

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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:
In re : Chapter 11 Case No.
:
SILICON GRAPHICS, INC., et al., : 09 – 11701 (MG)
:
Debtors. : (Jointly Administered)
:
-----X

APPLICATION OF THE DEBTORS FOR AUTHORITY
TO EMPLOY AND RETAIN DAVIS POLK & WARDWELL
AS SPECIAL CORPORATE COUNSEL FOR THE DEBTORS,
NUNC PRO TUNC TO THE COMMENCEMENT DATE

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TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

Silicon Graphics, Inc. and certain of its affiliates, as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the “**Debtors**,”),¹ respectfully represent:

Relief Requested

1. By this application (the “**Application**”), the Debtors seek an order in the form attached hereto as Exhibit A (the “**Order**”) authorizing the Debtors, pursuant to sections 327(e) and 328(a) of the Bankruptcy Code and Bankruptcy Rule 2014(a), to retain and employ Davis Polk & Wardwell (“**DPW**”), *nunc pro tunc* to the Commencement Date, as special corporate counsel to represent the Debtors in respect of strategic corporate advice and the potential sale of all or portions of their assets. The Debtors request that the Court approve the employment of DPW under the terms and conditions set forth in this Application, as more fully described in the Declaration of William M. Kelly, a partner of DPW, annexed hereto as Exhibit B (the “**Kelly Declaration**”).

2. The Debtors have selected DPW as their attorneys because of the Firm’s extensive experience and knowledge in both corporate transactional work and in litigation, and, in particular, because of DPW’s recognized expertise in mergers and acquisitions, bankruptcy and restructuring, credit, corporate finance, capital markets, tax, executive compensation and

¹ More information regarding the Debtors’ business, their pre-arranged restructuring plan, and the background of these chapter 11 cases can be found in the Declaration of Gregory S. Wood Pursuant to Rule 1007-2 of the Local Bankruptcy Rules for the Southern District of New York in Support of First-Day Motions and Applications, filed on April 1, 2009, the date the Debtors filed their chapter 11 petitions (the “**Commencement Date**”).

employee benefits and many other areas. DPW has been actively involved in a wide variety of major chapter 11 cases² and has a premier corporate and M&A practice.

3. DPW also has extensive knowledge of the Debtors' businesses and financial affairs due to its long standing relationship with the Debtors, and is well qualified to provide certain services required by the Debtors in their Chapter 11 Cases. William M. Kelly, a partner at DPW, represented the Debtors as outside counsel from 1991 through 1994 while at another law firm and then served as a senior executive in various roles, including General Counsel, from 1994 to 1999. Steven S. Weiner, another partner at DPW, served as the Debtors' Senior Intellectual Property Counsel from 1995 to 1998. After joining DPW, Mr. Kelly was the Debtors' primary outside counsel from 2000 until the Debtors filed for bankruptcy in 2006. DPW and Mr. Kelly resumed service as the Debtors' outside counsel in 2008. During DPW's representation of the Debtors, DPW, Mr. Kelly and Mr. Weiner have represented and provided advice to the Debtors and worked closely with and advised the Debtors' Board of Directors and management, in connection with considering and negotiating a broad range of matters, including intellectual property issues, asset sales, strategic partnerships and potential sales involving a change of control. DPW has also provided advice to the Board of Directors and several of its committees, including the Audit Committee, regarding financial and accounting matters that these committees have considered from time to time. Accordingly, DPW has significant

² For example, DPW has been retained in the following chapter 11 cases: *In re Lyondell Chemical Company*, Case No. 09-10023 (Bankr. S.D.N.Y. Jan. 6, 2009); *In re Frontier Airlines Holdings, Inc.*, Case No. 08-11298 (Bankr. S.D.N.Y. May 2, 2008); *In re WCI Communities, Inc.*, Case No. 08-11643 (Bankr. D. Del. Aug. 4, 2008); *In re Delta Air Lines, Inc.*, Case No. 05-17923 (Bankr. S.D.N.Y. Sept. 14, 2005); *In re Meridian Auto. Systems-Composites Operations, Inc.*, Case No. 05-11168 (Bankr. D. Del. Apr. 26, 2005); *In re Citation Corp.*, Case No. 04-08130 (Bankr. N.D. Ala. Sep. 18, 2004); *In re Lorai Space & Commc'ns LTD.*, Case No. 03-41710 (Bankr. S.D.N.Y. July 15, 2003); *In re Maxim Medical Group, Inc.*, Case No. 03-10438 (Bankr. D. Del. Feb. 11, 2003); *In re Conseco, Inc.*, Case No. 02-49672 (Bankr. N.D. Ill. Dec. 17, 2002); *In re Adelphia Commc'ns Corp.*, Case No. 02-41729 (Bankr. S.D.N.Y. June 25, 2002); *In re AremisSoft Corp.*, Case No. 02-32621 (Bankr. D. N.J. Mar. 15, 2002); *In re Cedar Chem. Corp.*, Case No. 02-11039 (Bankr. S.D.N.Y. Mar. 8, 2002); *In re Enron Corp.*, Case No. 01-16034 (Bankr. S.D.N.Y. Dec. 12, 2001)

relevant experience with the Debtors across a wide range of transactional, financial and accounting matters. DPW's special understanding of the Debtors' business operations, intellectual property and legal issues will enable DPW to continue to deal effectively and efficiently with the primary legal issues and problems likely to arise within the scope of DPW's retention.

Scope of Services

4. The services of DPW are appropriate and necessary to enable the Debtors to execute their duties as debtors and debtors in possession faithfully and to implement the restructuring and reorganization of the Debtors. Subject to further order of this Court, it is proposed that DPW be employed to render such legal services as may be requested by the Debtors and able to be performed by DPW, including, but not limited to strategic corporate advice, including (1) the evaluation and negotiation of strategic alternatives including such sales of assets, business units and intellectual property assets, both core and non-core, of the Debtors as may be proposed during the course of the Chapter 11 Cases, (2) such advice to the Debtors, their Board of Directors and management as may be requested and (3) advice regarding transaction agreements, specific assets or liabilities and advice in connection with the sale of these assets and divestitures of these liabilities (the "**Special Counsel Matters**").

5. Contemporaneously herewith, the Debtors are applying to this Court to retain Ropes & Gray LLP ("**Ropes & Gray**") as general restructuring counsel to represent the Debtors during these Chapter 11 Cases. To minimize costs, DPW has been working and will continue to work closely with the Debtors, Ropes & Gray, and each of the Debtors' other retained professionals to clearly delineate each professional's respective duties and to prevent unnecessary duplication of services whenever possible. While certain aspects of the

representations may necessarily involve Ropes & Gray as well as DPW, the Debtors believe that the services DPW will provide will be complementary to, rather than duplicative of, the services to be performed by any other retained counsel. Further, the Debtors are mindful of the need to avoid the duplication of services and appropriate procedures will be implemented to ensure minimal duplication of effort, if any, as a result of DPW's role as special corporate counsel.

Continued Retention of DPW is in the Best Interests of the Debtors

6. The Debtors believe that DPW is both well qualified and uniquely able to represent them within the scope of DPW's retention in an efficient and effective manner. Where counsel has already been engaged in a representation that is the subject of the section 327(e) application, continuity of representation is in the "best interests" of the estate. See *In re Bowman*, 181 B.R. 836 (Bankr. D. Md. 1995) (approving retention of section 327(e) special counsel and noting that where counsel is "already familiar with the litigation . . . appointing different counsel could cause needless and wasteful expense and delay to the estate"); *In re Black & White Cab Co.*, 175 B.R. 24, 26 (Bankr. E.D. Ark. 1994) (approving retention of attorney to continue his representation of the debtor in connection with a criminal investigation because, among other reasons, the attorney's prior involvement in the matter indicated that he could "assist in the resolution of the investigation . . . more expeditiously than any other attorney."). The Debtors believe that both the strategic interruption and the duplicative cost in obtaining a substitute counsel to replace DPW's unique role at this juncture would be extremely harmful to the Debtors and their estates. If the Debtors are required to retain counsel other than DPW in connection with the Special Counsel Matters, the Debtors, their estates and all parties in interest will be unduly prejudiced by the time and expense necessary to enable other counsel to become familiar with the Debtors' businesses, operations, corporate and capital structure,

restructuring needs and strategic prospects. This would unfairly disadvantage the Debtors and all parties of interest. For the reasons set forth herein and in the Kelly Declaration, the Debtors believe that it is in the best interests of their estates and creditors for the Debtors to be authorized to employ and retain DPW to render professional services on their behalf.

DPW Does Not Represent or Hold Any Interest Adverse to the Debtors or the Debtors' Estates With Respect to the Scope of its Retention

7. DPW has informed the Debtors that, except as set forth in the Kelly Declaration, DPW is not connected with the Debtors, their creditors, other parties-in-interest or the United States Trustee or any person employed by the Office of the United States Trustee. In addition, the Kelly Declaration states that, to the best of Mr. Kelly's knowledge after due inquiry, DPW does not represent or hold any interest adverse to the Debtors or their estates with respect to the matters upon which it is to be engaged. With respect to the standard to be applied in the retention of an attorney employed as special counsel, the court in *Vining v. Taunt (In re M.T.G., Inc.)* 298 B.R. 310, 318 (E.D. Mich 2003) has recognized that section "327(e) only requires that the attorney not be in conflict with (i.e., not hold an interest adverse to the estate) with the trustee for the specific purpose that the special counsel designation applies." See also *In re AroChem*, 176 F.3d 610, 622 (2d Cir. 1999) (where the Second Circuit emphasized that, under section 327(e) of the Bankruptcy Code, potential conflicts must be evaluated only with respect to the scope of the proposed retention.)

8. The Debtors have been informed that DPW will conduct an ongoing review on each April 30, August 31 and December 31 that occurs during the Debtors' Chapter 11 Cases (commencing with the first of such dates to occur after the 90th day following the Commencement Date) to ensure that no disqualifying circumstances have arisen, and, if any new facts or relationships that DPW believes should be disclosed to this Court and the parties-in-

interest in these cases are discovered, DPW will file a supplemental disclosure with the Court and serve such supplemental disclosure on the Office of the United States Trustee for the Southern District of New York.

Professional Compensation

9. For services rendered by DPW, the Debtors propose to pay DPW at rates that do not exceed the rates that DPW customarily charges to its other clients for work of this type, and to reimburse DPW according to its customary reimbursement policies (subject to the limitations of local rules), and respectfully submit that such rates and policies are reasonable. The applicable rates for time keepers on this matter are set forth in the Kelly Declaration. DPW adjusts its rates periodically, generally on January 1 of each year.

10. As of the filing of these cases, DPW was not a creditor of the Debtors. Beginning in March 2009, the Debtors established a retainer balance with DPW. As DPW issued invoices to the Debtors, DPW applied the amount due from the retainer, and the Debtors subsequently replenished the retainer. After giving effect to the application of its pre-petition charges, the retainer is now zero.

11. The Debtors understand that, in connection with the reimbursement of reasonable and necessary expenses, it is DPW's policy to charge its clients for certain expenses incurred in connection with providing certain client services, including travel, lodging, photocopying, postage, vendor charges, delivery service and other expenses incurred in providing professional services, and for other services actually provided in this matter, including word processing, secretarial and overtime charges.

12. All of DPW's fees and expenses incurred during these Chapter 11 Cases will, except as may otherwise be ordered by the Court, be subject to approval of the Court upon proper application by DPW in accordance with sections 330 and 331 of the Bankruptcy Code,

Bankruptcy Rule 2016(a), the fee and expense guidelines established by the United States Trustee and any other applicable requirements.

Jurisdiction

13. Pursuant to 28 U.S.C. §§ 157 and 1334 and Standing Order M-61 of the United States District Court for the Southern District of New York, dated July 10, 1984 (Ward, Acting C.J.), the Court has jurisdiction to consider and grant the relief requested herein. A proceeding to consider and grant such relief 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.

Notice

14. The Debtors shall serve notice of this Application on (i) the Office of the United States Trustee for the Southern District of New York, (ii) counsel to the Agent to the Secured Lenders, and (iii) the creditors holding the 30 largest unsecured claims against the Debtors' estates (on a consolidated basis). The Debtors submit that, in view of the facts and circumstances, such notice is sufficient and no other or further notice need be provided.

Objection

15. An objection ("***Objection***") to this Application shall be considered timely only if, on or prior to the objection deadline, it is (a) filed with the Court and (b) served upon and actually received by the Notice Parties.

16. If no Objections are timely filed and served as set forth herein, the Debtors shall, on or after the objection deadline, submit to the Court a final order granting the relief requested herein, which order shall be submitted and may be entered with no further notice or opportunity to be heard afforded to any party. If an Objection is timely filed, a hearing will be held on a date to be determined by the Debtors.

17. The foregoing notice procedures satisfy Bankruptcy Rule 9014 by providing the counterparties with notice and an opportunity to object and be heard at a hearing. See, e.g., In re Drexel Burnham Lambert Group, Inc., 160 B.R. 729, 734 (S.D.N.Y. 1993) (an opportunity to present objections satisfies due process); In re Colorado Mountain Cellars, Inc., 226 B.R. 244, 246 (D. Colo. 1998) (a hearing is not required to satisfy Bankruptcy Rule 9014). Furthermore, the proposed notice procedures protect the due process rights of the parties in interest without unnecessarily exposing the Debtors' estates to unwarranted administrative expenses.

No Previous Request

18. No previous request for the relief sought herein has been made by the Debtors to this or any other court.

WHEREFORE, the Debtors respectfully request that the Court grant the relief requested herein and such other and further relief as is just and proper.

Dated: April 1, 2009
Sunnyvale, California

/s/ Gregory S. Wood
Gregory S. Wood
Senior Vice President and Chief Financial Officer

EXHIBIT A

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
: **Chapter 11 Case No.**
: **09 – 11701 (MG)**
: **(Jointly Administered)**
: **Debtors.**
: **09 – 11701 (MG)**
: **(Jointly Administered)**
: **Debtors.**
-----X

ORDER AUTHORIZING THE EMPLOYMENT AND RETENTION OF DAVIS_ POLK & WARDWELL AS SPECIAL CORPORATE COUNSEL FOR THE DEBTORS, NUNC PRO TUNC TO THE COMMENCEMENT DATE

Upon the application (the “**Application**”)¹ of Silicon Graphics, Inc., on behalf of itself and its affiliated debtors and debtors in possession in the above-captioned cases (collectively, the “**Debtors**”), pursuant to sections 327(e) and 328(a) of the Bankruptcy Code and Bankruptcy Rule 2014(a), for an order (the “**Order**”) authorizing the Debtors to employ and retain the law firm of Davis Polk & Wardwell (“**DPW**”) *nunc pro tunc* to the Commencement Date, as the Debtors’ special corporate counsel to represent the Debtors in respect of strategic corporate advice and the potential sale of all or portions of their assets pursuant to section 327(e) of the Bankruptcy Code, *nunc pro tunc* to the Petition Date; and upon the Declaration of William M. Kelly, sworn to on April 1, 2009 (the “**Declaration**”); and it appearing that this Court has jurisdiction to consider the Application pursuant to 28 U.S.C. §§ 157 and 1334; and it appearing that venue of the Application in this district is proper pursuant to 28 U.S.C. §§ 1408 and

¹ Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Application.

1409; and it appearing that this matter is a core proceeding pursuant to 28 U.S.C. § 157(b); and this Court having determined that the relief requested in the Application is in the best interests of the Debtors, their estates and creditors; and it appearing that proper and adequate notice of the Application has been given and that no other or further notice is necessary; and the Court having determined that the legal and factual bases set forth in the Application establish just cause for the relief granted herein; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefore:

IT IS HEREBY ORDERED THAT:

1. The Application is GRANTED *nunc pro tunc* to the Commencement Date.
2. The Debtors are authorized to employ and retain DPW as their special corporate counsel in the Debtors' Chapter 11 Cases pursuant to sections 327(e) and 328 of the Bankruptcy Code, all as described in and contemplated by the Application and on the terms provided in the Application the Kelly Declaration.
3. DPW shall be compensated for its services and reimbursed for any related expenses in accordance with the rates (as adjusted from time to time) and disbursement policies set forth in the Application, the Declaration, and applicable provisions of the Bankruptcy Code, Bankruptcy Rules, Local Rules, and any other applicable orders of the Court.
4. DPW shall apply for compensation for professional services rendered and reimbursement of expenses incurred in connection with the Debtors' chapter 11 cases in compliance with the applicable provisions of the Bankruptcy Code,

the Bankruptcy Rules, the Local Rules, guidelines established by the Office of the United States Trustee for the Southern District of New York, and any other applicable procedures and orders of the Court.

5. To the extent that there may be any inconsistency between the terms of the Application and this Order, the terms of this Order shall govern.

6. The Debtors are authorized and empowered to take all actions necessary to implement the relief granted in this Order.

7. This Court retains jurisdiction to hear and determine all matters arising from or related to the implementation and/or interpretation of this Order.

8. The requirement pursuant to Rule 9013-1 of the Local Rules that the Debtors file a separate memorandum of law in support of the Application is deemed satisfied.

New York, New York

Dated: _____, 2009

UNITED STATES BANKRUPTCY JUDGE

EXHIBIT B

DAVIS POLK & WARDWELL
1600 El Camino Real
Menlo Park, CA 94025
Telephone: (650) 752-2000
Facsimile: (650) 752-2111
William M. Kelly
Sarah K. Solum

*Proposed Special Corporate Counsel to
the Debtors and Debtors in Possession*

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

-----X
: **Chapter 11 Case No.**
: **09 – 11701 (MG)**
: **(Jointly Administered)**
: **Debtors.**
: **Debtor.**
-----X

**DECLARATION OF WILLIAM M. KELLY AND
DISCLOSURE STATEMENT OF DAVIS POLK & WARDWELL
IN SUPPORT OF THE APPLICATION OF THE DEBTORS TO
EMPLOY AND RETAIN DAVIS POLK & WARDWELL
AS SPECIAL CORPORATE COUNSEL FOR THE DEBTORS**

William M. Kelly declares as follows:

1. I am a partner of the firm of Davis Polk & Wardwell (“**DPW**” or the “**Firm**”), a law firm with its principal office at 450 Lexington Avenue, New York, New York 10017. The firm’s Menlo Park offices are located at 1600 El Camino Real, Menlo Park, California 94025, and the firm has other offices in Washington, D.C., London, Paris, Frankfurt, Madrid, Tokyo, Beijing and Hong Kong.

2. I submit this declaration (the “**Declaration**”)¹ in connection with the application (the “**Application**”), dated April 1, 2009, of the above-captioned debtors and debtors in possession (collectively, the “**Debtors**”) for approval of the Debtors’ retention of DPW as their special corporate counsel in the above-captioned Chapter 11 Cases at rates in effect from time to time that do not exceed the rates that DPW customarily charges to its other clients for work of this type, and in accordance with the Firm’s normal reimbursement policies, in compliance with sections 328(a), 329 and 504 of title 11 of the United States Code (the “**Bankruptcy Code**”), and to provide disclosure required under Rules 2014(a) and 2016(b) of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”). Unless otherwise stated in this Declaration, I have personal knowledge of the facts set forth herein.

3. To the extent it is brought to my attention that any information disclosed herein requires amendment or modification upon DPW’s completion of further review or as additional party in interest information becomes available to it, I intend to file a supplemental declaration to the Court reflecting such amended or modified information.

4. Subject to the qualifications herein and, to the best of my knowledge, neither I, DPW, nor any partner, counsel to, or associate of the Firm represents any entity other than the Debtors in connection with the Debtors’ Chapter 11 Cases or the Special Counsel Matters. In addition, except as set forth

¹ Unless otherwise defined herein, each capitalized term shall have the meaning ascribed to such term in the Application.

herein, to the best of my knowledge, after due inquiry and after an inquiry conducted by associates working under my supervision, neither I, DPW, nor any partner, counsel to, or associate of the Firm represents any party in interest in these Chapter 11 Cases in matters related to the Debtors' Chapter 11 Cases or the Special Counsel Matters.

5. DPW has in the past represented, currently represents, and may in the future represent, in matters unrelated to the Debtors' Chapter 11 Cases, entities that are claimants or interest holders of the Debtors. DPW, which employs more than 650 attorneys, has a large and diversified legal practice that encompasses the representation of many financial institutions and commercial corporations. Some of those entities are, or may consider themselves to be, creditors or parties in interest in the Debtors' Chapter 11 Cases or to otherwise have interests in these cases.

6. In preparing this Declaration, I relied on information brought to my attention pursuant to procedures DPW has used to evaluate compliance with the requirements of the Bankruptcy Code and the Bankruptcy Rules regarding the retention of professionals by a debtor under the Bankruptcy Code (the "**Internal Review Procedures**"). Pursuant to the Internal Review Procedures, the Firm has taken the following actions to identify the parties relevant to this Declaration and to ascertain DPW's connection to such parties:

(a) A list of parties in interest (the "**Comprehensive List**") was provided to DPW by the Debtors' primary bankruptcy counsel, Ropes & Gray, on

March 16, 2009 for the purposes of DPW's conflicts review. Ropes & Gray has informed DPW that the Comprehensive List is complete as of March 16, 2009.²

(b) Of those parties on the Comprehensive List, DPW compared the lists of the Debtors' (i) current and former directors and officers, (ii) professionals, (iii) lenders and agents, (iv) significant shareholders, (v) subsidiaries, (vi) vendors, (vii) creditors, (viii) customers, (ix) landlords, (x) significant litigants, (xi) major competitors, (xii) insurers, (xiii) banks, (xiv) utilities and (xv) a list of employees in the Office of the United States Trustee (the "**Potential Parties in Interest**") to the Firm's master records database from its conflict clearance and billing records, which includes all clients (and former clients going back 10 years) for which any attorney time charges have been billed (the "**Records Database**"). The Records Database includes the name of each current or former client; and, for each significant current or former matter for each client or former client, the names of the DPW personnel identified at the time such matter was opened as responsible for such matter and, in most instances, a list of the names of the other parties directly relevant to such matter. It is the policy of DPW that no new matter may be accepted or opened without completing and submitting to those charged with maintaining the Records Database the information necessary to check each such matter for conflicts, including the identity of the prospective client, the matter and other relevant parties.

² Given DPW's role in the Debtors' Chapter 11 Cases, it has relied on Ropes & Gray to provide the list of potential parties in interest.

Accordingly, the Records Database is regularly updated for every new client retaining DPW and significant matters undertaken for such client.

(c) Any matches between the Records Database and the list of Potential Parties In Interest were identified (the “**Client Match List**”).

(d) An attorney then reviewed the Client Match List and deleted individuals or entities that DPW either does not currently represent or has not represented in the last two years. The remaining individuals or entities are set forth on Exhibit 1 attached hereto.

(e) A general inquiry was sent to all DPW attorneys by electronic mail asking them whether any of them has any connection to or relationship with any of the Potential Parties in Interest.

(f) Any parties thus identified that DPW represents as a client or has represented as a client within the last two years were reviewed by an attorney working under my supervision. Based upon such review, DPW believes that it does not hold or represent an interest that is adverse to the Debtors and their estates with respect to the Special Counsel Matters on which DPW is being retained (with any relevant representations identified below).

7. Disclosure with respect to any connections DPW has or has had with the Debtors, their significant creditors, or any other significant Potential Parties In Interest, any of their respective attorneys and accountants, the United States Trustee or any employee of that office, insofar as I know or have been able to ascertain after reasonable inquiry, is set forth below. In many cases, DPW

continues to represent the parties or entities described below, and will likely continue to do so in the future in matters unrelated to the Debtors:

(a) DPW also has extensive knowledge of the Debtors' businesses and financial affairs due to its long standing relationship with the Debtors, and is well qualified to provide certain services required by the Debtors in their Chapter 11 Cases. William M. Kelly, a partner at DPW, represented the Debtors as outside counsel from 1991 through 1994 while at another law firm and then served as a senior executive in various roles, including General Counsel, from 1994 to 1999. Steven S. Weiner, another partner at DPW, served as the Debtors' Senior Intellectual Property Counsel from 1995 to 1998. After joining DPW, Mr. Kelly was the Debtors' primary outside counsel from 2000 until the Debtors filed for bankruptcy in 2006. DPW and Mr. Kelly resumed service as the Debtors' outside counsel in 2008. During DPW's representation of the Debtors, DPW, Mr. Kelly and Mr. Weiner have represented and provided advice to the Debtors and worked closely with and advised the Debtors' Board of Directors and management, in connection with considering and negotiating a broad range of matters, including intellectual property issues, asset sales, strategic partnerships and potential sales involving a change of control. DPW has also provided advice to the Board of Directors and several of its committees, including the Audit Committee, regarding financial and accounting matters that these committees have considered from time to time. Accordingly, DPW has significant relevant experience with the Debtors across a wide range of transactional, financial and

accounting matters. Within the scope of its retention, DPW attorneys have had personal contact with many directors, officers and employees of the Debtors.

(b) In response to the general electronic mail that DPW sent out to all attorneys, asking them whether they have any knowledge of any representation by DPW of any party other than Silicon Graphics and its affiliates in matters in which Silicon Graphics has been involved, DPW did not find any such connections that would cause DPW to represent or hold an interest adverse to that of the Debtors with respect to the Special Counsel Matters on which DPW is being retained. To the extent that DPW discovers any additional information that requires disclosure, we will file a supplemental disclosure.

(c) In the course of its practice, DPW represents and will continue to represent many parties who may be engaged in adverse litigation with a Potential Party In Interest in matters unrelated to these Chapter 11 Cases. In the course of its conflicts review, and except as set forth herein, DPW did not find any such connections that would cause DPW to represent or hold an interest adverse to that of the Debtors with respect to the Special Counsel Matters on which DPW is being retained. To the extent that DPW discovers any additional information that requires disclosure, we will file a supplemental disclosure.

(d) In the course of its regular practice of law, DPW represents and expects to continue to represent, numerous domestic and foreign banks, financial intermediaries, corporations and professionals. In the course of representing such parties, DPW has, from time to time represented numerous creditors of the Debtors or other Potential Parties In Interest. In addition, over the course of

many years, DPW has worked with or been involved in matters with many of the entities, competitors, financial institutions and professionals listed on the Comprehensive List. In the course of its conflicts review, and except as set forth herein, DPW did not find any such connections that would cause DPW to represent or hold an interest adverse to that of the Debtors with respect to the Special Counsel Matters on which DPW is being retained. To the extent that DPW discovers any additional information that requires disclosure, we will file a supplemental disclosure.

(e) DPW has previously represented within the last two years and/or currently represents, and may represent in the future, the non-Debtor entities listed on Exhibit 1 (or their affiliates) in matters unrelated to the Special Counsel Matters. The list attached hereto as Exhibit 1 is the product of implementing the Internal Review Procedures. DPW does not and will not represent any of the entities listed on Exhibit 1 in matters related to the Debtors' Chapter 11 Cases or the Special Counsel Matters.

(f) Partners, counsel and associates of DPW, including attorneys that may be or may in the future be engaged in DPW's representation of the Debtors, have in the past been employed by various Potential Parties In Interest, or, when employed by other law firms or professional services firms, have performed services for various Potential Parties In Interest as clients. Similarly, Potential Parties in Interest may at one time have been employed by DPW. Although I do not believe any such connections would in any way affect DPW's ability to effectively represent the Debtors with respect to the Special Counsel Matters on

which DPW is being retained, out of an abundance of caution, I disclose such connections on Exhibit 2 hereto.

(g) Partners, counsel and associates of DPW have relatives who are or in the past have been employed by various Potential Parties In Interest. Although I do not believe any such connections would in any way affect DPW's ability to effectively represent the Debtors in the matters for which DPW is being retained, out of an abundance of caution, I disclose such connections on Exhibit 3 hereto.

(h) It is my understanding that, except as set forth below, no DPW attorney or their respective immediate family members is a creditor of the Debtors. Various DPW attorneys may own stock or debt securities in several Potential Parties In Interest other than the Debtors. However, I have been advised that none of these individuals owns sufficient stock or debt securities of any such entity to influence its affairs in any way, and I do not believe these attorneys' interests, considered separately or collectively, are material.

(i) As part of its practice, DPW appears in cases, proceedings and transactions involving many different attorneys, accountants, financial consultants and investment bankers, some of which have represented in the past, represent now or may represent in the future claimants and other Potential Parties In Interest in these cases. DPW is not aware of any relationship it has with any such attorneys, accountants, financial consultants and investment bankers that would be adverse to the Debtors or their estates.

(j) Certain Potential Parties In Interest, including Fragomen Del Rey Bernsen & Loewy, have provided, and in some cases continue to provide, services to DPW in matters unrelated to the Debtors.

(k) Various DPW associates are seconded to the legal departments of DPW clients for several months, some of whom are Potential Parties In Interest, including Credit Suisse and Morgan Stanley. However, I do not believe any such connections would in any way cause DPW to hold or represent an interest adverse to the Debtors with respect to the Special Counsel Matters for which DPW is being retained.

(l) In addition to the foregoing and except as set forth herein, after reasonable inquiry, I do not believe there is any connection between DPW and the United States Trustee for the Southern District of New York or any person employed by the Office of such United States Trustee. Although I do not believe any such connections would in any way affect DPW's ability to effectively represent the Debtors in the matters for which DPW is being retained, out of an abundance of caution, I disclose such connections on Exhibit 4 hereto.

8. The Debtors have been informed that DPW will conduct an ongoing review of its files on each April 30, August 31 and December 31 that occurs during the Debtors' cases (commencing with the first of such dates to occur after the 90th day following the Commencement Date) to ensure that no disqualifying circumstances have arisen, and, if any new facts or relationships that DPW believes should be disclosed to this Court and the parties-in-interest in these cases are discovered, DPW will file a supplemental disclosure with the Court and

serve such supplemental disclosure on the Office of the United States Trustee for the Southern District of New York.

9. During the twelve month period prior to the Petition Date, DPW received from the Debtors an aggregate of \$759,421.43 for professional services performed and expenses incurred. Beginning in March 2009, the Debtors established a retainer balance with DPW. As DPW issued invoices to the Debtors, DPW applied the amount due from the retainer, and the Debtors subsequently replenished the retainer. After giving effect to the application of its pre-petition charges, the retainer is zero.

10. DPW will be compensated at rates that do not (and will not) exceed the rates that DPW customarily charges to its other clients for work of this type. As of the Petition Date, the applicable rates for timekeepers on this matter were \$655 to \$1020 per hour for partners and counsel, \$325 to \$695 per hour for associates and \$110 to \$315 for paraprofessionals and staff. DPW adjusts its rates periodically, generally on January 1 of each year.

11. It is DPW's policy to charge its clients for certain expenses incurred in connection with providing certain client services, including, without limitation, travel, lodging, photocopying, postage, vendor charges, delivery service and other expenses incurred in providing professional services, and for other services actually provided on this matter, including word processing, secretarial and overtime charges.

12. No promises have been received by DPW, or, to the best of my knowledge after due inquiry, any partner, counsel, or associate thereof, as to

payment or compensation in connection with these cases other than in accordance with the provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Bankruptcy Rules and Guidelines established by the Office of the United States Trustee (the “**Guidelines**”). DPW has no agreement with any other entity to share with such entity any compensation received by DPW or by such entity.

13. DPW intends to apply pursuant to section 330 of the Bankruptcy Code for allowances of compensation for professional services rendered in these Chapter 11 Cases and for reimbursement of actual and necessary expenses incurred in connection therewith in accordance with the provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, the Guidelines and any applicable orders of the Court.

14. The foregoing constitutes the statement of DPW pursuant to sections 327(e), 328(a), 329 and 504 of the Bankruptcy Code and Bankruptcy Rules 2014(a) and 2016(b).

15. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, and that this Declaration was executed on April 1, 2009.

/s/ William M. Kelly
William M. Kelly
Davis Polk & Wardwell

Exhibit 1 to Kelly Declaration

Individuals or entities that DPW represents or has currently represented in the last 2 years

Aetna Incorporated
Alltel Communications Inc.¹
Aquila
CIBC – Canadian Imperial Bank of Commerce
Credit Suisse – Geneva²
Deloitte and Touche SA
EMC Corporation³
Ernst & Young LLP
Harris Corporation
Hewlett Packard
Houlihan Lokey Howard & Zukin⁴
ING
KPMG⁵
Kramer Levin Naftalis
Lehman Brothers
Lockheed Martin Corporation⁶
MCI⁷
MCI Worldcom Communications⁸
MetLife⁹
Morgan Stanley
Morgan Stanley Senior Funding
Oracle USA Incorporated
Paul Hastings Janofsky & Walker LLP
PricewaterhouseCoopers LLC
SMART Modular Technologies
St. Paul/Travelers
Symphony¹⁰

- Symphony Asset Management
- Symphony Credit Opps Fund Ltd.

TD Canada Trust¹¹
T-Systems/TSI (Germany)¹²
Verizon

¹ Parent company Verizon Communications Inc. is a DPW client.

² Parent company Credit Suisse Group AG is also a DPW client.

³ Subsidiary VMware is a DPW client.

⁴ Parent company Orix Corporation is a DPW client.

⁵ Subsidiaries KPMG – United Kingdom, KPMG Peat Marwick LLP and KPMG

Australia are also DPW clients.

⁶ Subsidiary Loral Space & Communications Inc. is also a DPW client.

⁷ Parent company Verizon Communications Inc. is a DPW client.

⁸ Parent company Verizon Communications Inc. is a DPW client.

⁹ Parent company Metropolitan Life Insurance Co. is a DPW client. Subsidiary MetLife Bank, N.A. is also a DPW client.

¹⁰ Parent company Madison Dearborn is a DPW client.

¹¹ Parent company Toronto-Dominion Bank is a DPW client.

¹² Parent company Deutsche Telekom is a DPW client.

Verizon Wireless¹³
Watershed Asset Management
Wells Fargo

¹³ Parent company Verizon Communications Inc. is a DPW client.

Exhibit 2 to Kelly Declaration

Potential Parties In Interest with whom DPW attorneys were previously employed or provided services to and/or Potential Parties In Interest that were employed by DPW

1. Prior to joining DPW, a DPW associate completed work for Hellman & Friedman, the parent company of AlixPartners LLC.
2. Prior to joining DPW, a DPW partner completed work for ADM/Advanced Medical Devices.
3. Prior to joining DPW, a DPW partner completed work for SilverLake Partners which, with TPG, owns Avaya.
4. A DPW associate was a summer associate at Baker & McKenzie LLP.
5. Prior to joining DPW, a DPW associate completed work for Blakes Cassel & Graydon.
6. Prior to joining DPW, several DPW associates completed work for Chubb.
7. Prior to joining DPW, several DPW associates and a partner completed work for CIBC – Canadian Imperial Bank of Commerce.
8. Prior to joining DPW, a DPW associate completed work for Cingular Wireless.
9. Prior to joining DPW, a DPW associate completed work for CSC (Cablevision Systems Corp.).
10. Prior to joining DPW, a DPW associate completed work for Deloitte and Touche.
11. Prior to joining DPW, a DPW associate completed work for DIRECTV Latin America, a subsidiary of DIRECTV Incorporated.
12. Prior to joining DPW, several DPW associates and a partner completed work for Ernst & Young. Several DPW associates were also previously employed by Ernst & Young.
13. Prior to joining DPW, a DPW associate completed work for Hartford Fire Insurance Company, a subsidiary of The Hartford.
14. Prior to joining DPW, a DPW partner, an associate and a counsel completed work for Hewlett-Packard.
15. Prior to joining DPW, a DPW associate completed work for Orix Corp., the parent company of Houlihan Lokey Howard & Zukin.
16. Prior to joining DPW, several DPW associates completed work for IBM. A DPW associate was also previously employed by IBM.
17. Prior to joining DPW, several DPW associates and a partner completed work for various ING subsidiaries, including ING Real Estate, ING Lease, ING Clarion Partners, ING Capital LLC and ING Group N.V.
18. Prior to joining DPW, several DPW associates completed work for Intel Americas Incorporated.
19. Prior to joining DPW, several DPW associates completed work for KPMG.

20. A DPW counsel was previously employed by Kramer Levin Naftalis.
21. Prior to joining DPW, several DPW associates completed work for Lloyds.
22. Prior to joining DPW, several DPW associates completed work for MetLife. A DPW associate was also previously employed by MetLife.
23. Prior to joining DPW, several DPW associates completed work for Microsoft. A DPW associates was also previously employed by Microsoft.
24. Prior to joining DPW, a DPW associate completed work for Morgan Lewis & Bockius. Several DPW associates were also previously employed by Morgan Lewis & Bockius.
25. A DPW associate was previously employed by Morgan Stanley.
26. Prior to joining DPW, a DPW associate completed work for Morgan Stanley Senior Funding.
27. Prior to joining DPW, a DPW partner completed work for NEC Corporation.
28. Prior to joining DPW, a DPW associate completed work for Northrop Grumman Corporation.
29. Prior to joining DPW, several DPW associates completed work for Oracle Corp, the parent company of Oracle USA Incorporated.
30. Orrick Herrington & Sutcliffe is acting as co-counsel with DPW on a pro bono litigation matter.
31. Prior to joining DPW, a DPW associate completed work for PriceWaterhouseCoopers.
32. Prior to joining DPW, a DPW associate completed work for Qimonda AG, the parent company of Qimonda North America.
33. Prior to joining DPW, a DPW associate completed work for Raytheon Company.
34. A DPW associate was previously employed by Ropes & Gray LLP.
35. Prior to joining DPW, a DPW associate completed work for Flextronics, the parent company of Solectron.
36. Prior to joining DPW, a DPW associate completed work for St. Paul/Travelers. Another DPW associate completed work for St. Paul Fire & Marine Insurance Co. and Travelers Indemnity Co., subsidiaries of St. Paul/Travelers.
37. Prior to joining DPW, several DPW associates and a partner completed work for Sun Microsystems Inc.
38. Prior to joining DPW, a DPW associate completed work for Madison Dearborn, the parent company of Symphony.
39. Prior to joining DPW, a DPW partner completed work for Synopsys.
40. Prior to joining DPW, several DPW associates completed work for Deutsche Telekom, the parent company of T-Systems/TSI (Germany).
41. Prior to joining DPW, a DPW associate completed work for Sungard, the parent company of Vericenter.

42. Prior to joining DPW, a DPW associate completed work for Verizon. Another DPW associate completed work for MCI Inc., a subsidiary of Verizon.
43. Several DPW associates and a counsel were previously employed by Weil Gotshal & Manges LLP.
44. Prior to joining DPW, several DPW associates and a counsel completed work for various subsidiaries of Wells Fargo, including Wells Fargo Securities LLC, Wells Fargo Foothill Inc., Wells Fargo Distribution Finance, LLC and Wells Fargo Bank.
45. Prior to joining DPW, several DPW associates completed work for both Zurich and various subsidiaries, including Zurich Benefit Finance LLC, Zurich Financial Services, Zurich Holding Company of America and Zurich American Insurance Company.

Exhibit 3 to Kelly Declaration

**Relatives of DPW attorneys who are currently employed or
have previously been employed by Potential Parties In Interest**

1. The father-in-law of a DPW partner works at BAE Systems Incorporated.
2. The father of a DPW associate is a partner at Baker & McKenzie LLP.
3. The spouse of a DPW associate and the fiancée of a DPW associate work at Deloitte Consulting.
4. The spouse of a DPW partner and the spouse of a DPW associate work at DLA Piper Rudnick Gray Cary US LLP.
5. The father of a DPW partner is a partner at Fenwick & West.
6. The spouse of a DPW associate works at IBM.
7. The sibling of a DPW associate works at KPMG.
8. The sibling of a DPW counsel works at Lampe, Conway & Co.
9. The cousin of a DPW associate works at MetLife.
10. The cousin of a DPW associate works at Razorfish, a subsidiary of Microsoft.
11. The brother-in-law of a DPW associate works at Oracle.
12. The spouse of a DPW associate works at Orrick Herrington & Sutcliffe.
13. The spouses of two DPW associates work at PriceWaterhouseCoopers. The cousin of another DPW associate works at PriceWaterhouseCoopers.

Exhibit 4 to Kelly Declaration

**Connections between DPW attorneys and persons
employed in the office of the United States Trustee**

1. A DPW associate is an acquaintance of Andy Velez-Rivera.