

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In re : Chapter 11  
: :  
Ampex Corporation, : Case No. 08-\_\_\_\_\_ ( )  
: :  
Debtor. :  
-----X

In re : Chapter 11  
: :  
Ampex Data Systems Corporation, : Case No. 08-\_\_\_\_\_ ( )  
: :  
Debtor. :  
-----X

In re : Chapter 11  
: :  
Ampex Data International Corporation, : Case No. 08-\_\_\_\_\_ ( )  
: :  
Debtor. :  
-----X

In re : Chapter 11  
: :  
Ampex Finance Corporation, : Case No. 08-\_\_\_\_\_ ( )  
: :  
Debtor. :  
-----X

In re : Chapter 11  
: :  
AFC Holdings Corporation, : Case No. 08-\_\_\_\_\_ ( )  
: :  
Debtor. :  
-----X

In re : Chapter 11  
: :  
Ampex Holdings Corporation, : Case No. 08-\_\_\_\_\_ ( )  
: :  
Debtor. :  
-----X

In re : Chapter 11  
: :  
Ampex International Sales Corporation, : Case No. 08-\_\_\_\_\_ ( )  
: :  
Debtor. :  
-----X

**DEBTORS' MOTION FOR AN ORDER:**

**(A) AUTHORIZING PAYMENT OF PREPETITION (1) WAGES, SALARIES AND OTHER COMPENSATION, (2) EMPLOYEE MEDICAL AND SIMILAR BENEFITS, (3) REIMBURSABLE EMPLOYEE EXPENSES, (4) OTHER MISCELLANEOUS EMPLOYEE EXPENSES AND BENEFITS, AND (5) SALES AND USE TAXES; AND (B) GRANTING RELATED RELIEF**

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

The debtors and debtors in possession in the above-captioned cases (each a "**Debtor**" and, collectively, the "**Debtors**"),<sup>1</sup> by and through their proposed attorneys, Willkie Farr & Gallagher LLP, respectfully represent:

**BACKGROUND**

1. On the date hereof (the "**Petition Date**"), Ampex Corporation ("**Ampex**"), Ampex Data Systems Corporation ("**Data Systems**"), and each of the other Debtors filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the "**Bankruptcy Code**"). The Debtors intend to continue in the possession of their respective properties and the management of their respective businesses as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.<sup>2</sup> As of the date hereof, no official committee of unsecured creditors has been appointed.

2. The Debtors are a leading innovator and licensor of visual information technology. During their 63-year history, the Debtors have developed substantial proprietary technology relating to the electronic storage, processing and retrieval of images and other data.

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<sup>1</sup> The last four digits of the taxpayer identification numbers of the Debtors follow in parentheses: (i) Ampex Corporation (7696); (ii) Ampex Data Systems Corporation (2575); (iii) Ampex Data International Corporation (0794); (iv) Ampex Finance Corporation (6720); (v) AFC Holdings Corporation (5726); (vi) Ampex Holdings Corporation (5336); and (vii) Ampex International Sales Corporation (0866). Each of the Debtors has a mailing address of 1228 Douglas Avenue, Redwood City, California 94063.

<sup>2</sup> The Debtors have nine foreign affiliates that are incorporated in seven countries; one each in the United Kingdom, Japan, Belgium, Colombia, and Brazil, and two each in Germany and Mexico (collectively, the "**Foreign Affiliates**"), respectively. With the exception of the Foreign Affiliates located in the United Kingdom and Japan, none of the Foreign Affiliates conduct meaningful business activity. To date, none of the Foreign Affiliates have commenced insolvency proceedings in this country or abroad.

Ampex currently owns approximately 370 patents and patent applications covering digital image processing, digital image compression and recording technologies.

3. The Debtors' licensing division generates revenues from granting licenses covering a variety of technologies that were developed when the Debtors designed and manufactured digital video tape recorders and special effects products used in the professional television broadcast and post-production industries. Certain of the Debtors' patented innovations developed for the professional markets have been adopted in consumer products years later. Therefore, several manufacturers of consumer products have in the past paid royalties to Ampex.

4. One of the Debtors, Data Systems, develops and incorporates technology in the design and manufacture of high performance instrumentation recorders, principally used in defense applications to gather digital images and other data from aircraft, satellites and submarines. Data Systems' products are used primarily by manufacturers of commercial aircraft and U.S. and foreign military and intelligence agencies. In addition, Data Systems sells spare parts for professional video recorders and other products that it previously manufactured and marketed to companies involved in television production and post-production.

5. Ampex, the ultimate parent of the other Debtors, is a publicly-held corporation, whose Class A Common Stock has been listed on the NASDAQ Capital Market (formerly the NASDAQ SmallCap Market) since September 1, 2006, under the symbol "AMPX."<sup>3</sup>

6. As of March 30, 2008, the Debtors had approximately \$59.6 million of outstanding funded indebtedness. Approximately, \$6.9 million represents principal and interest

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<sup>3</sup> From June 24, 2005 to August 31, 2006, the Class A Common Stock was listed on the NASDAQ Global Market (formerly the NASDAQ National Market). From November 21, 2003 to June 23, 2005, the Class A Common Stock was listed for quotation on the OTC Bulletin Board under the symbol "AEXCA."

that has accrued under an indenture dated as of February 28, 2002 (as amended, the “**Indenture**”), between Ampex, as Issuer, and U.S. Bank, National Association, as successor trustee to State Street Bank and Trust Company, as initial trustee. Pursuant to the Indenture, Ampex issued 12% Senior Secured Notes due 2008 (the “**Senior Notes**”), which are secured by liens on certain collateral including Ampex’s rights to receive all royalties, license fees and other payments under certain licensing agreement. The remaining \$52.7 million, as of March 30, 2008, of the Debtors’ outstanding financing relates to pension obligations satisfied by Hillside Capital Incorporated (“**Hillside**”), a former affiliate of the Debtors. For the year ending December 31, 2006, the Debtors reported total revenue of \$35,921,000. As of December 31, 2007, the Debtors’ unaudited balance sheet reflected total assets of \$26,467,000 and total liabilities of \$133,602,000.

7. Despite strong core businesses with positive cash flows, the payments needed to satisfy legacy pension obligations, and the Debtors’ resulting obligations to Hillside, overwhelm the Debtors’ balance sheet. At the direction of Ampex’s Board of Directors, management engaged in discussions with Hillside and, later, known major holders of the Senior Notes to explore a consensual restructuring of the Debtors’ obligations.

8. These discussions were successful and culminated in the Joint Chapter 11 Plan of Reorganization for Ampex Corporation and Its Affiliated Debtors (as may be amended, the “**Plan**”). If consummated, the restructuring transactions contemplated in the Plan will substantially delever the Company and provide additional needed liquidity. As evidenced by a Plan Support Agreement, executed by Hillside and holders of in excess of a majority in amount of the outstanding Senior Notes, the Plan has a broad base of support.

## JURISDICTION

9. This Court has jurisdiction to consider this motion (the “**Motion**”) pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief requested herein are sections 105(a), 363(b), and 507(a) of title 11 of the Bankruptcy Code and Rule 6003 of the Federal Rules of Bankruptcy Procedure.

## RELIEF REQUESTED

10. As of the Petition Date, the Debtors were current on virtually all non-pension related payments owed to or on account of Employees.<sup>4</sup> Nevertheless, given the consequences that could befall the estates if Employee obligations are not satisfied, out of an abundance of caution, the Debtors seek authority to pay any outstanding amounts in respect of payroll and other expenses that may arise in connection with the employee benefit obligations described herein. Failure to pay certain Employee obligations would cause immediate and irreparable harm to the Debtors.

11. Accordingly, by this Motion, the Debtors seek entry of an order, pursuant to sections 105(a), 363(b), and 507(a) of the Bankruptcy Code authorizing, but not directing, the Debtors to: (a) pay and/or perform, as applicable, certain prepetition obligations to current Employees or independent contractors, including accrued prepetition wages, salaries, and other cash and non-cash compensation claims (collectively, the “**Employee Wage Claims**”); (b)

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<sup>4</sup> The Pension Benefit Guaranty Corporation (the “**PBGC**”), Ampex, and certain other entities, including Hillside and Sherborne Holdings Inc. (“**SHI**”), entered into a joint settlement relating to the Pension Plans (the “**PBGC Agreement**”). Under the terms of the PBGC Agreement, Ampex and Hillside are jointly and severally liable to the PBGC to fund certain minimum funding contributions (the “**Required Contributions**”) to the Pension Plans, but Ampex remained the sponsor of the Pension Plans. Pursuant to a related settlement agreement dated as of December 1, 1994, between Hillside, Ampex and certain entities affiliated with SHI (the “**HSA Agreement**”), in the event Ampex is unable, after using commercially reasonable efforts, to obtain the funds necessary to make the Required Contributions from sources other than Hillside, Hillside is obligated to satisfy all or a portion of such Required Contribution in exchange for a note in the amount of such contribution. It is anticipated that Hillside will continue to make all Required Contributions during the pendency of these chapter 11 cases.

reimburse Employees for travel and other expenses incurred prepetition by the Employees on behalf of the Debtors in the course of their duties (the “**Employee Expense Obligations**”); (c) administer employee benefit plans, policies and programs (collectively, the “**Employee Benefit Programs**”);<sup>5</sup> (d) pay all related prepetition withholdings and payroll-related taxes (the “**Employer Taxes**” and, together with the Employee Wage Claims, the Employee Benefit Programs and the Employee Expense Obligations, the “**Prepetition Employee Obligations**”) associated with the Employee Wage Claims and the Employee Benefit Programs; and (e) pay all sales and use taxes.<sup>6</sup>

12. Absent the relief requested herein, not only could the Employees suffer enormous personal hardship, but the Debtors’ businesses could be immediately and irreparably harmed. Thus, entry of an order approving this Motion is critical to ensure the continuity of the Debtors’ operations and preserve the value of these estates.

A. **Prepetition Wages, Salaries and Other Compensation**

(a) *Employees*

13. As noted above, the Debtors currently employ approximately 100 full-time Employees who provide a variety of services to support the Debtors’ operations. The Debtors’ average monthly payroll for all of the Employees is approximately \$677,000. Approximately 35% of all Employees are hourly wage earners, while the remaining 65% are salaried personnel.

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<sup>5</sup> For the avoidance of doubt, the Employee Benefit Programs do not include the Debtors’ obligations under their pension or supplemental retirement plans.

<sup>6</sup> Out of an abundance of caution, the proposed Order provides that the relief granted therein shall not constitute or be deemed an assumption of any of the employment and service agreements to which the Debtors are a party or any of the Debtors’ employee benefit policies, plans, programs, practices and procedures pursuant to section 365(a) of the Bankruptcy Code.

(i) Non-Exempt Payroll

14. The Debtors' hourly Employees are paid every other Friday, one week in arrears. The Debtors' last bi-weekly payroll for hourly Employees, in the aggregate amount of approximately \$65,300, was paid on March 21, 2008, for the two-week period ending March 14, 2008. The next payroll for the Debtors' hourly Employees is scheduled to be paid on April 4, 2008, for the period ending March 28, 2008. The Debtors estimate that the aggregate prepetition Employee Wage Claims with respect to the April 4, 2008 payroll for hourly Employees will equal approximately \$65,300, or an average of \$960 per hourly Employee.<sup>7</sup>

(ii) Exempt Payroll

15. The Debtors' salaried Employees are paid every other Friday in arrears through the payment date. The Debtors' last payroll for salaried Employees was paid on March 21, 2008, for the period ending March 21, 2008. The Debtors' average bi-weekly payroll for salaried Employees is approximately \$256,950. The Debtors estimate that the aggregate prepetition Employee Wage Claims with respect to the April 4, 2008, payroll for salaried Employees will equal approximately \$128,500.

(b) *Commissions*<sup>8</sup>

16. In addition to fixed compensation, certain of the Debtors' Employees are entitled to receive commissions for performance based on a percentage of sales or other performance goals (the "**Commission Payments**"). Commission Payments are made on a rolling basis and, therefore, there may be certain Employees who are owed Commission Payments on account of prepetition sales or other performance. Commission Payments earned in

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<sup>7</sup> In addition to the bi-weekly payroll, the Debtors pay approximately \$2,500 per week in overtime.

<sup>8</sup> The Debtors pay bonuses to several employees at the end of each year. Bonuses for 2007 have already been paid.

2007, totaled approximately \$550,440.<sup>9</sup> The Debtors estimate that \$18,000 to \$30,000 in Commission Payments attributable to the prepetition period are currently outstanding.

**B. Employee Business Expenses**

17. The Debtors reimburse Employees who incur and pay a variety of approved business-related expenses in the ordinary course of performing their duties for the Debtors (“**Employee Expense Obligations**”).<sup>10</sup> Typically, the Debtors reimbursed Employee Expense Obligations incurred by a total of 46 Employees, averaging \$2,200 per employee per month. Because a significant lag time may occur between the time such expenses are incurred and the time an expense reimbursement request is submitted, it is difficult to determine with any precision the aggregate outstanding amount of such Employee Expense Obligations. The Debtors request authority, in their discretion and in the exercise of their business judgment, to continue to honor their Employee Expense Obligations in the ordinary course of business regardless of when such obligations arose.

**C. Employee Benefit Programs**

18. In the ordinary course of business, as is customary with most large businesses, the Debtors have established various employee benefit plans, programs and policies, such as: health insurance; dental insurance; vision insurance; group life insurance; workers’

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<sup>9</sup> The Commissions represented approximately 2.5% of total commissionable invoices.

<sup>10</sup> For example, certain of the Debtors’ Employees are provided with a vehicle allowance for use in the course of their duties. Six (6) Employees are paid, in addition to standard compensation, a vehicle allowance of approximately \$4,050 in the aggregate, per month, to compensate for use of their personal vehicle in the performance of their duties on behalf of the Debtors. Moreover, the Debtors lease an additional five (5) vehicles that are used by certain Employees in the performance of their duties. The Debtors spend approximately \$2,120 per month (excluding fuel, maintenance, and insurance) to pay for such vehicles. The Debtors hereby request the authority to continue to satisfy these obligations, whether or not such payments are attributable to the prepetition period.

compensation insurance; business travel accident insurance; long-term disability coverage; and a 401(k) plan. The primary Employee Benefit Programs are described below.

(a) *Medical, Dental, and Vision Insurance*

19. The Debtors provide all of their full-time Employees with a number of medical benefits pursuant to several different plans (collectively, the “**Medical Plans**”). Such Medical Plans include, but are not limited to, medical, dental, and vision plans provided by various medical benefits providers.

20. Depending on location, each of the Debtors’ full time Employees may elect healthcare coverage which is provided by one of two preferred provider organizations (“**PPO’s**”). Alternatively, Employees located in California are also offered a choice of healthcare coverage from certain health maintenance organizations (“**HMO’s**”). In all, the Debtors have arrangements with five providers (collectively, the “**Health Plans**”).

21. The Debtors fund 100% of the monthly healthcare premiums paid under four of the five Health Plans for Employees who elect individual coverage. The Debtors also fund anywhere from 37% to 75% of the monthly premiums for dependent or family coverage under the Health Plans. The participating Employees fund the remaining percentage of monthly premiums, which are withheld *pro rata* from each paycheck and remitted monthly to the applicable provider.

22. Collectively, the Health Plans cost the Debtors approximately \$650 per month per Employee (which amount reflects the total monthly cost of the program divided by the number of Employees participating therein). The Debtors pay the monthly premiums in advance

on the first day of each month. Accordingly, the Debtors estimate that, as of the Petition Date, there were no outstanding obligations with respect to accrued but unpaid Health Benefits costs.<sup>11</sup>

23. The Debtors provide dental benefits ( "**Dental Benefits**") to all hourly and salaried Employees through a dental plan administered by Delta Dental USA ("**Delta**"). The maximum cost of Dental Benefits provided to any one Employee is \$2,000 per year. In addition to paying all Dental Benefit premiums for Employees, the Debtors fund 59% and 53%, respectively, of the monthly premiums related to dual and family coverage under the Delta plan. Dental Benefits cost the Debtors approximately \$76 per Employee per month. The Debtors pay the monthly premiums for the Dental Benefits in advance, on the first day of each month. Accordingly, the Debtors estimate that, as of the Petition Date, there were no outstanding obligations with respect to accrued but unpaid Dental Benefits.

24. The Debtors also offer their Employees optional insurance for vision care ("**Vision Benefits**") through the Vision Services Plan ("**VSP**"). In addition to paying all Vision Benefit premiums for Employees, the Debtors fund 58% and 46%, respectively, of the monthly premiums for dual and family coverage under the Vision Benefits. Vision Benefits cost the Debtors approximately \$11 per month per Employee. The Debtors pay the monthly premiums for the Vision Benefits in advance, on the first day of each month. Accordingly, the Debtors estimate that, as of the Petition Date, there were no outstanding obligations with respect to accrued but unpaid Vision Benefits.

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<sup>11</sup> Pursuant to the requirements of the Consolidated Omnibus Budget Reconciliation Act of 1986 ("**COBRA**"), the Debtors provide for temporary continuation of health care benefits to former Employees when the Employee pays the full premium plus 2%. Although the Debtors do not incur additional expenses on account of this coverage, the Debtors request authority to continue to remit any amounts necessary for former Employees to retain the right to coverage under the Debtors' Medical Plans in accordance with the requirements and terms of COBRA.

25. As set forth above, the Debtors do not believe there are any amounts outstanding under any of the Medical Plans. However, in the event there is any lag in payment, the Debtors request the authority to pay any amounts due providers of each of the Medical Plans, regardless of when such amounts may have accrued.

(b) *Life Insurance*

26. The Debtors offer term life insurance to their Employees pursuant to group policies issued by Metropolitan Life Insurance Company (“**MetLife**”). The life insurance benefits provide Employees with coverage equal to one times their annual salary up to \$50,000 at no cost to the Employees. Employees may elect to purchase additional life insurance benefits. The Debtors expend approximately \$2,835 per month on account of the life insurance offerings. The Debtors pay the monthly premiums for the life insurance in advance, on the first day of each month. Accordingly, the Debtors estimate that, as of the Petition Date, there were no outstanding obligations with respect to accrued but unpaid life insurance costs. The Debtors hereby seek authority to maintain their life insurance programs, including paying, in their discretion, any amounts owed to MetLife in the ordinary course of their business, regardless of when such amounts accrued.

(c) *401(k) Plan*

27. The Debtors maintain a 401(k) plan (the “**401(k) Plan**”) for their employees. This Plan is administered by Fidelity Investments (“**Fidelity**”).

28. The Debtors’ employees may contribute a percentage of their earnings (up to the annual statutory limit) to the 401(k) Plan.<sup>12</sup> As a benefit to employees, the Debtors

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<sup>12</sup> In addition to other withheld amounts (collectively, the “**Employee Deductions**”), the Debtors withhold employee-elected amounts for 401(k) Plan participation from Employee’s compensation. The Debtors estimate that on average, monthly employee contributions to the 401(k) Plan equal approximately \$1.95 million.

contribute matching funds to Employee 401(k) accounts equal to 50% of each participating employee's monthly contribution, up to a monthly maximum of 8% of the Employee's monthly compensation. The Debtors typically contribute between \$75 and \$1,710 per Employee per month to the 401(k) Plan.

29. Typically, the Debtors make required contributions to the 401(k) Plan at or about the same time that payroll is funded and, therefore, do not believe any amounts are currently outstanding with respect to the 401(k) Plan. As such funds are not the property of the estates and failure to timely forward Employee withholdings for the 401(k) plans may be a violation of the Employee Retirement Income Security Act of 1974 (as amended, "ERISA"), however, out of an abundance of caution, the Debtors seek permission to remit withheld monies to Fidelity. In addition, the Debtors seek the authority to continue to honor matching obligations under the 401(k) Plan.

(d) *Salary Continuance*

30. It is the Debtors' policy that if any of the Debtors' Employees are prevented from working due to a prolonged illness or serious accident such Employees become entitled to receive an amount equal to 70% to 100% of their basic earnings (depending on whether they are salaried or hourly Employees) (the "Salary Continuance") while on an approved medical or industrial leave of absence. In the event an Employee is injured or ill, the Debtors' Salary Continuance program begins on the sixth consecutive working day that the Employee is absent from work. The number of weeks of Salary Continuance that Employees are entitled to, depending on whether they are hourly or salaried, ranges from two to twenty-six weeks based on the number of years of continuing service, provided, however, that the total amount of Salary Continuance pay shall not exceed an amount equal to 26 weeks of any Employee's salary. Currently, the Debtors do not owe any amounts on account of Salary

Continuance. By this Motion, the Debtors request the authority to maintain their Salary Continuance program.

(e) *Paid Time Off*

(iii) Vacation

31. Pursuant to the Debtors' vacation policy, Employees are entitled to take between 10 and 25 days off of work depending on their level and years of active service with the Company. Vacation time for employees is calculated from the date of an Employee's hire and accrues (subject to a cap) for each month of active service. Specifically, Employees may accrue and "bank" up to twice their annual entitlement, at which point no additional vacation time may be accrued.<sup>13</sup>

32. The Debtors currently estimate that approximately \$1,000,000 in Vacation Time has been accrued by Employees. As the Debtors will continue to operate their businesses as debtors in possession, Employees will be able to take their paid time off in the ordinary course of business. Under applicable state law, the Debtors are only obligated to compensate Employees for unused, accrued paid time upon an Employee's termination of employment. Typically, the Debtors have had to pay an average of \$10,220.00 at the time of an Employee's departure on account of unused vacation time. By this Motion, the Debtors seek the authority to satisfy any departing Employee's claims for unused vacation time.

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<sup>13</sup> The Debtors comply with all applicable local laws, rules and ordinances regarding the accrual and use of vacation time by their Employees. Accordingly, certain Employees who have vacation time "banked" under the Debtors' prior vacation policy may submit a request to use such time.

## (iv) Holidays

33. Pursuant to the Debtors' holiday policy, the Debtors provide all of their Employees with eleven paid holidays per calendar year ("**Holiday Time**"). By this Motion, the Debtors seek the authority to honor any obligations to Employees on account of Holiday Time.

D. **Tax Withholdings From Employee Paychecks**

34. The Debtors are obligated to pay certain Employer Taxes, including FICA (Social Security and Medicare), federal, state, and, in some instances, local income and other payroll taxes on behalf of the Employees. A portion of such payments represent amounts withheld from Employees' paychecks, and the remainder of such payments represents required employer contributions. Typically, Employer Taxes arising in connection with the Debtors' payroll for all Employees are approximately \$134,000 per bi-weekly pay period. The Debtors withhold Employer Taxes at the time of the applicable pay period; however, amounts withheld are remitted weekly, monthly, or quarterly, depending on state and local laws. Consequently, as of the Petition Date, the Debtors may be in possession of Employer Taxes relating to the prepetition period. The Debtors believe that, because many of the Employer Taxes will constitute "trust fund" taxes and the remaining Employer Taxes likely will create priority claims pursuant to section 507(a)(8) of the Bankruptcy Code, the payment of the Employer Taxes will not unfairly prejudice other unsecured creditors or parties in interest. Accordingly, the Debtors request authority to pay any accrued but unpaid Employer Taxes that may relate to the prepetition period as and when they become due in the ordinary course of the Debtors' businesses.<sup>14</sup>

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<sup>14</sup> Infrequently, the Debtors are required, by order of a court, to garnish wages from an Employee's paycheck. The Debtors believe that garnished wages are not a part of the Debtors' estates pursuant to section 541 of the Bankruptcy Code, so payment of garnished wages to the appropriate party, as designated by the applicable court order, will not unfairly prejudice other unsecured creditors. Accordingly, the Debtors

E. **Sales & Use Taxes**

35. In addition to Employee withholdings, the Debtors also collect sales and use taxes from customers for remittance to the appropriate national, provincial, territorial, state or local taxing authority (the “**Prepetition Taxes**”). Generally, these Prepetition Taxes are paid timely in arrears. The Debtors estimate that they pay an average of no more than \$2,500.00 in such taxes per month. By this motion, the Debtors seek the entry of an order authorizing, but not directing, them to pay such Prepetition Taxes that are accrued and owing. Like the Employer Taxes, the Debtors believe that the Prepetition Taxes are “trust fund taxes” held in trust for the benefit of the applicable taxing authority, and therefore such funds are not property of the Debtors’ estates.

**BASIS FOR RELIEF**

36. The obligations for which the Debtors request authority to pay herein would constitute prepetition employee wage claims or prepetition claims for contributions to an employee benefits plan entitled to priority under section 507(a)(4) of the Bankruptcy Code, and because the Debtors do not believe that the aggregate amount owed to any Employee exceeds the \$10,950.00 cap contained therein, the Debtors respectfully submit that granting the relief requested will not adversely affect the Debtors’ other unsecured creditors.

37. The remittance of the Employee contributions towards Employer Taxes and the 401(k) Plan or payment of garnished wages will also not prejudice the Debtors’ estates because such withholdings are held in trust for the benefit of the related payees and, thus, do not constitute property of the Debtors’ estates under section 541 of the Bankruptcy Code. See

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request authority to pay any garnished wages, regardless of whether they relate to prepetition or postpetition periods, as and when directed by the applicable court order.

Begier v. IRS, 496 U.S. 53 (1990). Similarly, the Debtors submit that the Prepetition Taxes that have been collected or withheld by the Debtors are held in trust for the benefit of those third parties to whom payment is owed or on behalf of whom such payment is being made. Case law supports the proposition that such taxes are not property of the Debtors' estates within the meaning of section 541 of the Bankruptcy Code. See Begier v. IRS, 496 U.S. 53, 65 (1990) (taxes such as excise taxes, FICA taxes and withholding taxes are property held by debtor in trust for another and, as such, do not constitute property of estate); DeChiaro v. New York State Tax Comm'n, 760 F.2d 432, 433 (2d Cir. 1985) (sales taxes are "trust fund" taxes); In re Al Copeland Enters., Inc., 133 B.R. 837, 842 (Bankr. W.D. Tex. 1991) (debtor obligated to pay sales taxes plus interest, because such taxes were "trust fund" taxes), aff'd, 991 F.2d 233 (5th Cir. 1993); In re Am. Int'l Airways, Inc., 70 B.R. 102, 103 (Bankr. E.D. Pa. 1987) (funds held in trust for federal excise and withholding taxes is not property of debtor's estate and, therefore, not available for distribution to creditors); Shipley Co., Inc. v. Darr (In re Tap, Inc.), 52 B.R. 271, 278 (Bankr. D. Mass. 1985) (funds paid by employer to debtor for payment of employer's federal taxes were returnable to employer and not part of debtor's estate).

38. Further, in order to achieve a successful reorganization and continue their business activity, the Debtors need their Employees to work with the same or greater degree of commitment and diligence as they did prior to the Petition Date. The requested authority to continue to pay Employee Benefit Programs is vital to ensure that the Debtors can retain personnel knowledgeable about the Debtors' businesses. The relief requested will encourage the Employees to continue to provide quality services to the Debtors at a time when they are most needed and allow the Debtors to remain competitive in the job markets in which they operate.

39. Under section 105(a) of the Bankruptcy Code, which sets forth the general equitable powers of bankruptcy courts, this Court has the power to authorize the payment of the Prepetition Employee Obligations. See In re Columbia Gas Sys., Inc., 171 B.R. 189, 192 (Bankr. D. Del. 1994); In re Ionosphere Clubs, Inc., 98 B.R. 174, 176 (Bankr. S.D.N.Y. 1989). This authority often is referred to as the “necessity of payment” doctrine. See In re Just for Feet, Inc., 242 B.R. 821, 824 (D. Del. 1999) (“While this doctrine was not codified in the Bankruptcy Code, courts have used their equitable power under section 105(a) of the Code to authorize the payment of pre-petition claims when such payment is deemed necessary to the survival of a debtor in a chapter 11 reorganization.”). The “necessity of payment doctrine” was first articulated by the Supreme Court over a century ago in Miltenberger v. Logansport C. & S.W.R. Co., 106 U.S. 286 (1882).

40. The Debtors’ Employees are essential to the success of the Debtors’ business. Consequently, it is critical that the Debtors continue the ordinary course personnel policies, programs, and procedures that were in effect prior to the Petition Date. If the checks issued and fund transfers requested in payment of the Prepetition Employee Obligations are dishonored, or if such accrued obligations are not timely paid postpetition, the Debtors’ Employees may suffer extreme personal hardship and certain of them may be unable to pay their daily living expenses. Likewise, it would be inequitable to require the Debtors’ Employees to bear personally the business expenses that were incurred on behalf of the Debtors with the expectation that they would be reimbursed.

41. Authorizing, but not directing, the Debtors to pay the Prepetition Employee Obligations in accordance with the Debtors’ prepetition business practices is in the best interests of the Debtors, the creditors, and all parties in interest, and will enable the Debtors

to continue to operate the business efficiently without disruption. A significant deterioration in morale among Employees at this critical time would have a devastating impact on the Debtors, their customers, the value of the assets and business and the ability to reorganize. The total amount to be paid if the relief sought herein is granted is modest compared with the size of the Debtors' estates and the importance of the Debtors' Employees to the restructuring effort. Further, many of these obligations are not immediate but, rather, will be satisfied over an extended period of time and, in some cases, not at all (i.e., accrued vacation time used by Employees).

42. Pursuant to section 363 of the Bankruptcy Code, a bankruptcy court is empowered to authorize a chapter 11 debtor to expend funds in the bankruptcy court's discretion outside the ordinary course of business. Payment of prepetition wage and salary claims in order to preserve and protect a debtor's business and to ultimately reorganize, retain their employees and maintain positive employee morale, even if such payment were deemed to be outside the ordinary course of business, is a sufficient business justification for such an authorization. See Ionosphere Clubs, 98 B.R. at 175.

43. Furthermore, with respect to obligations described herein, including, but not limited to, Employee Wage Claims, Employer Taxes and the Prepetition Taxes, failure by the Debtors to fulfill such obligations could potentially result in claims being asserted directly against the Debtors' officers and directors. Not only would such claims against the Debtors' officers and directors distract such individuals at a time when it is critical that their full attention be focused on the reorganization efforts of the Debtors, but such officers and directors would be entitled to indemnification by the estates.

44. Numerous courts, including this Court, have permitted the postpetition payment of prepetition wage and salary obligations as well as sales and use tax obligations on the first day or in the early stages of other chapter 11 bankruptcy cases. See, e.g., In re Tower Automotive, Inc., Case No. 05-10578 (ALG) (Bankr. S.D.N.Y. Feb. 3, 2005); In re Choice One Communications, Inc., Case No. 04-16433 (RDD) (Bankr. S.D.N.Y. Oct. 5, 2004); In re Cornerstone Propane, L.P., Case No. 04-13856 (RDD) (Bankr. S.D.N.Y. June 4, 2004); In re NRG Energy, Inc., Case No. 03-13024 (PCB) (Bankr. S.D.N.Y. May 19, 2003); In re Allegiance Telecom, Inc., Case No. 03-13057 (RDD) (Bankr. S.D.N.Y. May 15, 2003); In re Worldcom, Inc., Case No. 02-13533 (AJG) (Bankr. S.D.N.Y. July 22, 2002); In re Adelphia Communications Corp., Case No. 02-41729 (REG) (Bankr. S.D.N.Y. June 26, 2002); In re Global Crossing Ltd., Case No. 02-40188 (REG) (Bankr. S.D.N.Y. Jan. 28, 2002); and see, e.g., In re Dana Corporation, et al., Case No. 06-10354 (BRL) (Bankr. S.D.N.Y. March 6, 2006); In re Musicland Holding Corp., Case No. 06-100064 (SMB) (Bankr. S.D.N.Y. Dec. 27, 2005); In re Delphi Corp., Case No. 05-44481 (RDD) (Bankr. S.D.N.Y. Oct. 14, 2005); In re Delta Air Lines, Inc., Case No. 05-17923 (PCB) (Bankr. S.D.N.Y. Sept. 16, 2005) .

45. Accordingly, for the foregoing reasons, the Debtors submit that cause exists for granting the relief requested herein.

### **NOTICE**

46. Notice of this Motion will be given to: (a) the United States Trustee for the Southern District of New York; (b) counsel to Hillside; (c) counsel to the Indenture Trustee; and (d) the parties listed on the Debtors' consolidated list of fifty (50) largest unsecured creditors. The Debtors submit that, under the circumstances, no other or further notice is required.

47. No previous motion for the relief sought herein has been made to this or any other court.

48. Because this Motion raises no novel issues of law, and the authorities relied upon herein are set forth above, the Debtors respectfully submit that the Motion itself satisfies the requirements of Rule 9013-1(b) of the Local Bankruptcy Rules of the Southern District of New York regarding the submission of a memorandum of law.

**CONCLUSION**

WHEREFORE, the Debtors respectfully request that the Court enter an order, substantially in the form annexed hereto as Exhibit A, granting the Motion and such other and further relief as may be just and proper.

Dated: March 30, 2008  
New York, New York

Ampex Corporation et al.,  
Debtors and Debtors in Possession

By: /s/ D. Gordon Strickland  
D. Gordon Strickland  
Chief Executive Officer

WILLKIE FARR & GALLAGHER LLP  
Proposed Attorneys for Debtors and  
Debtors in Possession

By: /s/ Rachel C. Strickland  
Matthew Feldman (MF-8961)  
(A Member of the Firm)  
Rachel C. Strickland (RS-3787)  
(A Member of the Firm)  
Lauren C. Cohen (LC-3262)

787 Seventh Avenue  
New York, New York 10019  
(212) 728-8000

**EXHIBIT A**

**Proposed Order**

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
In re : Chapter 11  
: :  
Ampex Corporation, : Case No. 08-\_\_\_\_\_ ( )  
: :  
Debtor. :  
-----X

In re : Chapter 11  
: :  
Ampex Data Systems Corporation, : Case No. 08-\_\_\_\_\_ ( )  
: :  
Debtor. :  
-----X

In re : Chapter 11  
: :  
Ampex Data International Corporation, : Case No. 08-\_\_\_\_\_ ( )  
: :  
Debtor. :  
-----X

In re : Chapter 11  
: :  
Ampex Finance Corporation, : Case No. 08-\_\_\_\_\_ ( )  
: :  
Debtor. :  
-----X

In re : Chapter 11  
: :  
AFC Holdings Corporation, : Case No. 08-\_\_\_\_\_ ( )  
: :  
Debtor. :  
-----X

In re : Chapter 11  
: :  
Ampex Holdings Corporation, : Case No. 08-\_\_\_\_\_ ( )  
: :  
Debtor. :  
-----X

In re : Chapter 11  
: :  
Ampex International Sales Corporation, : Case No. 08-\_\_\_\_\_ ( )  
: :  
Debtor. :  
-----X

**ORDER: (A) AUTHORIZING PAYMENT OF PREPETITION (1) WAGES, SALARIES AND OTHER COMPENSATION, (2) EMPLOYEE MEDICAL AND SIMILAR BENEFITS, (3) REIMBURSABLE EMPLOYEE EXPENSES, (4) OTHER MISCELLANEOUS EMPLOYEE EXPENSES AND BENEFITS, AND (5) SALES AND USE TAXES; AND (B) GRANTING RELATED RELIEF**

Upon the motion (the “**Motion**”) of the debtors and debtors in possession in the above-captioned cases (the “**Debtors**”), for an order, pursuant to sections 105(a), 363(b), and 507 of title 11 of the United States Code (the “**Bankruptcy Code**”), authorizing, but not directing, the Debtors to pay prepetition wages, compensation, employee benefits and sales and use taxes as set forth therein; and upon the Affidavit of Craig L. McKibben, Chief Financial Officer of Ampex Corporation, in Support of Chapter 11 Petitions and First Day Pleadings; and due and sufficient notice of the Motion having been given; and it appearing that no other or further notice need be provided; and it appearing that the relief requested by this Motion is in the best interests of these estates, their creditors, and other parties in interest; and after due deliberation and sufficient cause appearing therefor, it is hereby

ORDERED, ADJUDGED AND DECREED, that:

1. The Motion is granted to the extent set forth herein.
2. Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.
3. The Debtors shall be and hereby are authorized to pay, in their sole discretion, the Prepetition Employee Obligations in their entirety including, but not limited to, Employee Wage Claims, Employee Benefit Programs, Employee Expense Obligations, and Employer Taxes as and when such obligations are due.
4. The Debtors shall be and hereby are authorized, in their sole discretion, to honor and continue their Employee Benefit Programs that were in effect as of the Petition Date;

provided, however, that such relief shall not constitute or be deemed an assumption or an authorization to assume any of such Employee Benefit Programs, including, policies, plans, programs, practices, and procedures, pursuant to section 365(a) of the Bankruptcy Code.

5. The Debtors are authorized, but not directed to remit monthly premiums to the applicable provider under the Employee Benefit Programs.

6. The Debtors are authorized, but not directed, to pay the Prepetition Taxes.

7. To the extent the Debtors have not yet sought to remit payment to the Taxing Authorities, the Debtors are authorized to issue checks or provide for other means of payment to the Taxing Authorities, to the extent necessary to pay the Prepetition Taxes.

8. Authorizations given to the Debtors in this Order empower but do not direct the Debtors to effectuate the payments specified herein subject to the availability of sufficient funds.

9. Notwithstanding Bankruptcy Rule 6004(g), this Order shall be effective and enforceable immediately upon entry hereof.

10. This Court shall retain jurisdiction over an any and all matters arising from or related to the implementation or interpretation of this Order.

Dated: \_\_\_\_\_, 2008  
New York, New York

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UNITED STATES BANKRUPTCY JUDGE