail and business consumers and merchants as well as through distributors (collectively, the "**Customers**"). In the ordinary course of business, the Debtors develop and implement a diverse range of customer programs and practices to attract these consumers and distributors, which, for purposes of this Motion, are organized into the following broad categories, each of which is described in turn below: (a) warranties; (b) refunds, billing adjustments, and other credits; (c) purchasing incentives and marketing allowances; (d) revenue sharing programs; (e) financing programs; (f) trade association memberships; and (g) indemnification and limitations on liability

(as each of the same may be amended, modified or supplemented from time to time in the ordinary course, collectively, the “**Customer Programs**”). For all of the reasons set forth herein, by this Motion, the Debtors are seeking authority, to the extent permitted by the terms of the DIP Financing, to pay or otherwise honor their prepetition obligations arising under or based upon the Customer Programs and otherwise continue their Customer Programs postpetition in the ordinary course of business.

6. Because the Debtors do not maintain specific bank accounts for the payment of various customer claims, this Motion relies on the accruals for which the Debtors have accounted in order to illustrate the scope of the Debtors’ Customer Programs. The accruals cited below are included to convey the extent of the Debtors’ Customer Programs and should not be read as an estimate of the net amounts owed by the Debtors to their Customers. Many of the Debtors’ Customers are large merchants with whom the Debtors transact on a frequent basis. From time to time, the Debtors execute credit memos to keep track of the amounts owed under various rebate and reimbursement programs described below. However, these credits are, in most cases, largely, if not fully offset, by amounts owed to the Debtors by their Customers.

7. It is critically important to the Debtors’ long-term viability that they maintain the loyalty and trust of their Customers, preserve their brand equity and protect their reputation, particularly while operating in chapter 11. Indeed, the Debtors must be able to assure their Customers and send a strong message to the marketplace that they are willing and able to honor their prepetition obligations to their Customers and continue to maintain and/or develop, implement and administer their Customer Programs in the ordinary course of business consistent with the same integrity and accountability for which they are well-known.

8. The decision to commence these cases, while difficult, will afford the Debtors the opportunity to emerge from chapter 11 competitively positioned to capitalize on

future growth prospects and capture new market share. Such opportunities will not be possible, however, if the Debtors are unable to honor their obligations to their Customers.

**A. Warranties**

9. Consistent with industry practice, the Debtors maintain warranty policies, which the Debtors believe are essential to their reputation and encourage a greater number of orders. The Debtors provide warranties on both the consumables sold to consumers and merchants and equipment, such as photo-printing kiosks, installed at various retail and commercial locations. The Debtors' standard customer agreement for sale of consumables generally disclaims all warranties, express or implied, that are not expressly stated on, packaged with, or accompanying the product. The Debtors also offer customized warranty agreements with certain merchants that purchase large quantities of the Debtors' goods. These warranties generally represent that the goods being sold comply with applicable product safety regulations, labeling regulations and other federal and state laws, ordinances, statutes, rules and regulations. Despite the Debtors' best efforts to avoid the breach of any of these warranties, the Debtors are subject to numerous warranty claims in the ordinary course of business. For the purposes of maintaining a loyal customer base and a strong reputation, the Debtors make every effort to resolve such claims in a manner that is satisfactory to their Customers. Such a resolution may include, but is not limited to, the replacement or repair of the subject consumable or equipment.

10. To account for warranty claims, the Debtors accrue a reserve against revenue already recorded that includes known warranty claims not yet paid and unknown claims expected to be claimed and paid for future warranty repairs. The Debtors' accrued reserves for such known and unknown warranty claims as of January 9, 2012 equaled approximately \$15.1 million. The Debtors also rely on service vendors to make repairs and replace parts necessary to honor the warranties that accompany their products (collectively, the "**Repair Service**

**Vendors**”). The Debtors pay Repair Service Vendors approximately \$800,000 per month to, among other things, make on-site visits to repair broken equipment or to accept and service defective consumer goods. The Debtors estimate that as of January 9, 2012, they owe the Repair Service Vendors approximately \$280,000.

11. To further support their Customers’ concerns and questions regarding problems with the Debtors’ products or services, the Debtors engage third-party call centers, some of which are located outside the United States, to answer questions and take repair service requests (collectively, the “**Call Center Vendors**”). These vendors are the primary interface between the Debtors and the public and it is essential that this support remain available to the Debtors’ Customers postpetition. The Debtors pay Call Center Vendors approximately \$2.1 million per month and estimate that as of January 9, 2012, they owe the Call Center Vendors approximately \$2.8 million.

12. The Debtors submit that the cost of honoring and paying such obligations is less than the harm that could be caused by not paying such amounts. Indeed, the failure to honor the Debtors’ warranty obligations could severely damage consumer satisfaction and consumers’ faith in the Debtors and damage their reputation, perhaps irreparably, to the detriment of the Debtors’ businesses and these estates.

## **B. Refunds, Billing Adjustments and Other Credits**

### **i. Refunds**

13. Consistent with industry practice, the Debtors also maintain return policies, which the Debtors believe are essential to their reputation and encourage a greater number of orders. The Debtors market various consumer goods such as digital cameras and inkjet printers directly to consumers. The Debtors generally offer standard return policies to consumers who are not satisfied with their purchase. For example, a consumer who purchases a

digital camera from the Debtors' online store can return the item within 30 days for a full refund. The Debtors also market consumables directly to merchants. These merchants include, but are not limited to, large department stores, electronics stores and office supply stores. The Debtors generally do not accept returns from these merchants absent an allegation of a defective or damaged product. The Debtors account for future returns by consumers and merchants by accruing a reserve against revenue. The reserve includes both known return claims not yet paid, and unknown claims expected to be claimed and paid. The Debtors' accrued reserves with respect to such changes as of January 9, 2012 equaled \$2.5 million.

14. When necessary, refunds may be issued as a credit applied to the credit card used to purchase the product. In other instances, refunds may be applied as a credit to the purchaser's account. With respect to the former, refunds relating to credit card sale transactions are effected through one of the credit card processing agreements the Debtors maintain with certain third-party payment processors. When a refund is issued on account of a credit card purchase, the processor credits the purchaser's credit card for the refund and then offsets that amount against amounts otherwise due to the Debtors (net any proper transaction, merchant or similar contractual fees) on account of subsequent sales.<sup>2</sup>

**ii. Billing Adjustments**

15. In addition to product-return refunds, despite the Debtors' best efforts, from time to time consumers may be invoiced in error. For example, an invoice may not properly reflect the items ordered by the consumer, a duplicate payment may have been made on account of one order, a consumer may have been charged or paid an incorrect price for a purchased product, or certain agreed-upon discounts may not be reflected. Where a consumer

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<sup>2</sup> In some cases, refunds on account of prepetition credit card sales will likely be offset against amounts that would otherwise have been due to the Debtors on account of postpetition product purchases.

pays an amount invoiced in error, the Debtors correct the error through a credit against future purchases. The Debtors account for these credits by accruing a reserve against revenue not yet recorded for customer credit balances. The Debtors' accrued reserves with respect to such charges as of January 9, 2012, equaled \$4.4 million.

**iii. Down Payments and Other Deferred Revenue**

16. In other instances, a Customer may have a claim against the Debtors because the Customer has provided a down payment or has made full payment on a sale but is awaiting delivery of the contractual services or products from the Debtors. For example, a consumer who purchases printed photos from Kodak Gallery pays upon checkout but may not receive the picture for five to seven days. The Debtors account for these claims in two ways. For Customer down payments, the Debtors record a liability upon the receipt of cash from the Customer on sales for which the Debtors have not recognized revenue; as of January 9, 2012, the amount of such liabilities is \$5.0 million. The Debtors also record a liability for billings done or cash received for which revenue has not been recorded because the Debtors have not performed contractual services or delivered product. As of January 9, 2012, the Debtors have a deferred revenue balance of \$58.5 million. The Debtors intend to honor these prepetition commitments to their Customers so as to maintain their reputation as a trustworthy provider of goods and services in the film and digital imaging industries.

**iv. Other Credits**

17. The Debtors also issue various other minor credits for which the Debtors do not accrue a reserve. Nevertheless, the Debtors intend to continue to honor these credits, which may be claimed by Customers postpetition. These credits include, without limitation, prompt pay discounts, product shortage credits, tax deductions for incorrect calculations, unsalable goods, coupons, claims for non-compliance, and incomplete equipment installations.

As of January 9, 2012, the Customers are seeking \$1.5 million in these types of credits.

However, the Company reviews all credits requested by the Customers and the Company anticipates that the total credits applied to future invoices will be likely less than the \$1.5 million requested.

18. The Debtors submit that the cost of honoring and paying such obligations is less than the harm that would be caused by not paying such amounts. Indeed, the failure to honor the Debtors' refund, billing adjustment and other credit obligations could severely damage consumer satisfaction and consumers' faith in the Debtors and damage their reputation, perhaps irreparably, to the detriment of the Debtors' businesses and these estates.

### **C. Purchasing Incentives and Marketing Allowances**

19. In the ordinary course of business, the Debtors offer various consumer purchasing incentives and marketing allowances (collectively, the "**Purchasing Incentives and Marketing Allowances**") in an effort to, among other things, attract new consumers and/or market cross- or up-selling opportunities to existing Customers.

20. Although the nature and extent of these consumer promotions tend to vary over time and among businesses, customary examples include rebates, price protection or free gifts with the purchase of the Debtors' products. The Debtors also offer various merchant incentives in an effort to build and maintain relationships with key sellers of the Debtors' products. For example, the Debtors offer certain merchants Volume Incentive Rebates, which offer a percent revenue rebate (usually between one and two percent) if certain revenue targets are met. These promotions provide an important source of revenue for the Debtors—whether directly, through increased sales, or indirectly, through relationship building. The Debtors account for these credits by accruing against revenue already recorded. Revenue is actually reduced when the related rebate-eligible sale is recorded. Because these rebates are tied directly

to purchases, much, if not all, of the Debtors' liability can be offset by amounts due to the Debtors from their Customers. The Debtors do not intend to pay to their Customers this accrued reserve, but rather to maintain their practice of crediting this amount towards future purchases through the issuance of credit memos.<sup>3</sup>

21. In addition, to ensure promotion of their consumables, certain of the Debtors' agreements with merchants and distributors provide for the establishment and accrual of marketing allowance funds ("MAF"). Subject to the Kodak Minimum Advertised Price Guidelines, the Debtors accrue funds based on the merchants' purchases to be available solely for reimbursement of pre-approved advertising and marketing activities. Funds are accrued monthly based upon a percentage of the merchant's net purchases of qualified products. For example, each purchase of a C-Series Digital Camera by the merchant might accrue 5% of the purchase price to the MAF. Examples of marketing activities that may qualify for reimbursement include, without limitation: (a) print advertising; (b) signage and broadcasts; (c) training; (d) promotional merchandise; (e) direct mail and faxes; (f) sales force incentives; (g) on-location product demonstrations; and (h) web initiatives. These activities are critical to ensuring that the Debtors' consumables, such as digital cameras, are effectively promoted by merchants and distributors.

22. Generally, once accrued, marketing funds become available for reimbursement of pre-approved marketing activities, in the month following the purchase. The Debtors' marketing allowances are accrued to the same reserve as the rebates, discussed above. The Debtors submit that the cost of honoring and paying such obligations is less than the harm that could be caused by not paying such amounts. Indeed, the failure to honor the Debtors' MAF

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<sup>3</sup> The offset described above applies only when there is an identity of the party receiving the rebate and the party who makes the purchase. In certain cases, one entity may receive a rebate for directing purchases. For example, movie studios may receive a rebate for directing film processing centers to utilize Kodak film.

obligations could severely damage the Debtors' relationships with key merchants and distributors. Furthermore, the Debtors would be unable to grow their businesses without the increased sales attributable to marketing programs sponsored by the MAF accounts.

23. The Debtors' accrued reserves as of January 9, 2012 on account of the Purchasing Incentives and Marketing Allowances equaled approximately \$152 million. These reserves generally relate to the following categories of Customers (in the corresponding amounts): (a) studios, including major motion picture studios as well as the film processing labs that make copies of movies onto Eastman Kodak Print Film (\$60 million); (b) retailers, including electronics, office supply, discount retailers and pharmacies that carry a wide range of Kodak's consumer goods (\$48 million); (c) printing and graphics, including providers of graphic supplies and equipment, and bindery and finishing equipment (\$39 million); and (d) distributors, including consumer electronics, digital photography, print and presentation, video editing, outdoor, security and photo identification market categories (\$5 million). The Debtors do not intend to pay to their Customers this accrued reserve, but rather to maintain their practice of crediting this amount toward future purchases through the issuance of credit memos. These credits are largely, if not fully, offset by amounts owed to the Debtors by their Customers for all business segments except Entertainment Imaging, which provides rebates directly to the movie studios. The average monthly payments to the movie studios were approximately \$15.1 million for fiscal year 2011. As stated previously, these funds from Kodak incentivize movie studios to have their film reels for theaters around the country printed on ECP film by the processing lab.

#### **D. Revenue Sharing Programs**

24. The Debtors make agreements with certain Customers, such as major tourist attractions, to provide them with photography equipment and services in exchange for a percentage of the revenue generated from visitors purchasing pictures. The structure of these

revenue sharing programs varies, however, in a typical arrangement; the Debtors collect all proceeds, take their agreed upon percentage, and remit the remainder to the Customer at a later date. The Debtor typically remits the predetermined share of the revenue back to the Customer on a monthly or bi-weekly basis. The Debtors estimate that, as of January 9, 2012 they owe approximately \$850,000 to Customers participating in these revenue sharing programs.

**E. Financing Programs**

25. The Debtors maintain various financing programs with financial institutions, such as GE Capital and TCF Bank. This allows Customers to finance high-cost products. Customers lease the products from the applicable financial institution, and make monthly lease payments to the financial institution, lessor. The financial institution pays the Debtors the full purchase price of the financed product. The Debtors remit two types of payments back to the financial institutions, (i) a loss reserve payment that reduces the interest rate charged to the Customer; and (ii) rebate payments that the Customer earns by purchasing additional goods from the Debtors, which are applied against payments owed by the Customer to the financial institution. There would be a significant reduction in the Debtors' revenue if these programs were not continued due to the loss of the initial sales and subsequent purchases of supplies to operate the products by the Customers. The Debtors estimate that, as of January 9, 2012 they may owe approximately \$1.0 million to vendors participating in these programs.

**F. Trade Associations**

26. The Debtors participate in several trade shows sponsored by associations for which it is a member throughout the year as a way to showcase their latest products with potential and existing Customers. In order to maintain a consistent presence, deposits and equipment purchased and designed for the shows must be placed up to a year in advance to

secure a prime location. The Debtors estimate that, as of January 9, 2012 they have approximately \$500,000 in commitments to these trade associations.

**G. Indemnity and Limitations on Liability**

27. To incentivize merchants and distributors to purchase the Debtors' products and services, the Debtors frequently provide indemnity and other limitations on liability. The Debtors typically indemnify Customers from any claim that an electronic consumable, such as an inkjet printer, infringes a U.S. patent or a copyright enforceable in the U.S. The Debtors also generally indemnify purchasers from any personal or bodily injury or property damage caused by a defect in the product. The Debtors also have customized indemnity agreements with certain key merchants, which may grant indemnification for a broader set of claims arising out of the contract. The Debtors' agreements with their merchant Customers also include other limitations on liability. A standard customer agreement provides that neither party will be liable to the other for incidental, consequential, indirect, punitive or special damages arising under the agreement. The limitation does not, however, apply to the parties' indemnity obligations.

**Jurisdiction**

28. 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, 1107(a) and 1108 of the Bankruptcy Code, rule 6003 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**") and rule 9013-1 of the Local Bankruptcy Rules for the Southern District of New York (the "**Local Rules**").

**Relief Requested**

29. By this Motion, the Debtors request entry of the Proposed Orders, authorizing the Debtors to (a) pay or otherwise honor prepetition obligations to their customers arising under or based upon the Customer Programs that are outstanding as of the Petition Date (collectively, the “**Customer Obligations**”) and (b) continue to develop and/or maintain and implement the Customer Programs postpetition in the ordinary course of business consistent with past practice, as the Debtors determine is necessary in the exercise of the Debtors’ business judgment. The Debtors also 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.

**Basis for Relief**

**A. Applicable Authority Supports Preplan Payment of the Customer Obligations.**

30. 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.

31. 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).

32. 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.

33. 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, C. &*

*S.W.R. 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)).

34. 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.”).

35. It is the Debtors’ business judgment that continuing to honor the Customer Obligations, including the payment of any and all Preplan Payments in respect thereto as requested herein, will result in enhanced creditor recoveries through the preservation of their going-concern value. The Debtors’ long-term viability depends on maintaining the loyalty and trust of their Customers, preserving their brand equity and protecting their reputation, particularly while operating in chapter 11. The Debtors must be able to assure their Customers and send a strong message to the marketplace that they are willing and able to honor their

prepetition obligations to their Customers and continue to maintain and/or develop, implement and administer their Customer Programs in the ordinary course of business consistent with the same integrity and accountability for which they are well-known. As such, 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).

36. Courts in this district historically have granted relief consistent with the Debtors’ request on the basis that payment of prepetition obligations to their Customers is essential to maximizing recoveries for creditors and preserving the debtor’s estate. *In re AMR Corporation*, No. 11-15463 (Bankr. S.D.N.Y. Nov. 29, 2011); *In re Sbarro*, No. 11-11527 (Bankr. S.D.N.Y. Apr. 4, 2011); *In re The Great Atlantic & Pacific Tea Company, Inc.*, No. 10-24549 (Bankr. S.D.N.Y. Dec. 12, 2010); *In re The Readers Digest Ass’n, Inc.*, Case No. 09-23529 (Bankr. S.D.N.Y. Aug. 8, 2009); *In re Chemtura Corp.*, No. 09-11233 (Bankr. S.D.N.Y. Mar. 18, 2009); *In re Lyondell Chem. Co.*, No. 09-10023 (Bankr. S.D.N.Y. Jan. 23, 2009); *In re Frontier Airlines Holdings, Inc.*, No. 08-11298 (Bankr. S.D.N.Y. April 10, 2008). The Debtors submit that the present circumstances warrant similar relief in these chapter 11 cases.

**B. Continuing the Customer Programs and Honoring the Customer Obligations Is In the Best Interests of the Debtors’ Businesses and These Estates.**

37. Continuing to administer their Customer Programs without interruption during the pendency of these chapter 11 cases and honoring prepetition commitments to Customers arising thereunder will help preserve the Debtors’ valuable relationships with their Customers and goodwill, which will inure to the benefit of all the Debtors’ creditors and benefit their estates. In contrast, if the Debtors are unable to continue their Customer Programs postpetition or pay amounts due and owing to Customers, the Debtors risk isolating certain

Customer constituencies (who could then initiate business relationships with the Debtors' competitors) and could suffer corresponding losses in loyalty from their Customers and goodwill that will harm their prospects for reorganization and/or for maximizing value. Additionally, the Debtors' Customer Programs are essential marketing strategies for attracting new Customers.

38. Thus, in addition to potentially ruining their relationships with directly affected Customers, nonpayment of the Customer Obligations could also create a market-wide perception that the Debtors do not honor the promises they make to their Customers. Moreover, the Debtors believe that the bankruptcy filing itself could negatively influence Customers' attitudes and behavior towards their businesses unless the Debtors are able to take the measures requested in this Motion to alleviate concerns of their Customers. Such a perception could erode the Debtors' hard-earned reputation and brand loyalty, which, in turn, could adversely impact their prospects for a successful reorganization.

39. The Debtors believe that the relief requested herein will pay dividends with respect to the long-term reorganization of their businesses, both in terms of profitability and the engendering of goodwill, especially at this critical time following the filing of these chapter 11 cases. Accordingly, the Debtors submit that they have shown cause sufficient to warrant the authority to pay and honor their Customer Obligations and continue the Customer Programs relating thereto, and respectfully request that the relief sought herein be approved on the terms set forth in the attached order.

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

40. 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 related to the Customer Programs. 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 Customer Obligations. 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 Debtors' Customer Programs, solely to the extent the Debtors have sufficient funds standing to their credit with such financial institutions. Any such financial institution may rely on the representations of such Debtors as to which checks are issued or wire transfers are made and 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**

41. 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). Many of the Debtors’ obligations under the Customer Programs are contingent on customer actions (such as returns), thus the Debtors cannot reliably estimate the payments that will be made in the 21 days after the petition date.

42. Immediate and irreparable harm would result if the relief requested herein is not granted. As stated herein, continuing to administer their Customer Programs without interruption during the pendency of these chapter 11 cases and honoring prepetition

commitments to Customers arising thereunder will help preserve the Debtors' valuable relationships with their Customers and goodwill, which will inure to the benefit of all the Debtors' creditors and benefit their estates. In contrast, if the Debtors are unable to continue their Customer Programs postpetition or pay amounts due and owing to Customers, the Debtors risk isolating certain Customer constituencies (who could then initiate business relationships with the Debtors' competitors) and could suffer corresponding losses in loyalty from their customers and goodwill that will harm their prospects for reorganization and/or for maximizing value. 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)**

43. 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**

44. 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 right to contest any claims related to the Customer Programs and the Customer Obligations 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**

45. Notice of this Motion has been provided to: (a) the United States Trustee for the Southern District of New York; (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**

46. 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 thereafter.

Dated: January 19, 2012  
New York, New York

/s/ Andrew G. Dietderich  
\_\_\_\_\_  
Andrew G. Dietderich  
John J. Jerome  
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- and -

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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> , <sup>1</sup>	)	Case No. 12- _____ (_____)
	)	
Debtors.	)	(Jointly Administered)
	)	
_____	)	

**INTERIM ORDER (A) AUTHORIZING, BUT NOT DIRECTING, THE  
DEBTORS TO (I) MAINTAIN AND ADMINISTER CUSTOMER PROGRAMS  
AND (II) HONOR RELATED PREPETITION OBLIGATIONS TO CUSTOMERS AND  
(B) AUTHORIZING, BUT NOT DIRECTING, ALL FINANCIAL INSTITUTIONS  
TO HONOR ALL RELATED PAYMENT REQUESTS**

Upon the motion (the “**Motion**”)<sup>2</sup> 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 (i) continue to maintain and administer prepetition Customer Programs, promotions and practices and pay and otherwise honor their obligations to customers relating thereto in the ordinary course of business consistent with past practice and (ii) continue to develop and/or maintain and implement their Customer Programs postpetition in the ordinary course of business consistent with past practice, as the Debtors determine is necessary in the exercise of the Debtors’ business judgment and (b) authorizing, but not directing, financial institutions to receive, process, honor and pay all related checks and electronic payment requests; and upon consideration of the First Day Declaration; and it appearing that this Court has jurisdiction to

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<sup>1</sup> 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.

<sup>2</sup> All capitalized terms not otherwise defined herein are to be given the meanings ascribed to them in the Motion.

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 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 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 continue to honor, maintain and administer the Customer Programs developed and designed by the Debtors to acquire and retain customers, engender brand loyalty, develop and sustain a positive reputation in the marketplace, grow market share and, ultimately, generate sales and enhance long-term viability, in the ordinary course of business consistent with past practice, as the Debtors determine is necessary or appropriate in the exercise of the Debtors' business judgment; *provided, however*, that within the 21-day period following the Petition Date, the Debtors shall only honor those Customer Programs to the extent that the Debtors determine, in the exercise of their business judgment, that honoring such Customer Programs is necessary to avoid immediate

and irreparable harm to the Debtors; *provided further*, that in no event shall the Debtors pay any Customer Obligations before such amounts are due and payable.

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, without any duty to inquire otherwise and without any liability for 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

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United States Bankruptcy Judge

**EXHIBIT B**

**Proposed Final Order**

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

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

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**FINAL ORDER (A) AUTHORIZING, BUT NOT DIRECTING, THE  
DEBTORS TO (I) MAINTAIN AND ADMINISTER CUSTOMER PROGRAMS  
AND (II) HONOR RELATED PREPETITION OBLIGATIONS TO CUSTOMERS AND  
(B) AUTHORIZING, BUT NOT DIRECTING, ALL FINANCIAL INSTITUTIONS  
TO HONOR ALL RELATED PAYMENT REQUESTS**

Upon the motion (the “**Motion**”)<sup>2</sup> 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 (i) continue to maintain and administer prepetition Customer Programs, promotions and practices and pay and otherwise honor their obligations to customers relating thereto in the ordinary course of business consistent with past practice and (ii) continue to develop and/or maintain and implement their Customer Programs postpetition in the ordinary course of business consistent with past practice, as the Debtors determine is necessary in the exercise of the Debtors’ business judgment and (b) authorizing, but not directing, financial institutions to receive, process, honor and pay all related checks and electronic payment requests; and upon consideration of the First Day Declaration; and it appearing that this Court has jurisdiction to consider the Motion pursuant

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<sup>1</sup> 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.

<sup>2</sup> All capitalized terms not otherwise defined herein are to be given the meanings ascribed to them in the Motion.

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 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 continue to honor, maintain and administer the Customer Programs developed and designed by the Debtors to acquire and retain customers, engender brand loyalty, develop and sustain a positive reputation in the marketplace, grow market share and, ultimately, generate sales and enhance long-term viability, in the ordinary course of business consistent with past practice, as the Debtors determine is necessary or appropriate in the exercise of the Debtors' business judgment; *provided, however*, that in no event shall the Debtors pay any Customer Obligations before such amounts are due and payable.
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, without any duty to inquire otherwise and without any liability for 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 6003(b) are satisfied.

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

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

11. 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

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United States Bankruptcy Judge