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

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In re: )  
 ) Chapter 11  
EASTMAN KODAK COMPANY, *et al.*,<sup>1</sup> )  
 ) Case No. 12-10202 (ALG)  
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Debtors. ) (Jointly Administered)  
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**DEBTORS’ OMNIBUS REPLY IN SUPPORT OF THEIR MOTION  
FOR AN ORDER (A) APPROVING PROCEDURES FOR RIGHTS OFFERINGS  
AND (B) AUTHORIZING THE DEBTORS TO CONDUCT THE RIGHTS  
OFFERINGS IN CONNECTION WITH THE FIRST AMENDED  
JOINT CHAPTER 11 PLAN OF REORGANIZATION  
OF EASTMAN KODAK COMPANY AND ITS DEBTOR AFFILIATES**

Eastman Kodak Company (“**Kodak**”), on behalf of itself and its affiliated debtors and debtors in possession (collectively, the “**Debtors**”), hereby submits this omnibus reply (this “**Reply**”) in further support of the *Debtors’ Motion for an Order (a) Approving Procedures for Rights Offerings and (b) Authorizing the Debtors to Conduct the Rights Offerings in Connection with the First Amended Joint Chapter 11 Plan of Reorganization of Eastman Kodak Company and its Debtor Affiliates* [Docket No. 4082] (the “**Motion**”) and in response to the objections and

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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.



informal statements (collectively, and as described below, the “**Objections**”) received in connection with the Motion.

### **Preliminary Statement**

1. On April 30, 2013, the Debtors filed the *Joint Chapter 11 Plan of Reorganization of Eastman Kodak Company and Its Debtor Affiliates* [Docket No. 3650] (the “**Initial Plan**”) and the *Disclosure Statement for Debtors’ Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code* [Docket No. 3651] (the “**Initial Disclosure Statement**”). Prior to and following the filing of the Initial Plan and Initial Disclosure Statement, the Debtors engaged in discussions regarding potential transactions that would result in the payment of Second Lien Notes Claims<sup>2</sup> in cash, enhance unsecured creditor recoveries and facilitate the confirmation process. The result of these extensive efforts is the Backstop Commitment and Rights Offerings, which are cornerstones of the *First Amended Joint Chapter 11 Plan of Reorganization of Eastman Kodak Company and Its Debtor Affiliates* [Docket No. 4140] (as may be amended, modified or supplemented from time to time, the “**Amended Plan**”) and the *First Amended Disclosure Statement for First Amended Joint Chapter 11 Plan of Reorganization of Eastman Kodak Company and its Debtor Affiliates* [Docket No. 4143] (as may be amended, modified or supplemented from time to time, the “**Amended Disclosure Statement**”).

2. The Amended Plan represents a comprehensive compromise that provides higher unsecured creditor recoveries and a more expeditious emergence from chapter 11 than the Initial Plan. The Creditors’ Committee has represented to the Debtors that it endorses fully the Debtors’ entry into the Backstop Commitment Agreement, the implementation of the Rights Offerings, and the other terms and conditions of the Amended Plan.

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<sup>2</sup> Capitalized terms not defined herein shall have the meanings given to them in the Motion or, if not defined in the Motion, shall have the meanings given to them in the Amended Plan.

3. On June 19, 2013, the Debtors filed the Motion, seeking approval of the proposed Rights Offerings Procedures and Rights Offerings Forms, and authorization to implement the Rights Offerings in accordance with the Rights Offerings Procedures, the Backstop Commitment Agreement, and the Amended Plan.

4. Five Objections to the Motion were filed with the Court, a majority of these Objections relating to specific features of the Rights Offerings Procedures. The Objections to the Motion include:

- An objection by Mr. Paul Hussey to the minimum claim amounts required for participation in the 4(2) Rights Offering [Docket No. 4126] (the “**Hussey Objection**”). The Hussey Objection asserts that the minimum claim amount required under the 4(2) Rights Offering Procedures with respect to “accredited investors” results in discrimination among similarly situated creditors.
- An objection by Liquidity Solutions, Inc. to various eligibility requirements provided under the 4(2) Rights Offering Procedures, including the minimum claim requirement and the requirement that a 4(2) Eligible Participant hold the minimum claim amount as of June 17, 2013 [Docket No. 4130] (the “**LSI Objection**”).
- A limited objection by FUJIFILM Corporation (“**FUJIFILM**”) to the Rights Offerings Procedures, to the extent the Rights Offerings Procedures unduly restrict the ability of FUJIFILM and other creditors to transfer rights related to their claims, including their eligibility to participate in the Rights Offerings [Docket No. 4133] (the “**FUJIFILM Objection**”).
- An objection by Mr. Scott Siegel to the proposed Rights Offerings, asserting, among other things, that the Amended Plan, including the Rights Offerings, unfairly discriminates in favor of the Backstop Parties and against all other unsecured creditors [Docket No. 4106] (the “**Siegel Objection**”).
- A limited objection by United States Debt Recovery XII, L.P. (“**USDR**”) asserting that the deadlines provided under the Rights Offerings Procedures have the practical effect of inappropriately disenfranchising USDR with respect to certain of its unsecured claims. [Docket No. 4128] (the “**USDR Objection**”).<sup>3</sup>

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<sup>3</sup> Following the filing of the USDR Objection, the Debtors contacted USDR in order to discuss USDR’s concerns with respect to the 4(2) Rights Offering Procedures. Through these discussions, the USDR Objection has been resolved.

5. As further detailed below, the Debtors respectfully request that the Court overrule all unresolved Objections, grant the relief requested in the Motion and enter the Proposed Order.

**Debtors' Reply**

**A. The Eligibility Requirements for Participation in the 4(2) Rights Offering are Reasonable and Appropriate.**

6. The Hussey Objection and the LSI Objection assert that the proposed 4(2) Rights Offering Procedures inappropriately limit participation in the 4(2) Rights Offering to creditors that hold a minimum face amount of General Unsecured Claims or Retiree Settlement Unsecured Claims in the amount of \$100,000, in the case of a “qualified institutional buyer” (as defined in Rule 144A under the Securities Act of 1933 (as amended from time to time, the “**Securities Act**”)) or \$500,000, in the case of an “accredited investor” (as defined in Regulation D under the Securities Act), in each case as of June 17, 2013<sup>4</sup> and July 19, 2013. The Hussey and LSI Objections suggest that these requirements discriminatorily favor large creditors over smaller creditors. Hussey Objection at 1; LSI Objection at 2. In addition, the LSI Objection asserts that the differing minimum holding requirements applicable to “qualified institutional buyers” and “accredited investors” are unjustified, and that limiting participation in the 4(2) Rights Offering to creditors that satisfy the minimum claim threshold as of June 17, 2013 inappropriately restricts the market for future claim sales by creditors. LSI Objection at 2.

7. The Debtors have formulated the eligibility requirements for participation in the 4(2) Rights Offering in order to ensure that the 4(2) Rights Offering Shares will be exempt

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<sup>4</sup> On June 24, 2013, the Debtors filed revised versions of the Proposed Order, 4(2) Rights Offering Procedures and 4(2) Certification Form [Docket Nos. 4121, 4123]. These revised exhibits to the Motion reflect a change to the proposed date as of which 4(2) Eligible Participants must hold the required minimum claim amounts provided under the 4(2) Rights Offering Procedures, from April 30, 2013 to June 17, 2013. The Debtors have modified the date in response to concerns raised informally by certain creditors after the filing of the Motion.

from registration under the Securities Act pursuant to section 4(2) thereof and/or Regulation D thereunder. While by definition they do not allow participation by all creditors, these requirements are designed to ensure that all 4(2) Eligible Participants possess the level of sophistication necessary to evaluate a potentially sizable investment in an emerging, restructured company without the benefit of a statutory prospectus containing the information required in a registered offering; and to ensure that such participants also have the ability to bear the risk of financial loss associated with that investment.

8. Among other things, the 4(2) Rights Offering Shares (except with respect to the Backstop Parties) will be “restricted securities” within the meaning of Rule 144 under the Securities Act, and thus may not be resold in the public market for a period of at least six months after the Debtors’ emergence from chapter 11, after which the Debtors expect the exemption for resales under Rule 144 to become available. Accordingly, the 4(2) Rights Offering Procedures also are intended to confirm that 4(2) Eligible Participants are able to bear the investment risk associated with the 4(2) Rights Offering for a substantial period of time.

9. While the minimum claims requirements under the 4(2) Rights Offering Procedures are not explicitly mandated by law, the Debtors believe these are reasonable and prudent limitations which serve as a proxy for the financial sophistication the Debtors believe is appropriate for participants in the 4(2) Rights Offering, and which help to ensure that the considerations above are addressed.

10. In light of these concerns, the Debtors initially designed the 4(2) Rights Offering to be open only to “qualified institutional buyers”. In general, “qualified institutional buyers” are institutions that own and invest on a discretionary basis at least \$100 million in

securities of issuers with which they are unaffiliated. In contrast, “accredited investors” need not meet a comparable requirement and may include individual investors.

11. Nevertheless, at the request of the Creditors’ Committee, the Debtors agreed to expand the 4(2) Rights Offering to include “accredited investors” if additional precautions could be taken to confirm that such “accredited investors” would have an appropriate level of financial sophistication and resources to participate in the 4(2) Rights Offering. The Debtors believe, and the Creditors’ Committee agrees, that the increased \$500,000 threshold for participation by “accredited investors” is appropriate under the circumstances to address additional concerns not applicable to participation by “qualified institutional buyers”.

12. Finally, the Debtors submit that requiring the minimum claim amount to be held as of June 17, 2013, together with the minimum claim requirement discussed above, is appropriate to ensure that the 4(2) Rights Offering Shares are not offered or sold by means of any general solicitation or general advertising. According to relevant guidance from the Securities and Exchange Commission, a private placement of securities (such as the 4(2) Rights Offering) may be conducted concurrently with a public offering (such as the 1145 Rights Offering) if investors in the private placement are not found by means of any general solicitation associated with the public offering. Under this guidance, this concern may be addressed by ensuring that the issuer has a pre-existing, substantive relationship with the private placement investors, and has identified these investors prior to any publicity or other public disclosure that could be considered to be a general solicitation with regard to the private offering. The Debtors submit that requiring 4(2) Eligible Participants to have substantial claims as creditors of the company as of June 17, 2013, the day before the Debtors filed their motion seeking approval of the Debtors’ entry into the Backstop Commitment Agreement (the “**BCA Approval Motion**”), is

a reasonable means of ensuring that this guidance is satisfied, notwithstanding its possible impact on the market for claims.

13. In sum, the Debtors believe the eligibility requirements applicable to the 4(2) Rights Offering do not arbitrarily restrict participation or unfairly discriminate in favor of large creditors to the detriment of smaller creditors. The Debtors respectfully submit that the 4(2) Rights Offering Procedures provide for limitations on participation which are reasonable and appropriate to address the concerns described above, and that the Hussey Objection and LSI Objection should be overruled.

**B. The 4(2) Rights Offering Procedures Do Not Unfairly Discriminate Among Similarly Situated Creditors of the Same Class.**

14. Neither the Debtors nor the Creditors' Committee believes the Amended Plan violates section 1123(a)(4) of the Bankruptcy Code by unfairly discriminating among similarly situated creditors of the same Class – contrary to Mr. Hussey's assertion. The Debtors, together with the Backstop Parties and the Creditors' Committee, designed the two-tier structure of the Rights Offerings to allow greater creditor participation to the extent consistent with applicable legal considerations (absent registering the Rights Offerings with the SEC). Moreover, as is common in rights offerings conducted under section 4(2) of the Securities Act in the context of chapter 11 cases, where applicable non-bankruptcy law limits participation in private placements involving a reorganized debtor's securities based on financial and other considerations (e.g., individuals must meet net worth or income tests), the Debtors have made provision to compensate creditors that do not meet the eligibility requirements for participation in the 4(2) Rights Offering. Among other things, the Creditors' Committee negotiated for an additional \$8 million to be distributed to creditors that certify that they are ineligible to

participate in the 4(2) Rights Offering. For these reasons, the Debtors' do not believe that the 4(2) Rights Offering unfairly discriminates among similarly situated creditors.<sup>5</sup>

**C. The Proposed Claim Determination Date Is Reasonable and Appropriate.**

15. The FUJIFILM Objection asserts that the Rights Offerings Procedures may impose inappropriate restrictions on the transfer of claims. The 1145 Rights Offering Procedures provide, for example, that if an 1145 Eligible Claim is transferred after the proposed Claim Determination Date of July 26, 2013, the corresponding 1145 Rights will be cancelled. The FUJIFILM Objection requests that the transfer restriction be postponed beyond the Claim Determination Date in order to allow FUJIFILM to transfer claims together with the corresponding 1145 Rights. FUJIFILM Objection at 2. The Debtors believe that the transfer restriction provided under the 1145 Rights Offering Procedures is a customary feature of rights offerings similar to the Debtors' proposed Rights Offerings, and that restricting the transfer of 1145 Rights after the Claim Determination Date allows the Subscription Agent to avoid the significant administrative burden of monitoring the transfer of 1145 Eligible Claims between the proposed Claim Determination Date and the Effective Date for purposes of allocating the 1145 Rights Offering Shares. The Debtors accordingly submit that the 1145 Rights Offering Procedures, including the transfer restrictions provided thereunder, are reasonable and appropriate for the conduct of the proposed Rights Offerings.

16. As the FUJIFILM Objection does not address other specific provisions of the Rights Offerings Procedures, the Debtors respectfully submit that it should be overruled.

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<sup>5</sup> See *In re Dana Corp.*, Case No. 06-10354 (Bankr. S.D.N.Y), where the debtors' proposed rights offering excluded certain smaller creditors, but the debtors (with the agreement of the Creditors' Committee) compensated those creditors who were ineligible to participate in the rights offering. See also *In re Harry & David Holdings, Inc.*, Case No. 11-10884 (Bankr. D. Del.), in which trade creditors ineligible to participate in a rights offering received different consideration as compensation.

**D. Other Unsecured Creditors Have a Similar Investment Opportunity to the Backstop Parties.**

17. The Siegel Objection alleges that the Backstop Parties will be purchasing shares of New Common Stock in the Rights Offerings at an unreasonably low price and that the Rights Offerings will “massively dilute” unsecured creditors who do not participate in the Rights Offerings. Siegel Objection at 1. These allegations are mistaken. As discussed in the Motion and the BCA Approval Motion, the Backstop Parties will purchase shares of New Common Stock in the Rights Offerings and/or pursuant to the Backstop Commitment Agreement at the Per Share Price; the same price paid by unsecured creditors who are not Backstop Parties. In other words, eligible unsecured creditors who are not Backstop Parties will have a similar investment opportunity to the Backstop Parties and will be able to share in the upside of Reorganized Kodak by participating in the Rights Offerings. Furthermore, the Rights Offerings do not significantly dilute non-participating creditors compared to the Initial Plan. Under both the Initial Plan and the Amended Plan, unsecured creditors receive 15% of the shares of New Common Stock (subject to modest dilution for the payment of the Backstop Fees) as a direct distribution on account of their claims, without any requirement in either case to provide additional capital.<sup>6</sup>

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<sup>6</sup> The Siegel Objection also asserts that the Debtors can pay the Second Lien Notes Claims in full with global cash on hand. This assertion is also mistaken. As discussed in the Amended Disclosure Statement, Kodak is subject to substantial limitations on the repatriation of foreign cash. As a result, the Debtors are projected to have access to only \$171 million in cash at emergence, excluding proceeds from their emergence financing and the Rights Offerings. Amended Disclosure Statement at J-1.

**Conclusion**

18. For the foregoing reasons, and for the reasons set forth in the Motion, the Debtors respectfully request that the Court overrule the unresolved Objections, grant the relief requested in the Motion and enter the Proposed Order.

Dated: June 25, 2013  
New York, New York

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