IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: SPANSION INC., *et al.*,[1] Debtors.	Chapter 11 Case No.: 09-10690 [Joint Administration Pending]

AFFIDAVIT OF DARIO SACOMANI , EXECUTIVE VICE PRESIDENT AND CHIEF FINANCIAL OFFICER OF SPANSION INC., IN SUPPORT OF FIRST DAY MOTIONS

STATE OF CALIFORNIA)
)
COUNTY OF SANTA CLARA)

I, Dario Sacomani, declare:

1. I am the Executive Vice President and Chief Financial Officer of Spansion Inc. ("**Spansion**"), a corporation organized under the laws of the State of Delaware, and one of the above-captioned debtors and debtors-in-possession in these proceedings. I am generally familiar with the day-to-day operations, business and financial affairs and books and records of Spansion and its subsidiaries.

2. On March 1, 2009 (the "**Petition Date**"), Spansion, Spansion LLC, Spansion Technology LLC ("**Spansion Technology**"), Spansion International, Inc. ("**Spansion International**"), and Cerium Laboratories LLC ("**Cerium**"), debtors and debtors-in-possession herein (collectively, the "**Debtors**"), each filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Bankruptcy Code, 11 U.S.C. §§ 101-1532 (the "**Bankruptcy Code**") in the United States Bankruptcy Court for the District of Delaware (the "**Chapter 11**

Cases"). The Debtors are operating their businesses as debtors-in-possession pursuant to §§ 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in these Chapter 11 Cases.

3. To enable the Debtors to minimize the adverse effects of the commencement of their Chapter 11 Cases on their businesses and to maximize the prospects of a successful reorganization, concurrently herewith, the Debtors have requested various types of relief in the various applications and motions described below (collectively, the "**First Day Motions**"). The First Day Motions seek relief intended to allow the Debtors to perform and meet those obligations necessary to fulfill their duties as debtors-in-possession.

4. In the First Day Motions, the Debtors seek relief intended to, among other things, maintain customer loyalty, engender vendor and supplier confidence and bolster employee morale. Each of the First Day Motions is crucial to the Debtors' reorganization.

5. I submit this Affidavit (the "**First Day Affidavit**") in support of the First Day Motions. Any capitalized term not expressly defined herein shall have the meaning ascribed to that term in the relevant First Day Motion. All facts set forth in this Affidavit are based on my personal knowledge, upon information supplied to me by others employed by the Debtors, upon my review of relevant documents, or upon my opinion based upon my experience and knowledge of the Debtors' operations, financial condition and their present liquidity crisis. If called upon to testify, I could and would testify competently to the facts set forth herein. I am duly authorized to submit this Affidavit.

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[1] The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: Spansion Inc., a Delaware corporation (8239); Spansion Technology LLC, a Delaware limited liability company (3982); Spansion LLC, a Delaware limited liability company (0482); Cerium Laboratories LLC, a Delaware limited liability company (0482), and Spansion International, Inc., a Delaware corporation (7542). The mailing address for each Debtor is 915 DeGuigne Dr., Sunnyvale, CA 94085.

6. Part I of this Affidavit describes the Debtors' business and the circumstances surrounding the commencement of these Chapter 11 Cases, and Part II sets forth facts in support of the First Day Motions.

I. THE DEBTORS' BUSINESS AND THE CHAPTER 11 CASES

A. Overview of the Debtors' Business Operations

7. Debtor Spansion is a semiconductor device company that designs, develops, manufactures, markets, licenses and sells "Flash Memory" solutions, which are semiconductor devices used to access and store digital information. Flash Memory enables virtually instant access, storage and interaction with multimedia content, and is a critical component in a broad range of electronic products including mobile phones, consumer electronics, automotive electronics, networking and telecommunications equipment, data center servers, personal computers and PC peripheral applications. Flash Memory is non-volatile memory, which means that the information stored in the device is not lost when the power source is turned off. Flash Memory is incorporated in products manufactured by original equipment manufacturers in each of these markets—including the top ten mobile phone, consumer electronics and automotive electronics original equipment manufacturers. In 2006 and 2007, Spansion was one of the largest suppliers for the overall Flash Memory market with a 12 percent market share, which rose to 14 percent for the first three quarters of 2008, based upon end sales of Spansion's products.

8. The Debtors are based in the United States. The Debtors' headquarters is in Sunnyvale, California. The Debtors and their subsidiaries have sales, marketing, research and development, manufacturing and assembly and licensing operations in the United States, the Middle East, Europe and Asia. The Debtors and their subsidiaries manufacture products through

three fabrication facilities and four assembly, test and pack facilities located in Texas, Japan, China, Thailand, and Malaysia. A chart depicting the location of the Debtors' facilities, including facilities of the Foreign Subsidiaries (hereinafter defined), is annexed hereto as Exhibit A.

9. The Debtors currently directly employ approximately 1,800 employees. The Foreign Subsidiaries currently directly employ approximately 6,100 employees. Some of the employees of Spansion LLC's wholly owned Japanese subsidiary, Spansion Japan Limited, are represented by a union.

10. For the first three quarters of 2008, the Debtors and their subsidiaries recorded consolidated net sales of approximately $1.814 billion. As of the end of the third quarter of 2008, the Debtors and their subsidiaries had approximately $3.840 billion in consolidated assets and approximately $2.398 billion in consolidated liabilities.

B. **Architecture, Market and Product Overview**

11. *Flash Memory Architecture*. There are two main architectures of Flash Memory in the market today: NOR Flash Memory, which is used for code and data storage in mobile phones and primarily for code storage in consumer and industrial electronics, and NAND Flash Memory, which is primarily used for data storage in removable memory applications, such as Flash Memory cards and USB drives. According to market research, during the first three quarters of 2008, the Debtors and their subsidiaries were responsible for approximately 37 percent of all NOR Flash Memory net sales—making them the largest supplier of NOR Flash Memory in the world.

12. *Flash Memory Market Categories and Applications*. The Flash Memory market may be divided into two major categories based on application: the integrated category,

which includes wireless and embedded applications, and the removable storage category. Within the integrated category, portable, battery-powered communications applications are referred to as "wireless" and all other applications, such as consumer, industrial, telecommunications and automotive electronics, are referred to as "embedded." Within the removable storage category, applications include Flash Memory cards and USB drives. The Debtors focus primarily on the integrated area of the Flash Memory market—developing and selling Flash Memory for both wireless and embedded applications.

13. *Wireless Products*. The majority of the Debtors' wireless products are used in mobile phones. The wireless portion of the integrated category, which primarily consists of mobile phones, represented the largest market for NOR Flash Memory in fiscal year 2007. Mobile phone applications represented a majority of the Debtors' sales in fiscal year 2007 and approximately half of the Debtors' sales for the first three quarters of 2008. The Debtors' wireless product sales are largely based on the multi chip package, which includes Flash Memory together with volatile memory, such as dynamic random access memory. The Debtors' wireless products offer a combination of low power consumption with fast performance, and they are used in mobile phones with capabilities such as complex ring tones, enhanced color displays, higher resolution cameras, and storage for multimedia content including music, video, and pictures.

14. *Embedded Products*. Embedded applications represented most of the balance of the Debtors' sales in fiscal year 2007 and in the first three quarters of 2008. Key embedded product applications include consumer, automotive, networking, telecommunications and gaming electronics. The Debtors' embedded Flash Memory devices are used in many diverse products including DVD players, digital video recorders, set-top boxes, automotive

engine and transmission control systems, personal computing peripherals, networking routers and switches.

15. *Development Platforms*. The Debtors also provide development tools and subsystems to customers in order to assist them in designing the Debtors' Flash Memory devices into their integrated products. By providing the necessary hardware development tools and platforms for design, the Debtors assist customers in prototyping their designs and in development, verification, evaluation and programming to streamline and simplify the design and development of their products.

C. Sales and Marketing

16. The Debtors market and sell their products worldwide under the Spansion trademark. The Debtors sell their products to their customers directly and through distributors. Fujitsu is currently the Debtors' primary distributor in Japan.

17. The Debtors market their products through a variety of direct and indirect channels. The Debtors pride themselves on their direct relationships with the top mobile phone original equipment manufacturers and embedded Flash Memory customers worldwide. In addition, the Debtors support "design-in" of their products on reference designs, which are typically used by a broad base of wireless handset manufacturers when choosing Flash Memory solutions. For embedded Flash Memory customers, the Debtors focus their marketing efforts on providers of complementary silicon to ensure their products interoperate effectively with the most widely used components in various embedded applications.

D. Customers

18. The Debtors' customers include original equipment manufacturers, original design manufacturers, and contract manufacturers. Among those customers, Nokia

Corporation accounted for more than 10 percent of the Debtors' net sales in fiscal year 2007. For fiscal year 2007, Fujitsu Limited, as both a distributor and a customer of the Debtors, accounted for approximately 35 percent of the Debtors' net sales.

E. **Corporate History and Structure**

19. A predecessor of Spansion was originally organized in 1993 as a Flash Memory manufacturing joint venture of Advanced Micro Devices, Inc. ("**AMD**") and Fujitsu Limited ("**Fujitsu**") named Fujitsu AMD Semiconductor Limited ("**FASL**"). FASL's primary function was to manufacture and sell Flash Memory wafers to AMD and Fujitsu, which in turn converted the Flash Memory wafers into finished Flash Memory products and sold them to their customers. AMD and Fujitsu were also responsible for all research and development and marketing activities and provided FASL with various support and administrative services.

20. By 2003, AMD and Fujitsu desired to expand the operations of FASL to achieve economies of scale, add additional Flash Memory wafer fabrication capacity, and include assembly, test, mark and pack operations, research and development capabilities, and various marketing and administrative functions. To accomplish these goals, in June 2003, AMD and Fujitsu reorganized the Debtors' business as a Flash Memory company called FASL LLC, later renamed Spansion LLC, by integrating the manufacturing venture with other Flash Memory assets of AMD and Fujitsu.

21. Spansion LLC reorganized into Spansion Inc., a Delaware corporation, in connection with an initial public offering (the "**Initial Public Offering**") on December 16, 2005. Spansion is a holding company that owns 100% of the membership interests of Spansion Technology. Spansion and Spansion Technology own 60% and 40%, respectively, of the membership interests of Spansion LLC, the Debtors' principal operating entity. Spansion LLC is

the direct parent of Spansion International and Cerium. A chart of the Debtors' current organizational structure is attached as Exhibit B.

22. Spansion's common stock is publicly traded on The Nasdaq Stock Market's Global Select Market under the symbol "SPSN." The closing price of the stock on February 20, 2009 was $0.05. The closing price of the stock on December 16, 2005 (the date of the Initial Public Offering) was $13.55. As of February 23, 2009, there were 35 record holders of common stock and approximately 161,551,854 shares of common stock outstanding.

F. **International Subsidiaries**

23. Spansion LLC is the direct or indirect parent of a number of companies organized under the laws of various foreign countries (the "**Foreign Subsidiaries**"). Spansion LLC's direct foreign subsidiaries are Spansion Holdings (Singapore) Pte. Ltd., Spansion Asia Holdings (Singapore) Pte. Ltd., Spansion (Thailand) Limited, Spansion (Penang) Sdn. Bhd., Spansion Japan Limited, Spansion (Kuala Lumpur) Sdn. Bhd., Spansion EMEA, and Saifun Semiconductors Ltd. Spansion LLC's indirect foreign subsidiaries are Spansion (China) Limited, Spansion Semiconductor Trading (Shanghai) Co. Ltd., Saifun (BVI) Limited, Tulip Semi Conductor Holdings (2005) Ltd., Tulip Semiconductor Ltd. and Tulip Semiconductor L.P.

24. On March 18, 2008, Spansion completed the acquisition of all of the outstanding shares of Saifun Semiconductors Ltd., a publicly held company headquartered in Netanya, Israel ("**Saifun**"). Saifun is a provider of intellectual property ("**IP**") solutions for the non-volatile memory market and licenses its IP to semiconductor manufacturers that use this technology to develop and manufacture a variety of Flash Memory products including products that integrate Flash Memory with logic as well as dedicated standalone Flash Memory devices.

25. On or about February 10, 2009, Spansion Japan Limited, a wholly-owned subsidiary of Spansion LLC ("**Spansion Japan**"), entered into a proceeding under the Corporate Reorganization Law (Kaisha Kosei Ho) of Japan to obtain protection from Spansion Japan's creditors (the "**Spansion Japan Proceeding**"). None of the other Foreign Subsidiaries has commenced reorganization or other insolvency proceedings.

G. **Summary of Prepetition Indebtedness**

26. At the time of the Initial Public Offering in December 2005, the Debtors' aggregate principal amount of outstanding debt was approximately $760 million. As of December 30, 2007, the Debtors' and the Foreign Subsidiaries' aggregate principal amount of outstanding debt was $1.4 billion. As of February 22, 2009, the Debtors' and the Foreign Subsidiaries' aggregate principal amount of outstanding debt was approximately $1.23 billion.

27. The Debtors' prepetition secured debt structure is comprised of the following: (1) a secured revolving credit facility (the "**Secured Credit Facility**"); (2) Senior Secured Floating Rate Notes Due 2013 (the "**FRNs**"); and (3) a credit line with UBS Bank USA (the "**UBS Credit Line**"). As of February 22, 2009, there was approximately $702 million in principal and approximately $8 million in accrued interest outstanding under these debt issuances.

28. Excluding trade debt, the Debtors' prepetition unsecured debt includes: (1) 11.25% Senior Notes Due 2016 (the "**Senior Notes**") and (2) 2.25% Exchangeable Senior Subordinated Debentures Due 2016 (the "**Debentures**"). As of February 22, 2009, there was approximately $457 million in principal and approximately $18 million in accrued interest outstanding under these debt issuances.

29. A chart depicting the Debtors' prepetition secured and unsecured debt is annexed hereto at Exhibit C.

H. **Secured Credit Facility**

30. Spansion LLC is the borrower under the Secured Credit Facility pursuant to that certain Credit Agreement, dated September 19, 2005, by and among Bank of America, N.A., as Agent (the "**Agent**"), Banc of America Securities LLC, as the Sole Lead Arranger and the Sole Book Manager, Spansion LLC and the lenders party thereto from time to time (the "**Lenders**"), as amended by that certain Amendment No. 1 to Credit Agreement, dated April 7, 2006, as amended by that certain Amendment No. 2 to Credit Agreement and Amendment to Security Agreement, dated November 3, 2006, as amended by that certain Amendment No. 3 to Credit Agreement and Amendment No. 2 to Security Agreement, dated May 9, 2007, as amended by that certain Amendment No. 4 to Credit Agreement and Consent, dated March 2008, and as amended by that certain Amendment No. 5 to Credit Agreement and Amendment No. 3 to Security Agreement (the "**Fifth Amendment**"), dated December 23, 2008 (as amended, extended, supplemented or otherwise modified from time to time, the "**Credit Agreement**"). Under the Credit Agreement, the Lenders made available to Spansion LLC a revolving line of credit for loans and letters of credit in an amount determined based upon certain key financial measurements, but not to exceed $175 million in any case. Spansion, Spansion International, Spansion Technology and Cerium have guaranteed the Secured Credit Facility. The Secured Credit Facility will terminate pursuant to its terms on September 19, 2010.

31. The Secured Credit Facility is secured by a first priority lien on all of Spansion LLC's assets other than (1) collateral secured in favor of the FRNs as described below (in which the Lenders have a second priority lien); (2) collateral securing the UBS Credit Line as

described below; and (3) its intellectual property (together with the FRN Priority Collateral (hereinafter defined), the "**Collateral**"). The Secured Credit Facility's collateral includes 100% of the capital stock or membership interests of Spansion LLC's domestic wholly-owned subsidiaries, and up to 65% of the capital stock or membership interests of Spansion LLC's foreign wholly-owned subsidiaries.

32. One key financial measurement in determining the amount available under the Secured Credit Facility is earnings before interest, taxes, depreciation, and amortization ("**Prepetition Debt EBITDA**"). The Credit Agreement provides that should Spansion LLC fail to meet a minimum Prepetition Debt EBITDA threshold, the amount available under the Secured Credit Facility would be reduced by $35 million from any previously calculated availability amount to meet covenant obligations. On September 28, 2008, Spansion LLC failed to meet this minimum Prepetition Debt EBITDA requirement and, as a result, the then total available borrowing amount was reduced by $35 million to approximately $38.5 million of borrowing availability under the Secured Credit Facility as of that date.

33. Pursuant to the Fifth Amendment executed in December 2008, the total borrowing availability amount under the Secured Credit Facility was reduced from $175 million to an aggregate of $45 million.

34. The Spansion Japan Proceeding, payment defaults under the Credit Agreement and defaults triggering cross-default provisions under other Spansion debt instruments have resulted in an event of default under the Secured Credit Facility. On February 23, 2009, the Agent notified the Debtors that, as a result of certain events of default, the Lenders are no longer obligated to fund the Senior Credit Facility.

35. As of February 22, 2009, no advances remain outstanding under the Credit Facility, approximately $2 million in letter of credit obligations, which have been cash collateralized, remain outstanding and approximately $16 million is outstanding, though for the most part not presently due and payable, under equipment leases (the "**Equipment Leases**") which became secured by the prepetition lender collateral pursuant to the Fifth Amendment (such obligations, plus accrued interest with respect thereto and any fees, costs and charges provided under the prepetition credit agreement documents, the "**Prepetition Revolver Indebtedness**").

I. **Senior Secured Floating Rate Notes**

36. In May 2007, Spansion LLC issued $550 million in aggregate principal amount of FRNs pursuant to that certain Indenture, dated May 18, 2007, by and between Spansion LLC, as Issuer, Spansion and Spansion Technology, as Guarantors, and Wells Fargo Bank, National Association, as Trustee (as amended, amended and restated, extended, supplemented or otherwise modified from time to time, the "**FRN Indenture**"). In June 2007, Spansion LLC issued an additional $75 million in aggregate principal amount of FRNs pursuant to the FRN Indenture, resulting in a total aggregate principal amount of $625 million of FRNs outstanding. HSBC Bank USA, National Association later replaced Wells Fargo as successor Trustee under the FRN Indenture. Interest on the FRNs accrues at a rate per annum, reset quarterly, equal to the three-month London Interbank Offered Rate plus 3.125%. Interest is payable on March 1, June 1, September 1 and December 1 of each year beginning September 1, 2007 until the maturity date of June 1, 2013.

37. The FRNs are secured by a first priority lien on all of Spansion LLC's inventory, equipment and real property and any proceeds from the sales of such collateral

(excluding sales of inventory in the ordinary course of business) (the "**FRN Priority Collateral**") and a second priority lien on the collateral that is securing the first priority lien under the Secured Credit Facility (excluding the capital stock of Spansion LLC's subsidiaries). The FRNs are not secured by Spansion LLC's intellectual property.

38. The Spansion Japan Proceeding constitutes an event of default under the FRN Indenture. As of February 22, 2009, the obligations under the FRN Indenture were $625 million plus accrued interest of approximately $8 million (together the "**Noteholder Indebtedness**").

39. Bank of America, N.A., as Agent, and Wells Fargo Bank, National Association, as Collateral Agent (as may be changed from time to time, the "**Collateral Agent**") for the holders of the FRNs (the "**FRN Noteholders**"), are parties to an Amended and Restated Intercreditor Agreement dated as of May 18, 2007 (the "**Intercreditor Agreement**"), which delineates the rights and remedies of the Agent, the Lenders, the Collateral Agent and the FRN Noteholders with respect to the Collateral.

40. In particular, the Intercreditor Agreement provides that any lien on Revolving Credit Priority Collateral (as defined in the Intercreditor Agreement) securing any Prepetition Revolver Indebtedness shall have priority over any lien on Revolving Credit Priority Collateral securing any Noteholder Indebtedness. The Intercreditor Agreement also provides that any lien on the Noteholder Priority Collateral (as defined in the Intercreditor Agreement) securing any Noteholder Indebtedness shall have priority over any lien on the Noteholder Priority Collateral securing any Prepetition Revolver Indebtedness.

J. **Senior Notes**

41. Spansion LLC issued $250 million in aggregate principal amount of Senior Notes pursuant to that certain Indenture, dated December 21, 2005, by and among Spansion LLC, as Issuer, Spansion and Spansion Technology, as Guarantors, and Wells Fargo Bank, N.A., as Trustee (as amended, extended, supplemented or otherwise modified from time to time, the "**Senior Notes Indenture**"). US Bank National Association later became the successor Trustee. The Senior Notes are general unsecured senior obligations of Spansion LLC. Interest under the Senior Notes is payable on January 15 and July 15 of each year beginning July 15, 2006 until the maturity date of January 15, 2016. Spansion LLC did not make the interest payment due on January 15, 2009. Under the Senior Notes Indenture, the failure to make an interest payment is an event of default if not cured within a 30-day cure period, which period expired on February 15, 2009 without any cure payment having been made.

42. The failure to cure the interest payment default and the Spansion Japan Proceeding each constitutes an event of default under the Senior Notes Indenture. As a result, all obligations under the Senior Notes Indenture have become immediately due and payable. As of February 22, 2009, approximately $250 million was outstanding in aggregate principal amount of Senior Notes and total accrued and unpaid interest under the Senior Notes was approximately $17 million.

K. **Exchangeable Senior Subordinated Debentures**

43. In June 2006, Spansion LLC issued $207 million in aggregate principal amount of 2.25% Exchangeable Senior Subordinated Debentures due 2016 (the "**Debentures**") pursuant to that certain Indenture, dated June 12, 2006, by and between Spansion LLC, as Issuer, Spansion and Spansion Technology, as Guarantors, and Wells Fargo Bank, N.A., as Trustee (the "**Exchangeable Debentures Indenture**"). Wilmington Trust Corporation later became the

successor Trustee. The Debentures are general unsecured senior subordinated obligations and rank subordinate in right of payment to all other senior indebtedness of Spansion LLC, including the Secured Credit Facility, the FRNs and the Senior Notes, but are senior in right of payment to all of Spansion LLC's other subordinated indebtedness. The Debentures bear interest at a rate of 2.25 percent per annum. Interest is payable on June 15 and December 15 of each year beginning December 15, 2006 until the maturity date of June 15, 2016.

44. The Spansion Japan Proceeding constitutes an event of default under the Exchangeable Debentures Indenture. As a result, all obligations under the Exchangeable Debentures Indenture have automatically become immediately due and payable. As of February 22, 2008, approximately $207 million was outstanding in aggregate principal amount of Debentures and total accrued and unpaid interest under the Debentures was approximately $1 million.

L. **The UBS Credit Line**

45. In October 2008, UBS AG, the fund manager with whom Spansion LLC holds its auction rate securities, announced an offer to its clients holding auction rate securities (the "**Offer**"). Under the Offer, UBS AG agreed to issue Series C-1 and/or C-2 Auction Rate Securities Rights (the "**Rights**") to Spansion LLC. The Rights would allow Spansion LLC to sell the auction rate securities held in its accounts with UBS Bank USA ("**UBS**") to UBS at par value during the period beginning June 30, 2010 and ending July 2, 2012. In exchange, Spansion LLC would be required to release UBS AG and its affiliates from claims that it may have for damages related to the auction rate securities (other than consequential damages), and Spansion LLC would grant UBS AG and its affiliates the right to sell or otherwise dispose of Spansion's LLC auction rate securities on its behalf (so long as Spansion LLC is paid the par value of the auction rate securities upon any disposition). As of September 28, 2008, the par value of

Spansion LLC's auction rate securities held with UBS was approximately $122 million and the fair value of those securities was approximately $107 million.

46. Under the Offer, Spansion LLC was also entitled to enter into a Credit Line Agreement with UBS for up to 75% of the market value of the auction rate securities.

47. Spansion LLC accepted the Offer and on December 29, 2008, Spansion LLC executed a Credit Line Account Application and Agreement for Organizations and Businesses (the "**UBS Credit Line**") with UBS that provides an aggregate amount of up to $85 million in the form of an uncommitted revolving line of credit, which is secured by a first priority lien in favor of UBS on auction rate securities owned by Spansion LLC. Advances under the UBS Credit Line will bear interest at a variable rate equal to the lesser of: (a) LIBOR plus 1.250% to 2.750%, depending on the amount of the advance, and (b) the then applicable weighted average rate of interest or dividend rate paid to Spansion LLC by the issuer of the auction rate securities, and in each case, such interest rate is subject to adjustment at any time and from time to time to reflect changes in the composition of the auction rate securities.

48. The UBS Credit Line also provides, among other things, that UBS may demand full or partial payment of the credit line at its sole discretion and without cause at any time and that UBS may at any time in its sole discretion terminate and cancel the credit line, provided, however, that UBS is required to provide to Spansion LLC alternative financing on substantially similar terms, unless the demand right was exercised as a result of certain specified events or the customer relationship between UBS and Spansion LLC is terminated for cause by UBS.

49. The Spansion Japan Proceeding constitutes an event of default under the UBS Credit Line. As a result, all obligations under the UBS Credit Line have automatically

become immediately due and payable. As of February 25, 2009, such obligations include approximately $79 million of principal and accrued interest.

M. **Obligations Under Capital Leases**

50. Spansion LLC's obligations under its capital lease agreements are collateralized by the assets leased to Spansion LLC. Leased assets principally consist of machinery and equipment. As of February 22, 2009, Spansion LLC's capital lease obligations totaled approximately $74 million, including approximately $31 million to Macquarie Electronics USA, Inc., approximately $9 million to General Electric Corporation and $34.5 million for approximately fifteen other leases for which Banc of America Leasing is the arranger. Interest on the capital lease obligations totals $11.5 million

N. **Circumstances Leading to the Commencement of These Chapter 11 Cases**

51. A variety of external economic factors have contributed to the decline in the Debtors' operating performance, such as persistent oversupply in the flash memory industry compounded by the global economic recession, which significantly reduced demand for the Debtors' products in the fourth quarter of 2008 and continues to negatively impact current demand. These two factors are further complicated by the Debtors' inability to obtain the additional external financing necessary to meet capital expenditure needs and operational costs in a market characterized by swift technological advances and constantly changing manufacturing processes.

52. The Debtors' strategy was historically based on aggressive revenue and market share growth, leveraging superior technology, and low cost, high-volume manufacturing. In the Debtors' 2006 long range planning cycle, forecasted revenue growth supported the

construction of a $1.2 billion advanced wafer fabrication facility ("**SP1**"). Debt financing was arranged and construction on SP1 commenced in early 2007.

53. Although the Debtors continued to increase their NOR memory market segment share according to third-party industry sources, steep average selling price ("**ASP**") declines during the first half of 2007 negatively affected revenue, profitability, and operating cash flow. At that time, the Debtors anticipated an improvement in the market environment for the second half of 2007 and aggressively continued the construction of SP1 and incurred associated capital expenditures with the ultimate goal of significant cost reductions that would enhance the Debtors' competitive advantage.

54. During the second half of 2007, the ASP environment stabilized relative to earlier in the year. However, the Debtors faced customer qualification issues resulting in a shortfall in anticipated revenue and increased inventory levels which contributed to the Debtors' failure to meet financial performance targets in the second half of 2007. For fiscal year 2007, cash flow from operations was approximately $200 million, which was significantly lower than anticipated. Driven by the facilitization of SP1 and investments in their research and development facility, the Debtors' capital spending in 2007 reached $1.1 billion.

55. The Debtors' 2008 operating plan included capital expenditures of $535 million, of which approximately 80% were expected to occur in the first half of the year in order to complete the phase 1 facilitization of SP1. Upon completion of this first phase, SP1 was anticipated to generate approximately $300 million in revenue in 2008.

56. In the first quarter of 2008, the Debtors lost liquidity in their investment in approximately $122 million of AAA rated auction rate securities (the "**ARS**"). Throughout the second and third quarters of 2008, the credit markets continued to deteriorate and the Debtors

intensified their cash management processes. Operationally, the ramp-up of SP1 was delayed due to slower than expected customer qualifications and a sharp decline in the Japanese wireless market. In the third quarter of 2008, the Debtors engaged investment bankers and capital restructuring advisors to evaluate the situation and to accelerate plans to improve liquidity. Multiple initiatives were launched and/or accelerated, including efforts to sell production facilities, raise capital, and seek liquidity options for the ARS.

57. In the fourth quarter of 2008, the macroeconomic environment deteriorated significantly, causing a sharp decline in worldwide demand for consumer goods, and consequently a sharp reduction of demand for the Debtors' products. Furthermore, continued tightening of credit availability and general market liquidity concerns curtailed the Debtors' ability to execute the liquidity initiatives launched in the third quarter of 2008. As these events unfolded, the Debtors intensified their strategic restructuring efforts to include pursuing a potential sale of the entire company. The sharp decline in demand, coupled with the inability of the Debtors to execute liquidity initiatives limited the Debtors' ability to generate sufficient funding for their operations and meet their debt servicing requirements, ultimately leading to the commencement of these Chapter 11 Cases.

II. FIRST DAY MOTIONS

58. Concurrently with the filing of these Chapter 11 Cases, the Debtors have filed a number of First Day Motions, consisting of procedural motions and motions relating to the Debtors' business obligations. The Debtors submit that approval of each First Day Motion is an important element of their reorganization efforts and is necessary to ensure a smooth transition into chapter 11 with minimal disruption to their operations. I have reviewed each of the First Day Motions, including the exhibits thereto, and believe that the relief requested therein

is critical to the Debtors' ability to achieve a successful reorganization. Factual information with respect to each First Day Motion is provided below and in each First Day Motion.

A. Motion for Entry of an Order Authorizing Joint Administration of Chapter 11 Cases Pursuant to Bankruptcy Rule 1015 and Local Rule 1015-1 (the "Joint Administration Motion")

59. Many of the motions, applications, hearings and orders that will arise in these Chapter 11 Cases will jointly affect all of the Debtors. Further, the Debtors submit that joint administration of these Chapter 11 Cases will ease the administrative burden on the Court and all parties-in-interest and will protect creditors of the respective estates against potential conflicts of interest.

60. For the foregoing reasons, the Debtors submit, and I agree, that it is in the best interest of the Debtors, their estates and creditors that an order be entered directing the joint administration of these Chapter 11 Cases and the consolidation thereof for procedural purposes only.

B. Motion for Entry of an Order Extending the Time Within Which the Debtors Must File Their Schedules and Statements of Financial Affairs (the "Schedules and Statements Motion")

61. The Schedules and Statements Motion seeks entry of an order pursuant to Rule 1007 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**") and Rule 1007-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "**Local Rules**"), setting a deadline 75 days after the Petition Date by which the Debtors must file their respective (i) schedules of assets and liabilities, (ii) schedules of executory contracts and unexpired leases and (iii) statements of financial affairs (collectively, the "**Schedules and Statements**").

62. Completing the Schedules and Statements requires the Debtors to collect, review and assemble a substantial amount of information. The Debtors estimate that they have

thousands of creditors (including current and former employees). Further, the conduct and operation of the Debtors' business operations require the Debtors to maintain voluminous books and records and complex accounting systems. Given the size and complexity of their business operations, the number of creditors, the fact that certain prepetition invoices have likely not yet been received, and the extensive efforts that the Debtors' management and other professionals devoted to negotiating with key creditor constituencies leading up to the filing of these Chapter 11 Cases, the Debtors have not had sufficient time to compile all of the information required to complete the Schedules and Statements.

63. Moreover, given the urgency with which the Debtors sought chapter 11 relief and the numerous critical operational matters that the Debtors' staff of accountants and legal personnel must address in the early days of these Chapter 11 Cases, the Debtors will not be in a position to complete the Schedules and Statements within the time specified in Bankruptcy Rule 1007 and Local Rule 1007-I(b). Nevertheless, recognizing the importance of the Schedules and Statements in these Chapter 11 Cases, the Debtors intend to complete the Schedules and Statements as quickly as possible under the circumstances.

64. Accordingly, I believe sufficient grounds exist to extend the deadline for filing the Schedule and Statements. The additional time requested in the Schedules and Statements Motion should help ensure that the Schedules and Statements are as accurate as possible.

C. **Motion for Order (I) Authorizing and Approving Continued Use of Existing Cash Management System, (II) Authorizing Continued Use of Existing Bank Accounts and Business Forms, and (III) Waiving the Requirements of 11 U.S.C. 345(b) on an Interim Basis (the "Cash Management Motion")**

(i) **Request for Authority to Continue Using the Debtors' Existing Cash Management System**

65. The businesses and financial affairs of the Debtors and the Foreign Subsidiaries are complex. In the ordinary course of the Debtors and the Foreign Subsidiaries' businesses, the Debtors and the Foreign Subsidiaries collect, disburse and move funds through numerous bank accounts across the globe. To lessen the disruption caused by these Chapter 11 Cases and to maximize the value of the Debtors' estates, it is essential that they be allowed to maintain their well-developed system for managing cash (the "**Cash Management System**").

66. In the ordinary course of business, the Debtors maintain various accounts (collectively, the "**Bank Accounts**") at Bank of America ("**BofA**"), Bank of America Securities, Banca Popular di Milano ("**BP**"), Dresdner Bank AG ("**Dresdner**"), Handelsbanken, Korea Exchange Bank ("**KEB**") SAMPO Bank ("**SAMPO**") and UBS AG ("**UBS AG**"). In addition, the Foreign Subsidiaries maintain various accounts (collectively, the "**Subsidiary Accounts**") at Agricultural Bank of China, Ambank Bhd., Bangkok Bank Public Co. Ltd., Bank Hapaolim, BofA, Bank of China, Bank of Tokyo-Mitsubishi UFJ, BNP Paribas Bank, GuangDong Development Bank, Industrial and Commercial Bank of China, Leumi Bank, Maybank Bhd., Resona Bank, ShangHai PuDong Development Bank, Shinkin Bank, The First International Bank of Israel and Toho Bank.

67. A list of the Bank Accounts is annexed to the Cash Management Motion as Exhibit A, a list of the Subsidiary Accounts is annexed to the Cash Management Motion as Exhibit B and a schematic setting forth the Debtors' Cash Management System, as described below, is annexed to the Cash Management Motion as Exhibit C.

68. Debtor Spansion LLC maintains a system of twelve operating accounts with BofA, as described below:

a. Three accounts for the receipt of accounts receivable (the "**A/R Accounts**"): (1) an account that receives accounts receivable paid by wire transfer in Euros, (2) an account that receives accounts receivable paid by European customers by wire transfer in US dollars and (3) an account that receives the remainder of Spansion LLC's accounts receivable paid in US dollars, which receives (a) funds by wire transfer and (b) funds by check through its lockbox component;

b. Two cash disbursement accounts that fund accounts payable (the "**A/P Accounts**"), (1) an account for wire payments and (2) an account for check payments, which are used to pay, among other things, vendor invoices, computer leases, automobile leases and insurance invoices and for other general corporate necessities;

c. A cash disbursement account to fund payroll (the "**Payroll Account**");

d. A cash disbursement account to fund workers' compensation insurance and claims (the "**Workers' Comp Account**");

e. An account to hold funds for the sale or purchase of intercompany stock and to make payments under Spansion LLC's share pledge agreement (the "**IC Account**");

f. An account that is currently inactive, but which BofA monitors and has authority to activate in the event of a default by Spansion LLC on its obligations to BofA;

g. A collateral account for Spansion LLC's purchase card with BofA;

h. A cash disbursement account for the Netherlands branch of Spansion LLC (the "**Netherlands Account**"), which funds intercompany transfers and accounts payable, including payroll; and

i. A concentration account (the "**Concentration Account**"), which performs, among other things, the following six functions:

(1) Receiving direct transfers by check or wire transfer for non-accounts receivable such as tax refunds, refunds from accounts payable over-payments, and amounts employees pay to the Debtors;

(2) Receiving funds from the A/R Accounts by automatic sweep and manual transfer on a daily basis;[2]

(3) Automatically funding the A/P Accounts, the Payroll Account, the Workers' Comp Account and funding the IC Account by manual transfer as needed;

(4) Funding investment accounts that the Debtors maintain with Bank of America Securities and UBS AG and receiving investment proceeds from such accounts;

(5) Receiving and funding intercompany transfers to the Netherlands Account, the Foreign Accounts (defined below), the Cerium A/R Account (defined below) and the Subsidiary Accounts; and

(6) Receiving loan funds pursuant to the Senior Credit Facility and the UBS Credit Line.

In addition to the foregoing bank accounts, Spansion LLC maintains two investment accounts with Bank of America Securities and UBS AG, which Spansion LLC funds at its discretion.

69. Debtor Spansion International maintains a system of ten separate bank accounts. The Spansion International cash management system consists of the foreign bank

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[2] Pursuant to the Senior Credit Facility, the Lenders channel funds from the A/R Accounts to pay down the Lenders' revolver before any funds are transferred from the A/R Accounts to the Concentration Account. After the Lenders' revolver has been paid down, any excess funds remaining in the A/R Accounts are transferred into the Concentration Account.

accounts (collectively the "**Foreign Accounts**") for the Spansion International locations in Finland, Germany, Italy, Korea, Sweden, the United Kingdom and Taiwan. The United Kingdom and Taiwan locations each maintain one account with BofA that functions as a cash disbursement account to fund all accounts payable, including payroll. The Italy, Finland and Sweden locations each maintain one account, respectively, with BP, SAMPO and Handelsbanken that functions as a cash disbursement account to fund all accounts payable, including payroll. The Germany location maintains two accounts: (1) an account with Dresdner for payroll and tax-related accounts payable and (2) an account with BofA for all other accounts payable. The Korea location maintains two accounts: (1) an account with KEB for payroll and tax-related accounts payable and (2) an account with BofA for all other accounts payable. In addition to the Foreign Accounts, Spansion International maintains a concentration account that receives capital injections.

70. Debtor Cerium maintains two bank accounts with BofA: (1) an account that receives deposits of accounts receivable and intercompany settlements from the Concentration Account (the "**Cerium A/R Account**") and (2) a cash disbursement account through which Cerium pays its accounts payable, including payroll.

71. Debtors Spansion and Spansion Technology do not maintain any Bank Accounts.

72. The Foreign Subsidiaries maintain numerous accounts, which are a mixture of accounts payable, payroll and tax disbursement accounts. The Subsidiary Accounts are primarily funded through inter-company transfers from the Concentration Account and are described below.

a. Saifun maintains three accounts: (1) one account with Leumi Bank, (2) one account with Bank Hapaolim and (3) one account with The First International Bank of Israel.

b. Saifun BVI Ltd. maintains one investment account with Credit Suisse Securities (USA) LLC which Saifun BVI Ltd. funds at its discretion.

c. Spansion (China) Limited maintains nine accounts: (1) two accounts with Bank of China, (2) two accounts with Agricultural Bank of China, (3) two accounts with BofA, (4) one account with Industrial and Commercial Bank of China, (5) one account with GuangDong Development Bank and (6) one account with ShangHai PuDong Development Bank.

d. Spansion (Kuala Lumpur) Sdn. Bhd. maintains six accounts: (1) four accounts with BofA, (2) one account with Maybank Group and (3) one account with Ambank Group.

e. Spansion (Thailand) Limited maintains six accounts: (1) four accounts with BofA and (2) two accounts with Bangkok Bank Public Co. Ltd.

f. Spansion Asia Holdings (Singapore) Pte. Ltd maintains two accounts with BofA.

g. Spansion EMEA maintains two accounts: (1) one account with BofA and (2) one account with BNP Paribas Bank.

h. Spansion Holdings (Singapore) Pte. Ltd maintains two accounts with BofA.

i. Spansion Japan maintains nine accounts: (1) two accounts with Toho Bank, (2) one account with Resona Bank, (3) four accounts with Bank of Tokyo-Mitsubishi UFJ and (4) two accounts with Shinkin Bank.

j. Tulip Semiconductor L.P. maintains one account with Leumi Bank.

k. Spansion Semiconductor Trading (Shanghai) Co. Limited maintains three accounts with BofA.

73. Given the size and complexity of the Debtors and the Foreign Subsidiaries' operations, as well as the need to preserve and enhance their respective going concern values, a successful reorganization of the Debtors and the Foreign Subsidiaries' businesses will be difficult to accomplish if there is substantial disruption in the Debtors and the Foreign Subsidiaries' cash management procedures. It is essential, therefore, that the Debtors and the Foreign Subsidiaries be permitted to continue to consolidate the management of their cash and transfer monies from entity to entity as needed and in the amounts necessary to continue the operation of their businesses. The basic structure of the Cash Management System described herein has been utilized by the Debtors and the Foreign Subsidiaries since their inception and constitutes the Debtors and the Foreign Subsidiaries' ordinary, usual and essential business practices. The Cash Management System is similar to those commonly employed by corporate enterprises comparable to the Debtors and the Foreign Subsidiaries in size and complexity. The widespread use of such systems is attributable to the numerous benefits they provide, including the ability to (a) closely track all corporate funds, (b) invest idle cash at higher returns, (c) ensure cash availability, and (d) reduce administrative expenses by facilitating the movement of funds and the development of timely and accurate account balance and

presentment information. These controls are particularly important here, given the significant amount of cash that flows through the Debtors' integrated cash management system on an annual basis.

74. It is critical both to the continued operation of the Debtors and the Foreign Subsidiaries' businesses and to the preservation of the value of those businesses that the Debtors and the Foreign Subsidiaries continue to utilize their existing Cash Management System without disruption. Preserving a "business as usual" atmosphere and avoiding the unnecessary distractions that would inevitably be associated with any substantial disruption in the Debtors' Cash Management System will facilitate the Debtors' reorganization efforts. Of course, as they have historically, the Debtors the Foreign Subsidiaries will continue to maintain records with respect to transfers of cash, so that the Debtors, as well as their creditors and this Court, can trace funds through the Cash Management System and ensure that all transactions are adequately documented and readily ascertainable. Accordingly, it is appropriate and entirely consistent with applicable provisions of the Bankruptcy Code and case law for the Court to approve the continued use of the Debtors' existing centralized Cash Management System. For these reasons, the Debtors request the authority to continue to use their Cash Management System.

75. In conjunction with the authority to continue to use their Cash Management System, the Debtors request that no bank participating in the Cash Management System (the "**Cash Management Banks**") that honors a prepetition check or other item drawn on any account that is the subject of the Cash Management Motion (a) at the direction of the Debtors, (b) in a good faith belief that the Court has authorized such prepetition check or item to be honored, or (c) as a result of an innocent mistake made despite implementation of reasonable item handling procedures, be deemed to be liable to the Debtors or to their estates on account of

such prepetition check or other item being honored post-petition. The Debtors believe that such flexibility accorded the Cash Management Banks is necessary to induce the Cash Management Banks to continue providing cash management services without additional credit exposure.

(ii) Request for Authority to Maintain Existing Bank Accounts and Business Forms

76. Requiring the Debtors to comply with the U.S. Trustee Guidelines, including the requirement that chapter 11 debtors close all existing bank accounts after filing a petition for reorganization and open new "debtor-in-possession" accounts in certain financial institutions designated as authorized depositories by the U.S. Trustee, would create significant and undue hardship on the Debtors. The Debtors therefore seek a waiver of the U.S. Trustee requirement that their Bank Accounts be closed and that new postpetition bank accounts be opened.

77. As described in detail above, the Debtors need to maintain the Cash Management System in order to ensure smooth collections and disbursements in the ordinary course of their business.

78. Accordingly, the Debtors should be permitted to continue to maintain their existing Bank Accounts and, if necessary, to open new accounts and close existing accounts in the normal course of their business operations. Otherwise, transferring the Bank Accounts will be disruptive, time consuming and expensive. Further, it is in the best interests of the Debtors for the Bank Accounts to be deemed debtor-in-possession accounts and for the Debtors to be authorized to maintain and continue using these accounts in the same manner and with the same account numbers, styles and document forms as those utilized during the prepetition period.

79. If the relief requested in the Cash Management Motion is granted, the Debtors will implement appropriate mechanisms to ensure that no payments will be made on

account of any prepetition debts incurred by them prior to the Petition Date, other than as authorized by the Court. For example, concurrently with the filing of the Cash Management Motion, the Debtors are filing motions requesting authority to pay certain prepetition obligations to employees, taxing authorities, customers, and other key constituencies in the ordinary course of business. To prevent the possible inadvertent payment of prepetition claims, except those otherwise authorized by the Court, the Debtors have advised the Cash Management Banks not to honor checks issued prior to the Petition Date. The Debtors will work closely with the Cash Management Banks to ensure appropriate procedures are in place to prevent checks issued prepetition from being honored absent this Court's approval.

80. In the Cash Management Motion, the Debtors also request that they be authorized to continue to use all stationery, pre-printed letterhead, purchase orders, invoices and other such related forms (the "**Business Forms**") and checks existing immediately before the Petition Date without reference to the Debtors' status as debtors-in-possession. The Debtors request that they be authorized to continue to use all such Business Forms existing immediately before the Petition Date without reference to the Debtors' status as debtors-in-possession. Parties doing business with the Debtors undoubtedly will be aware, as a result of the size of these Chapter 11 Cases and notification to creditors, of the Debtors' status as chapter 11 debtors-in-possession. Changing correspondence and business forms would be unnecessary and burdensome to the estates, as well as expensive and disruptive to the Debtors' business operations.

(iii) Request that the Court Waive the Deposit Requirements of 11 U.S.C. § 345(b) on an Interim Basis

81. In the Cash Management Motion, the Debtors also request that the Court waive the requirements of section 345(b) of the Bankruptcy Code on an interim basis and permit

the Debtors to maintain their deposits in their accounts in accordance with their existing deposit practices until such time as the Debtors obtain this Court's approval to deviate from the guidelines imposed under section 345(b) of the Bankruptcy Code on a final basis.

82. Given the complexity of the Cash Management System and the relative security of the Cash Management System, I believe sufficient grounds exist to grant Debtors' requests to (1) continue using the existing Cash Management System, (2) to continue maintaining the existing Bank Accounts and Business Forms, and (3) to receive an interim sixty-day waiver of the requirement of section 345(b) of the Bankruptcy Code.

D. **Motion for Order (I) Authorizing the Debtors to (A) Pay Certain Prepetition (1) Wages, Salaries and Other Compensation; (2) Employee Medical, Retirement and Similar Benefits; (3) Withholdings and Deductions, and (4) Reimbursable Employee Expenses; and (B) Continue to Provide Employee Benefits in the Ordinary Course of Business; and (C) Pay all Related Costs and Expenses, and (II) Authorizing and Directing Banks and Other Financial Institutions to Receive, Process, Honor and Pay All Checks Presented for Payment and to Honor All Funds Transfer Requests Made by the Debtors Relating to the Foregoing (the "Employee Wages and Benefits Motion")**

83. The Debtors currently directly employ approximately 1,600 employees in their locations within the United States and Canada, of whom approximately 880 are salaried employees (the "**Salary Employees**") and 720 are paid by the hour (the "**Hourly Employees**", and, together with the Salary Employees, the "**Domestic Employees**"). The Debtors also directly employ approximately 164 salaried employees in their international locations as follows (collectively, the "**Foreign Employees**" and, together with the Domestic Employees, the "**Employees**"): 6 employees in Finland (the "**Finland Employees**"), 33 employees in Germany (the "**Germany Employees**"), 61 employees in Italy (the "**Italy Employees**"), 27 employees in Korea (the "**Korea Employees**"), 2 employees in the Netherlands (the "**Netherlands**

Employees"), 5 employees in Sweden (the "**Sweden Employees**"), 25 employees in Taiwan (the "**Taiwan Employees**") and 5 employees in the United Kingdom (the "**UK Employees**").

84. In addition, the Debtors employ approximately 100 independent contractors in their domestic locations (the "**Domestic Independent Contractors**") and 10 independent contractors in their foreign locations (the "**Foreign Independent Contractors**" and, together with the Domestic Independent Contractors, the "**Independent Contractors**"). The Independent Contractors serve as, among other things, engineers, information technology specialists, accountants and analysts.

85. By the Employee Wages and Benefits Motion, the Debtors request entry of an order granting them authority, in their discretion, to pay and honor certain prepetition claims for, among other items, wages, salaries, bonuses, payments to or on behalf of Employees and Independent Contractors and other compensation, Reimbursable Expenses (as defined herein), federal and state withholding taxes and other amounts withheld (*e.g.*, garnishments, Employees' share of insurance premiums, taxes and 401(k) contributions), Employees' health benefits, insurance benefits, workers' compensation benefits, vacation time, disability coverage and all other Employee benefits that the Debtors have historically provided in the ordinary course of business (collectively, "**Employee Wages and Benefits**"), and to pay all fees and costs incident to the foregoing, including amounts owed to third party administrators. In addition, the Debtors seek authority to (i) modify, change or discontinue any of the Employee Wages and Benefits, and the policy related to Reimbursable Expenses and (ii) implement new Employee Wages and Benefits in the ordinary course of business during these Chapter 11 Cases (as defined herein), in each case in the Debtors' discretion and without the need for further Court approval. Finally, the Debtors request that banks and other financial institutions (the "**Financial**

Institutions") be authorized and directed to receive, process, honor and pay all checks presented for payment and to honor all funds transfer requests relating to the foregoing.

(i) **Unpaid Compensation**

86. In the months leading up to the Petition Date, the Debtors' aggregate gross monthly compensation, including wages, salaries, commissions and bonuses, was approximately $17,075,000 for the Domestic Employees and approximately $1,319,000 for the Foreign Employees.[3] However, on February 23, 2009, the Debtors implemented a reduction in work force (the "**RIF**") with respect to the Domestic Employees. Subsequent to the RIF, the Debtors' average aggregate monthly compensation, including wages, salaries and bonuses, is expected to be approximately $10,328,000 for the Domestic Employees.

87. The Domestic Employees are paid on a bi-weekly basis, one week in arrears. Specifically, on February 13, 2009, the Domestic Employees were paid their wages for the period of January 25, 2009 through February 8, 2009. The next payroll for the Domestic Employees was paid on February 27, 2009 for the period of February 9, 2009 through February 22, 2009.

88. The Debtors are currently in the process of implementing a reduction in work force with respect to certain of the Foreign Employees and, as a result, certain of the calculations and figures included herein are subject to change although the Debtors do not expect such changes to be very substantial.

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[3] The Germany Employees, the Italy Employees, and the Netherlands Employees are paid in Euros. For purposes of this Affidavit, amounts have been converted from Euros to US dollars ("**USD**") using the conversion rate as of February 4, 2009 of 1 Euro equals 1.28 USD. The Korea Employees are paid in South Korean Won ("**KRW**"). For purposes of this Motion, the amount of beneficial allowances has been converted from KRW to USD using the conversion rate as of February 4, 2009 of 1 USD equals 1,378.5 KRW. The gross monthly compensation amounts that the Debtors pay to the Italy Employees and the Netherlands Employees include employment taxes that all employers in Italy and the Netherlands pay for employee health and welfare benefits.

89. The Foreign Employees are paid on a monthly basis at the end of each month, one month in arrears, with the exception of the Italy Employees who are paid twice a month, in arrears, in June and December, and on a monthly basis at the end of each month, one month in arrears, in the remaining months of the year.

90. In addition to their salaries or hourly pay, certain Employees responsible for sales of the Debtors' products are entitled to receive commission-based pay ("**Commissions**"). Commissions are paid to applicable Employees on a quarterly basis, one quarter in arrears. As of the Petition Date, the Debtors estimate that there is $829,000 in accrued unpaid Commissions relating to the fourth quarter of 2008. It is difficult to know precisely how much in Commissions may be owed for services rendered by the Employees in the prepetition period for the first quarter of 2009. However, based on an analysis of the past year's commission figures, the average amount of Commissions paid by the Debtors for the last quarter of 2008 per month in the aggregate was $395,000.

91. The Debtors pay the Domestic Independent Contractors through a third party management company, Volt Information Sciences ("**Volt**"). Volt provides management, attendance tracking and payroll computation services for the Debtors. The Debtors pay Volt for work performed by the Domestic Independent Contractors on a weekly basis, two months in arrears, plus a small management fee. The Debtors estimate that the average aggregate monthly compensation they would owe to Volt for Domestic Independent Contractors postpetition, including the management fee, is $795,000. The Debtors pay the Foreign Independent Contractors directly and through the following third-party staffing providers: Seedorff & Partner GmbH, Tulip Recruitment, Manpower AB, Manpower Oy and Recruit Express (Taiwan) Pte Ltd. (the "**Foreign IC Providers**"). The Debtors estimate that the average aggregate monthly

compensation they would pay to the Foreign Independent Contractors and the Foreign IC Providers postpetition is $16,380.

92. The Debtors believe that, as of the Petition Date, (1) approximately $2,592,000 was earned but remains unpaid with respect to the Domestic Employees and $34,000 was earned but remains unpaid with respect to the Foreign Employees on account of accrued gross prepetition wages, salaries, overtime pay, signing bonuses payable in installments over time, Commissions, over time, jury and/or holiday pay that have accrued during the most recent payment period and other compensation (excluding Reimbursable Expenses, incentive bonuses and sick and vacation pay) was earned but remains unpaid to the Employees, (2) $441,000 in accrued prepetition wages and management fees was earned but remains unpaid to Volt with respect to the Domestic Independent Contractors and (3) $34,000 in accrued prepetition wages and other compensation was earned but remains unpaid with respect to the Foreign Independent Contractors (collectively, the "**Unpaid Compensation**"). Of the Debtors' approximately 1,900 total Employees and Independent Contractors, the Debtors seek authority to pay only approximately 100 individuals an amount in excess of $10,950 on account of Unpaid Compensation and other prepetition Employee Wages and Benefits.

93. As of the Petition Date, the Employees and the Independent Contractors, together with their respective management and staffing companies, have not been paid all of their prepetition wages earned in arrears. Additional items of Unpaid Compensation may be due and owing on the Petition Date because:

a. the chapter 11 petitions were filed in the midst of the Debtors' regular and customary salary and hourly wage payroll periods;

b. some payroll checks issued to Employees or checks issued to Volt for the Independent Contractors prior to the Petition Date may not have been presented for payment or cleared the banking system and therefore were not honored and paid as of the Petition Date;

c. Employees and Independent Contractors, together with their respective management and staffing companies, have not yet been paid all of their salaries, wages and management fees for services previously performed for the Debtors;

d. discrepancies may exist between the amounts paid and amounts Employees or Independent Contractors, together with their respective management and staffing companies, or others believe should have been paid, which, upon resolution, may reveal that additional amounts are owed to such Employees and Independent Contractors, together with their respective management and staffing companies.

(ii) <u>Deductions and Withheld Amounts</u>

94. The Debtors deduct from the Domestic Employees' paychecks (a) state disability insurance; (b) employee contributions for Health Benefits (as defined below), additional life insurance, disability, and accidental death insurance, and pre-paid legal services; (c) employee contributions to 401(k) plans and 401(k) loan repayments; (d) employee contributions to flexible spending accounts and (e) legally ordered deductions such as wage garnishments, child support and tax levies (collectively, the "**<u>Employee Deductions</u>**"). The Debtors forward amounts equal to the Employee Deductions (with the exception of amounts owing on account of self-insured programs) from their general operating accounts to appropriate third-party recipients.

95. Further, the Debtors are required by law to withhold amounts related to federal or national, state, and local income taxes, social security, Medicare taxes, other taxes imposed on the Foreign Employees by their respective countries of domicile and other amounts from the Employees' wages for remittance to the proper taxing authority (collectively, the "**Withheld Amounts**"). The Debtors must then make matching contributions from their own funds for social security, Medicare taxes, pay based on a percentage of gross payroll, additional amounts for state, federal and other foreign unemployment insurance and for other programs as required by the foreign countries in which the Foreign Employees are employed and domiciled (the "**Employee Payroll Taxes**," and, together with the Withheld Amounts, the "**Payroll Taxes**").

96. Subsequent to the RIF, Employee Deductions should equal approximately $2,210,000 in the aggregate per month. Due to the commencement of the Chapter 11 Cases, some funds which were deducted from Domestic Employees' paychecks prepetition may not have been forwarded to appropriate third-party recipients.

97. Subsequent to the RIF, Payroll Taxes with respect to the Domestic Employees should equal approximately $1,825,000 in the aggregate, per two-week period with approximately $1,411,000 attributable to Withheld Amounts and approximately $414,000 attributable to Employee Payroll Taxes. Payroll Taxes with respect to the Foreign Employees equal approximately $340,000 in the aggregate per month with approximately $265,000 attributable to Withheld Amounts and approximately $75,000 attributable to Employee Payroll Taxes. Before the Petition Date, the Debtors withheld amounts from Employees' earnings for the Payroll Taxes, but such funds may not have been forwarded to the appropriate taxing authorities prior to the Petition Date.

(iii) **Reimbursable Expenses**

98. Prior to the Petition Date, and in the ordinary course of their businesses, the Debtors reimbursed Employees and directors for certain expenses incurred in the scope of their employment including, inter alia, business-related travel expenses, business meals, telephone costs, membership in professional associations, seminars and other job-related training expenses, car mileage reimbursement, periodical subscriptions and other miscellaneous business expenses (collectively, the "**Reimbursable Expenses**"). Employees are required to submit Reimbursable Expenses through the Debtors' reimbursable expense program. After the approval of an Employee's Reimbursable Expense, such Reimbursable Expense is paid to the Employee in the Employee's next regularly scheduled paycheck.

99. Subsequent to the RIF, the Debtors expect to spend approximately $248,000 per month in the aggregate for Reimbursable Expenses with respect to the Domestic Employees and approximately $68,900 per month in the aggregate with respect to the Foreign Employees. As of the Petition Date, the Debtors believe that approximately $189,000 of Reimbursable Expenses have been incurred by Employees but remain unpaid. Employees have incurred the Reimbursable Expenses as described above on behalf of the Debtors and with the understanding that they would be reimbursed. Accordingly, the Debtors seek authority, in their discretion, to (a) pay Employees for all Reimbursable Expenses that (i) accrued prepetition and (ii) accrued postpetition but relate to the prepetition period, (b) continue reimbursing the Reimbursable Expenses in accordance with prepetition practices, and (c) modify the prepetition policies relating thereto as they deem appropriate.

(iv) **Vacation and Other Paid Time Off**

100. The Debtors provide Employees with paid vacation time ("**Vacation Time**"). Employees begin accruing paid Vacation Time from the first day of work. Vacation

Time is based upon the Employee's date of hire and is accrued daily. With respect to the Domestic Employees, Hourly Employees accrue from two (2) to four (4) weeks of Vacation Time per year, based upon years of service. Salary Employees accrue from three (3) to four (4) weeks of Vacation Time per year, based upon years of service. The maximum accrued Vacation Time allowed for the Domestic Employees is eight weeks. A Domestic Employee who reaches the maximum Vacation Time accrual will cease to accrue further Vacation Time until Vacation Time is taken and the balance is reduced below the maximum accrual limit.

101. The Debtors' Vacation Time policies vary for the Foreign Employees by location. The Finland Employees and the Sweden Employees are entitled to 30 days of Vacation Time per year. The Netherlands Employees and the UK Employees are entitled to 25 days of Vacation Time per year. The Germany employees are entitled to 29 days of Vacation Time per year. The Italy Employees are entitled to between 22 and 35 days of Vacation Time per year depending on seniority. The Korea Employees accrue up to 12 days of Vacation Time per year. The Taiwan Employees accrue from 12 to 30 days of Vacation Time per year based upon years of service.

102. As of the Petition Date, most of the Employees have some accrued and unused Vacation Time, aggregating approximately $9,807,000 with respect to the Domestic Employees and approximately $574,000 with respect to the Foreign Employees.

103. Prior to January 1, 2009, Domestic Employees who worked for the Debtors for at least four years were entitled to a paid sabbatical leave ("**Sabbatical**") in addition to Vacation Time. The Domestic Employees accrued from one to eight weeks of Sabbatical depending on their years of service. As of January 1, 2009, the Debtors eliminated Sabbatical on a going forward basis. However, a large number of the Domestic Employees have accrued

Sabbatical for the period prior to January 1, 2009. Domestic Employees with accrued Sabbatical have until December 31, 2010 to use their Sabbatical. As of the Petition Date, the Debtors estimate that there is approximately $2,508,000 in accrued unpaid Sabbatical.

104. The Employees also receive paid time off for holidays ("**Holidays**"). The Domestic Employees receive 11 Holidays per year. The Finland Employees receive 11 Holidays per year. The Germany Employees receive 12.5 Holidays per year. The Korea Employees and the Sweden Employees receive 15 Holidays per year. The Italy Employees receive 16 Holidays per year. The Netherlands Employees receive 10 Holidays per year. The UK Employees receive 13 Holidays per year. The Taiwan Employees receive up to 16 Holidays, which include some floating holidays that the Taiwan Employees can take at their election.

105. In addition to Vacation Time and Holidays, the Employees are entitled to up to ten paid sick days ("**Sick Days**") per year up to a maximum of four weeks. The Domestic Employees are also entitled to up to 30 days paid time off for illness, maternity or paternity leave, or dependent care leave ("**Family Leave**"). The Foreign Employees are entitled to paid time off for various occurrences, such as marriage, extended illness, death of a family member, marriage and family visits (the "**Additional PTO**").

106. The Debtors also provide administrative leaves of absence to the Domestic Employees as required by law ("**LOA**" and together with Vacation, Sabbatical, Holidays, Sick Days, Family Leave and the Additional PTO, collectively, "**Paid Time Off**"). The LOA benefits are administered by Aetna. The Debtors estimate that their monthly cost for LOA is approximately $5,000.

(v) **Employee Benefits**

107. The Debtors maintain various plans and policies to provide Employees with medical insurance, dental insurance, vision insurance, disability insurance, life insurance,

accidental death and dismemberment insurance, retirement and pension plans, flexible spending accounts, business travel accident and medical insurance, living expenses while working away from home, funds for business-related relocation, professional education and training, pre-paid legal services, workers' compensation insurance, COBRA insurance, directors and officers' liability insurance and other similar benefits (collectively the "**Employee Benefits**"). These Employee Benefits are described generally below.

Health Benefits

108. The Debtors provide Employees with various premium-based insurance plans and policies related to medical, dental, vision, mental health and health plan administration benefits (collectively, the "**Health Benefits**"). Subsequent to the RIF, the Debtors' approximate monthly cost for maintaining the Health Benefits is approximately $1,121,000 in the aggregate with respect to the Domestic Employees and approximately $14,000 in the aggregate with respect to the Foreign Employees.[4] As with the Unpaid Compensation, Employees and their families rely on the Debtors to provide continuing health care. Any failure to pay these amounts would be injurious to Employee welfare, morale and expectations.

109. **Domestic Medical Plans**. The Debtors offer Domestic Employees who work at least 30 hours a week medical and prescription drug coverage under (1) three plans administered by United Healthcare ("**UHC**"): (a) UHC Choice, an IPO plan, (b) UHC Plus, a PPO plan and (c) UHC Choice Plus Out of Area, a PPO plan (collectively, the "**UHC Plans**"), and (2) one plan administered by Kaiser Permanente ("**Kaiser**"), Kaiser HMO. Collectively, the UHC Plans and the Kaiser HMO plan are referred to herein as the "**Medical Plans**". All

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4 The aggregate cost to the Debtors for Health Benefits with respect to the Foreign Employees does not include the cost of Health Benefits for the Finland Employees, the Germany Employees, the Netherlands Employees or the Sweden Employees, which are paid through the portion of Payroll Taxes that the Debtors pay for such Employees.

Domestic Employees can elect to subscribe to any of the UHC Plans. Domestic Employees in Northern California can also elect coverage from the Kaiser plan. The Debtors are self-insured under the UHC Plans, and Kaiser provides insurance under the Kaiser HMO plan. The Debtors pay 85% of the costs of the Medical Plans, and participating employees pay the remaining 15% of the costs. The UHC Plans cost the Debtors approximately $745,000 per month.[5] The Kaiser HMO plan costs the Debtors approximately $219,000 per month. The Debtors also maintain a cash reserve of $1,750,000 in the event that the Debtors terminate the UHC Plans. The purpose of the cash reserve is to provide funding for all accrued unpaid claims under the UHC Plans for a period of 12 months following the Debtors' termination of those plans, because the UHC Plans are self-insured. The Debtors also maintain stop loss insurance, administered by Alternative Risk Solutions, to cover high cost medical claims exceeding $175,000 under the Debtors' self-insured medical plans. The stop loss insurance costs the Debtors approximately $8,700 per month.

110. **Domestic Dental Plans**. The Debtors offer Domestic Employees who work at least 30 hours a week dental coverage under two plans, the Dental PPO plan or the Dental INO plan (the "**Dental Plans**"). The Dental Plans are self-insured by the Debtors and administered by UHC. Domestic Employees may choose coverage from either Dental Plan. The Debtors pay 85% of the costs of the Dental Plans and participating employees pay the remaining 15% of the costs. The average aggregate monthly cost to the Debtors for the Dental Plans is $123,000.[6]

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5 The payments the Debtors make to the respective third-party service providers and insurers pursuant to the Medical Plans include the Debtors' 85% contribution (equal to the Debtors' costs for such programs, as indicated above) and the Employees' 15% contribution.

6 The payments the Debtors make to third-party service providers and UHC pursuant to the Dental Plans include the Debtors' 85% contribution (equal to the Debtors' cost for the Dental Plans, as indicated above) and the Employees' 15% contribution.

111. **Domestic Vision Plans.** The Debtors offer Domestic Employees who work at least 30 hours a week vision coverage under a self-insured vision plan (the "Vision Plan"), administered by VSP. The Debtors pay 45% of the costs of the Vision Plan and participating employees pay the remaining 55% of the cost. The Vision Plan costs the Debtors approximately $8,300 per month.[7]

112. **Employee Assistance.** The Debtors provide Domestic Employees who work at least 30 hours a week with mental health and family counseling benefits administered by Concern ("**Employee Assistance**"). The Debtors pay 100% of the costs of the Employee Assistance, which equals approximately $3,700 per month.

113. **Foreign Employee Health Benefits.** The Debtors provide Health Benefits directly and indirectly to certain of the Foreign Employees, which vary by location. The Debtors reimburse the Italy Employees for medical, vision and dental expenses, at an average monthly cost to the Debtors of approximately $4,600. The Debtors provide Health Benefits to the Korea Employees through Korea's National Statutory Healthcare Plan and through supplemental third party insurance for major illnesses. The average monthly cost to the Debtors for Health Benefits with respect to the Korea Employees is approximately $3,000. The Debtors provide Health Benefits to the Taiwan Employees through statutory social health insurance, which costs the Debtors approximately $5,500 per month. The Debtors provide Health Benefits to the UK Employees through a third-party insurer, Pru Health, which costs the Debtors approximately $700 per month.[8] The Debtors do not provide Health Benefits directly to

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[7] The payments the Debtors make to third-party service providers and VSP pursuant to the Vision Plan include the Debtors' 45% contribution (equal to the Debtors' cost for the Vision Plan, as indicated above) and the Employees' 55% contribution.

[8] The Debtors pay Health Benefits and certain other benefits with respect to the UK Employees in United Kingdom Pounds ("**GBP**"). For purposes of this Motion, amounts have been converted from Pounds to USD using the conversion rate as of February 4, 2009 of 1 GBP equals 1.44 USD.

the Finland Employees, the Germany Employees, the Netherlands Employees or the Sweden Employees; rather, a portion of the Payroll Taxes that the Debtors pay with respect to such employees funds state-provided healthcare.

114. In connection with the Health Benefits, the Debtors provide benefits plan administration services (the "**Administration Benefits**") to the Domestic Employees through a third-party administrator, Ceridian. The Administration Benefits include a web site for the Domestic Employees with communication materials, plan documents and benefits enrollment and changes services. The Administration Benefits cost the Debtors approximately $13,000 per month.

115. The Debtors believe that there are no other accrued unpaid prepetition obligations related to Health Benefits or the Administration Benefits as of the Petition Date. However, the Debtors may owe amounts on behalf of the Health Benefits that have accrued prepetition but have not yet been paid to Employees or the appropriate third parties.

Employee Insurance Benefits

116. The Debtors provide all Domestic Employees with premium-based basic group term life insurance ("**Primary Life Insurance**") at no expense to the Employees. The Debtors also provide Primary Life Insurance to all of the Finland Employees, the UK Employees, the Korea Employees and the Taiwan Employees. The Debtors provide Primary Life Insurance only to certain of the Italy Employees who are executives. The Debtors do not provide life insurance directly to the Germany Employees or the Sweden Employees; rather, a portion of the Payroll Taxes that the Debtors pay with respect to such Employees funds state-sponsored life insurance. The Debtors do not provide life insurance to the Netherlands Employees. With respect to the Domestic Employees, Primary Life Insurance consists of basic life insurance in the amount of one and a half times annual base pay for Employees other than

executives, and three times annual base pay for executives, up to $1,000,000 or $2,000,000 depending on the Employee's hire date. Primary Life Insurance coverage for the Foreign Employees varies by location. The Debtors pay 100% of the premiums for the Primary Life Insurance. The Debtors estimate that, subsequent to the RIF, maintaining the Primary Life Insurance costs the Debtors approximately $15,300 per month in the aggregate with respect to the Domestic Employees and approximately $2,700 per month in the aggregate with respect to the Foreign Employees. Employees may also purchase supplemental life insurance, dependent life insurance and accidental death and dismemberment insurance. The Debtors make no contributions to purchases of such supplemental life, dependent and accidental death and dismemberment insurance.

117. The Debtors offer certain of the Employees disability coverage in the event they are unable to work due to a disabling condition ("**Disability Insurance**"). The Debtors pay approximately $25,000 annually, with payments made in two installments, for audit services related to its Disability Insurance for Domestic Employees. The Debtors make no contributions with respect to Disability Insurance for Domestic Employees. The Disability Insurance was self-insured by the Debtors until December 31, 2008. As of January 1, 2009, the Disability Insurance is insured through Aetna. Aetna is in the process of buying out the pre-2009 reserves related to the Disability Insurance.

118. The Domestic Employees in California may choose between the Spansion California voluntary disability plan (the "**CA Voluntary Disability Plan**") and the California state disability insurance plan (the "**CA State Disability Plan**" and together with the CA Voluntary Disability Plan, the "**CA Disability Plans**"). Employees pay 100% of the premiums under the CA Disability Plans, and the premiums are placed into a custody account with Wells