

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

**MOTION FOR ORDER AUTHORIZING DEBTORS  
TO HONOR CERTAIN PREPETITION OBLIGATIONS TO  
CUSTOMERS AND TO CONTINUE CUSTOMER PROGRAMS**

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) and 363(b) of title 11 of the Bankruptcy Code.

### **CUSTOMER PROGRAMS**

10. Prior to the Petition Date and in the ordinary course of their businesses, the Debtors sought to develop and sustain a positive reputation in the marketplace through the implementation of a limited number of customer programs, including payment discounts,<sup>4</sup> warranties, and deferred revenue service agreements (collectively, the “**Customer Programs**”). Such Customer Programs are commonplace among the Debtors’ competitors. The universal goals of the Customer Programs are to meet competitive pressures, maximize sales, ensure customer satisfaction, and generate brand loyalty and goodwill for the Debtors, thereby retaining current customers, attracting new ones, and ultimately enhancing net revenue.

11. Deferred Revenue Service Agreements. Data Systems offers product service and maintenance to its customers through service agreements executed on an annual basis. Data Systems invoices customers annually for these service contracts, and while the customer is required to pay for the full year of service within 30 days of executing the agreement, the Debtors’ books and records recognize this revenue evenly over the following 12-month period. The Debtors record the amount which has not been recognized as revenue as a

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<sup>4</sup> Occasionally, the Debtors will offer customer discounts if the customer pays early and on normal terms. The total discounts in 2007 and 2006 equaled between \$10,000 and \$15,000 per year on over \$20 million in domestic sales.

liability representing service still owed for the remainder of the annual period. As of December 31, 2007, the Debtors estimated that they had approximately \$2,722,000 in revenue yet to be realized under deferred revenue service agreements, and estimated that the cost of servicing these agreements was approximately \$819,000.

12. Warranties. In the ordinary course of their business, as with most manufacturing companies, the Debtors offer, maintain, and honor various warranty policies with respect to their products. These warranties enable their customer to have defective goods repaired or replaced by the Debtors, as needed. As of December 31, 2007, the Debtors estimated that they had approximately \$118,000 of warranty accruals outstanding (i.e., the amount the Debtors anticipate being required to pay over the next twelve months on account of products under warranty). The Debtors typically offer warranties for 90 days to one year from the date of purchase but, in rare or special circumstances, will extend warranties for longer periods of time.

### **RELIEF REQUESTED**

13. By this Motion, the Debtors seek entry of an order, pursuant to sections 105(a) and 363(b) of the Bankruptcy Code, authorizing the Debtors, in their discretion, to perform their prepetition obligations related to the Customer Programs as they determine to be advisable, in the ordinary course of business, without further application to this Court.

14. The total operational and administrative cost to the Debtors to continue the Customer Programs is insignificant, especially in comparison to the revenue that such Customer Programs support. For the reasons set forth herein, the Debtors believe it is in the best interests

of the Debtors and their estates to continue, in the ordinary course of their businesses, those of the Customer Programs that the Debtors determine to be beneficial.<sup>5</sup>

### **BASIS FOR RELIEF**

15. The Court may authorize continuation of the Customer Programs under section 363(b) of the Bankruptcy Code. Bankruptcy Code section 363(b) provides, in relevant part, that “[t]he trustee, after notice and a hearing, may use, sell or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). Under this section, a court may authorize a debtor to pay certain prepetition claims. See In re Ionosphere Clubs, Inc., 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) (authorizing payment of prepetition claims where the debtors articulate “some business justification, other than the mere appeasement of major creditors”); Armstrong World Indus., Inc. v. James A. Phillips, Inc. (In re James A. Phillips, Inc.), 29 B.R. 391, 397 (S.D.N.Y. 1983) (authorizing contractor to pay prepetition claims of some suppliers who were potential lien claimants pursuant to section 363 because the payments were necessary for general contractors to release funds owed to debtors).

16. Additionally, section 105(a) of the Bankruptcy Code authorizes the Court to issue “any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code].” 11 U.S.C. § 105(a). A bankruptcy court’s use of its equitable powers to “authorize the payment of prepetition debt when such payment is needed to facilitate the rehabilitation of the debtor is not a novel concept.” Ionosphere Clubs, Inc., 98 B.R. at 175. Under section 105(a), the Court “can permit pre-plan payment of a prepetition obligation when essential to the continued operation of the debtor.” In re NVR L.P., 147 B.R. 126, 127

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<sup>5</sup> Nothing contained herein shall constitute, nor shall it be construed as, a request to assume or adopt any executory contract with respect to any customer or Customer Program. The Debtors expressly reserve all rights with respect to the continuation or cessation of any Customer Program and the assumption, adoption, or rejection of any executory contract with respect to any customer or Customer Program.

(Bankr. E.D. Va. 1992); see also In re Just for Feet, Inc., 242 B.R. 821, 826 (D. Del. 1999) (“To invoke the necessity of payment doctrine, a debtor must show that payment of the pre-petition claims is ‘critical to the debtor’s reorganization.’”).

17. Moreover, federal courts have consistently permitted postpetition payment of prepetition obligations where necessary to preserve or enhance the value of a debtor’s estate for the benefit of all creditors. See, e.g., In re Lehigh & New Eng. Ry., 657 F.2d 570 (3d Cir. 1981); Michigan Bureau of Workers’ Disability Comp. v. Chateaugay Corp. (In re Chateaugay Corp.), 80 B.R. 279 (S.D.N.Y. 1987), appeal dismissed, 838 F.2d 59 (2d Cir. 1988) (approving lower court order authorizing payment of prepetition wages, salaries, expenses, and benefits); In re Environdyne Indus. Inc., 150 B.R. 1008 (Bankr. N.D. Ill. 1993); In re NVR L.P., 147 B.R. 126, 127 (Bankr. E.D. Va. 1992); In re Financial News Network, Inc., 134 B.R. 732 (Bankr. S.D.N.Y. 1991); In re Gulf Air, Inc., 112 B.R. 152 (Bankr. W.D. La. 1989); In re Ionosphere Clubs, Inc., 98 B.R. 174 (Bankr. S.D.N.Y. 1989).

18. The success and viability of the Debtors’ business is dependent upon the Debtors’ ability to attract and retain customers. The Debtors believe that the uninterrupted maintenance of the aforementioned policies is essential to the Debtors’ ability to continue as a going concern. The Customer Programs are designed to enable the Debtors to remain a leader in their industry and compete with competitors who offer comparable programs. Any disruption, which would necessarily result from the termination of the Customer Programs, would undoubtedly have an adverse effect on the value of the Debtors’ assets and businesses and their ability to reorganize. Based on the foregoing, the Debtors submit that approval of the relief requested herein is necessary and appropriate to enable them to reorganize successfully.

**NOTICE**

19. 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.

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

21. 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  
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**ORDER AUTHORIZING DEBTORS TO HONOR CERTAIN PREPETITION  
OBLIGATIONS TO CUSTOMERS AND TO CONTINUE CUSTOMER PROGRAMS**

Upon the motion (the “**Motion**”) of the debtors and debtors in possession in the above-captioned cases (collectively, the “**Debtors**”) for entry of an order, pursuant to sections 105(a) and 363(b) of title 11 of the United States Code (the “**Bankruptcy Code**”), authorizing, but not directing, the Debtors to honor certain prepetition obligations to customers and to continue customer programs; 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.
2. Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.
3. The Debtors are authorized, in their sole discretion, to honor and perform all obligations in respect of the Customer Programs, without regard to whether the Debtors’ obligations under any such Customer Programs arose before or after the Petition Date.
4. The Debtors are authorized, but not directed, to continue, renew, replace, modify, and/or terminate such of their Customer Programs as they deem appropriate, in their discretion, and in the ordinary course of business, without further application to the Court.
5. The authorization granted hereby to continue the Customer Programs shall not create any obligation on the part of the Debtors or their officers, directors, attorneys, or

agents to perform, pay or provide credits under the Customer Programs, and none of the foregoing persons shall have any liability on account of any decision by the Debtors not to perform, pay or provide credits under the Customer programs and nothing contained in this order shall be deemed to increase, reclassify, elevate to an administrative expense status, or otherwise affect the performance, payments or credits provided under the Customer Programs to the extent not satisfied.

6. The relief granted herein shall not constitute an approval or assumption of any Customer Program or related agreement or policy pursuant to section 365 of the Bankruptcy Code.

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

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

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

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UNITED STATES BANKRUPTCY JUDGE