IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	
QIMONDA NORTH AMERICA CORP. and QIMONDA RICHMOND, LLC,	Chapter 11
Debtors,	Case No. 09-10589 (MFW)
	(Jointly Administered)
	Hearing Date: June 3, 2011 at 10:30 a.m. **Objection Deadline: May 27, 2011 at 4:00 p.m.**
CARL JACKSON, JULIA LEE, LAKITA BLAIR, LINDA FRAZIER, BONNIE WRIGHT, and CHRISTOPHER SHULL, on behalf of themselves and all others similarly situated,	
Plaintiffs,	
v.	Adv. Proc. No. 09-50192 (MFW)
QIMONDA NORTH AMERICA CORP. and QIMONDA RICHMOND, LLC,	
Defendants.	
CHERYL MAXEY, LAWRENCE D. MEYER, JACOB EVANS, and CLAUDE EDMONDS, on behalf of themselves and all others similarly situated,	
Plaintiffs,	
v.	Adv. Proc. No. 09-50199 (MFW)
QIMONDA NORTH AMERICA CORP., QIMONDA RICHMOND, LLC, and QIMONDA SEVERANCE PLAN,	
Defendants.	

DKT. NO. 2290/55/38/33

DT. FILED 5/13/11

BRIAN CAREY and JOHN EARLE, on behalf of themselves and all others similarly situated, Plaintiffs, v. QIMONDA NORTH AMERICA CORP., QIMONDA RICHMOND, LLC, and QIMONDA SEVERANCE PLAN, Defendants.	)	Adv. Proc. No. 09-50200 (MFW)

NOTICE OF JOINT MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

PLEASE TAKE NOTICE that on May 13, 2011, the Official Committee of Unsecured Creditors appointed in the above-captioned cases (the "Committee") filed its *Joint Motion for Preliminary Approval of Class Action Settlement* (the "Motion") with the United States Bankruptcy Court for the District of Delaware, 824 North Market Street, Wilmington, Delaware 19801 (the "Bankruptcy Court").

PLEASE TAKE FURTHER NOTICE that, responses, if any, to the Motion must be in writing, in conformity with the Federal Rules of Bankruptcy Procedure and the Local Rules of the United States Bankruptcy Court for the District of Delaware, filed with the Bankruptcy Court, and served upon, so as to be received by the undersigned counsel **May 27, 2011 at 4:00 p.m. (ET)**. Only properly and timely filed responses will be considered.

PLEASE TAKE FURTHER NOTICE that, a hearing to consider the relief requested in the Motion will be held on **June 3, 2011 at 10:30 a.m. (ET)** before The Honorable Mary F. Walrath, United States Bankruptcy Court for the District of Delaware, 824 N. Market Street, 5th Floor, Courtroom #4, Wilmington, Delaware 19801.

PLEASE TAKE FURTHER NOTICE THAT IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT FURTHER NOTICE OR HEARING.

Dated: May 13, 2011

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
QIMONDA NORTH AMERICA CORP. and QIMONDA RICHMOND, LLC,	Case No. 09-10589 (MFW)
Debtors,	(Jointly Administered)
	Hearing Date: June 3, 2011 at 10:30 a.m. **Objection Deadline: May 27, 2011 at 4:00 p.m.**
CARL JACKSON, JULIA LEE, LAKITA BLAIR, LINDA FRAZIER, BONNIE WRIGHT, and CHRISTOPHER SHULL, on behalf of themselves and all others similarly situated,	
Plaintiffs,	Adv. Proc. No. 09-50192 (MFW)
v.	
QIMONDA NORTH AMERICA CORP. and QIMONDA RICHMOND, LLC,	
Defendants.	
CHERYL MAXEY, LAWRENCE D. MEYER, JACOB EVANS, and CLAUDE EDMONDS, on behalf of themselves and all others similarly situated,	
Plaintiffs,	Adv. Proc. No. 09-50199 (MFW)
v.	
QIMONDA NORTH AMERICA CORP., QIMONDA RICHMOND, LLC, and QIMONDA SEVERANCE PLAN,	
Defendants.	

BRIAN CAREY and JOHN EARLE, on behalf of themselves and all others similarly situated, Plaintiffs, v. QIMONDA NORTH AMERICA CORP., QIMONDA RICHMOND, LLC, and QIMONDA SEVERANCE PLAN, Defendants.	)	Adv. Proc. No. 09-50200 (MFW)

JOINT MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

After arm's-length negotiations, including a mediation facilitated by former U. S. Bankruptcy Court Judge James L. Garrity, the Parties[1] in the above-captioned adversary proceedings, by and through their undersigned counsel, respectfully submit this Joint Motion pursuant to 11 U.S.C. § 105(a), Federal Rule of Civil Procedure 23, and Federal Rules of Bankruptcy Procedure 7023 and 9019, for an Order that (1) certifies the remaining uncertified classes[2] for settlement purposes only, subject to Plaintiffs' obligation to demonstrate that the classes satisfy all of the applicable requirements of

[1] For the purposes of this Joint Motion, the term "Parties" refers to (1) the collective group of "Plaintiffs," including (a) Carl Jackson, Julia Lee, Lakita Blair, Linda Frazier, Bonnie Wright, and Christopher Shull, on behalf of themselves and all others similarly situated (collectively, the "*Jackson* Plaintiffs"); (b) Cheryl Maxey, Lawrence D. Meyer, Jacob Evans, and Claude Edmonds, on behalf of themselves and all others similarly situated (collectively, the "*Maxey* Plaintiffs"); and (c) Brian Carey and John Earle, on behalf of themselves and all others similarly situated (collectively, the "*Carey* Plaintiffs"); (2) the Defendants and Debtors, Qimonda North America Corp. ("QNA") and Qimonda Richmond, LLC ("QR") (collectively, "Defendants"); and (3) the Official Committee of Unsecured Creditors (the "Committee").

[2] On April 6, 2010, pursuant to a joint motion filed by the *Jackson* Plaintiffs and Defendants, the Court certified a class of litigants in *Jackson* and appointed the law firms of Outten & Golden LLP and Klehr Harrison Harvey Branzburg, LLP, as class counsel. (Adv. Proc. No. 09-50192, D.I. 51.)

Federal Rule 23 prior to final approval of the settlement; (2) grants preliminary approval of the settlement terms outlined in the settlement agreement (the "Settlement Agreement") that the parties have negotiated, which is attached hereto as Exhibit A; (3) grants approval of the Settlement Agreement under Bankruptcy Rule 9019(a); (4) approves the form and manner of notice to class members; and (5) schedules a final fairness hearing for review and final approval of the settlement terms outlined in the Settlement Agreement to take place approximately 60 days after the Preliminary Approval Date. A list of settlement class members (or potential members) for each class, a proposed Preliminary Approval Order, a proposed Order Granting Final Approval, and a proposed Judgment are attached to the Settlement Agreement as Exhibits 4 through 8.

The grounds for this motion are set forth in the Brief in Support of Joint Motion for such an order, filed concurrently herewith.

Respectfully submitted,

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Dated: May 13, 2011

EXHIBIT A

CLASS ACTION SETTLEMENT AGREEMENT

This Class Action Settlement Agreement (together with all exhibits, schedules, all related side letters and annexes hereto, the "Settlement Agreement"), entered into as of May __, 2011, is by and between Qimonda North America Corp. ("QNA") and Qimonda Richmond, LLC ("QR" and together with QNA, the "Defendants"); the Official Committee of Unsecured Creditors (the "Committee"); Carl Jackson, Julia Lee, Lakita Blair, Linda Frazier, Bonnie Wright, and Christopher Shull (collectively, the "Jackson Representatives") on behalf of the Jackson Representatives and Class Members (each as defined below); (2) Cheryl Maxey, Lawrence D. Meyer, Jacob Evans, and Claude Edmonds (collectively, the "Maxey Representatives") on behalf of the Maxey Representatives and Class Members (each as defined below); and (3) Brian Carey and John Earle (collectively, the "Carey Representatives") on behalf of the Carey Representatives and Class Members (each as defined below) (and together with the Jackson Representatives and the Maxey Representatives, the "Class Representatives"). This Settlement Agreement memorializes the agreement of the parties hereto to fully, finally, and forever resolve, discharge, and settle certain claims, subject to the terms and conditions hereof.

RECITALS

WHEREAS, on February 20, 2009, QNA and QR each filed voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code") in the United States Court for the District of Delaware (the "Court"), which are being jointly administered under Case No. 09-10589 (MFW) (the "Chapter 11 Cases").

WHEREAS, on February 20, 2009, Jackson Representatives Carl Jackson and Julia Lee filed a Rule 23 class action, Adv. Proc. No. 09-50192 (MFW) (the "Lee Adversary Proceeding"), alleging that Defendants violated various provisions of the Worker Adjustment and Retraining Notification Act, 29 U.S.C. § 2101 *et seq.* (the "WARN Act"). On the same day, Jackson Representatives Lakita Blair, Linda Frazier, and Bonnie Wright filed a Rule 23 class action, Adv. Proc. No. 09-50193 (MFW) (together with the Lee Adversary Proceeding, the "Jackson Adversary Proceeding"), raising functionally identical allegations. These cases were consolidated on June 15, 2009. The Jackson Representatives, on behalf of themselves and a class of similarly situated individuals, alleged that Defendants violated the WARN Act by terminating them without providing sixty (60) days advance notice. On April 6, 2010, pursuant to the Joint Motion for Class Certification and Related Relief filed by the Jackson Representatives and Defendants, the Court certified the Jackson Class (as defined below) and sent out notice of the certification to the putative class members. To date, only five (5) (the "WARN Opt-Outs") out of one thousand two-hundred eighty (1,280) putative members of the Jackson Class have opted out.

WHEREAS, on February 22, 2009, the Maxey Representatives filed a Rule 23 class action, Adv. Proc. No. 09-50199 (MFW) (the "Maxey Adversary Proceeding"), alleging that Defendants terminated the Maxey Representatives and a class of similarly situated individuals from their employment in 2009 without providing severance benefits that Defendants were obligated to provide. The Court has not certified a class in the Maxey Adversary Proceeding.

WHEREAS, on February 22, 2009, the Carey Representatives filed a Rule 23 class action, Adv. Proc. No. 09-50200 (MFW) (the "Carey Adversary Proceeding"), alleging that the Carey Representatives and a class of similarly situated individuals were terminated by Defendants from their employment in 2009 and accepted new positions with QNA or QR in exchange for foregoing severance payments, but either never commenced employment in those new positions or briefly commenced employment in those positions before being terminated again without receiving severance benefits that they allege Defendants were obligated to provide. The Court has not certified a class in the Carey Adversary Proceeding.

WHEREAS, on April 24, 2009, certain Class Members filed a Rule 23 class action (the "Infineon Action"), Civil Action No. 09-00295 (SLR) in the United States District Court for the District of Delaware (the "District Court") against Infineon Technologies AG ("Infineon AG"), Infineon Technologies North America Corp. ("Infineon NA"), and Qimonda AG, alleging that the representative plaintiffs and a class of similarly situated individuals did not receive certain severance payments, received improper notice of termination, and did not receive certain employee wages and compensation from the defendants therein. The District Court has not certified a class in the Infineon Action.

WHEREAS, after weighing the uncertainty related to establishing the claims that are or could be made in this Litigation and the Infineon Action, overcoming the defenses available to Defendants, and achieving recovery for the Class Members, as well as the inherent risks, costs, and delays of litigation, the Class Representatives, by and through Class Counsel, have concluded that this Settlement Agreement represents a fair, adequate, and reasonable resolution to this matter. Likewise, after weighing the uncertainty related to establishing their defenses and the inherent risks, costs, and delays of litigation, Defendants and Committee, by and through their respective undersigned counsel, seek to settle the claims that are or could have been raised in the Jackson Adversary Proceeding, the Maxey Adversary Proceeding and the Carey Adversary Proceeding through this Settlement Agreement.

WHEREAS, Class Counsel has conducted and continues to conduct a thorough investigation and evaluation of the facts and law relating to the matters set forth in the Litigation and the Infineon Action. Class Counsel believes that, based on their investigation and analysis, they are in a position to fashion appropriate class relief by settlement with Defendants.

WHEREAS, the parties wish to memorialize the complete and full terms of a settlement of the Litigation. The parties propose to settle the claims in accordance with the terms, provisions and conditions of this Settlement Agreement, which Class Counsel believe are fair, reasonable and adequate, and beneficial to and in the best interests of Class Members.

NOW, THEREFORE, in consideration of the mutual promises contained in this Settlement Agreement, the Settling Parties hereby agree as follows:

ARTICLE I
DEFINITIONS

As used in all parts of this Settlement Agreement, the following terms have the meanings specified below.

1. "Carey Class" means the group of individuals who: (a) were involuntarily terminated by Defendants in late 2008 or early 2009; (b) were offered a Separation Agreement as part of that termination, which Separation Agreement provided for severance payments upon signing a release of claims; (c) were offered a new position with either of Defendants in exchange for declining to execute and return the Separation Agreement and release of claims and, thus waived a right to severance payments; (d) did not execute and return the Separation Agreement and, instead, accepted the new position; (e) either never commenced employment in the new position or briefly commenced employment in the new position before being terminated again; and (f) are not Opt-Outs.

2. "Class" means, collectively, the Carey Class, the Jackson Class and the Maxey Class.

3. "Class Counsel" means, for the Jackson Class, the law firms of Outten & Golden LLP, and Klehr Harrison Harvey Branzburg, LLP, and for the Maxey Class and Carey Class, the law firm of Klehr Harrison Harvey Branzburg, LLP.

4. "Class Member" means all Class Representatives and other persons who are members of the WARN Act Class and the Severance Classes.

5. "Class Notice" means the notices, to be approved by the Court, substantially in the form attached hereto as Exhibits 1, 2 and 3, which shall provide Potential Class Members with notice of the terms of this Settlement Agreement, the procedures and dates for filing objections, the date of the Settlement Hearing, and the procedure for becoming an Opt-Out.

6. "Class Representatives" shall have the meaning ascribed to it in the introduction.

7. "Common Fund" or "Common Fund Amount" shall have the meanings ascribed to such terms in Section 2.1.

8. "Effective Date" means the first day on which all of the following events have occurred: (a) all Settling Parties have executed this Settlement Agreement; (b) the Court has entered an Order of Final Approval and Judgment dismissing the Litigation with prejudice; (c) the Order of Final Approval and Judgment have become a Final Order; and (d) the failure of any party to exercise the Termination Right; provided, however, that the Settling Parties may agree to waive the requirement that the Order of Final Approval and Judgment have become a Final Order.

9. "Fairness Hearing" means a hearing set by the Court for the purpose of: (i) reviewing and approving the fairness, adequacy, and reasonableness of this Settlement Agreement and associated settlement pursuant to class action procedures and requirements; and (ii) entering the Judgment.

10. "Final Order" means when the Order of Final Approval and the Judgment with prejudice is entered in each of the Adversary Proceedings, and the time for the filing of any appeals has expired or, if there are appeals, approval of this Settlement Agreement and judgment has been affirmed in all respects by the appellate court of last resort to which such appeals have been taken and such affirmances are no longer subject to further appeal or review.

11. "Jackson Class" and "WARN Class" means the group of former employees of QNA or QR who: (a) worked at or reported to Defendants' facilities in Cary, North Carolina, or Sandston, Virginia; (b) were involuntarily terminated without cause on or about February 3, 2009; (c) did not receive at least 60 days' advance written notice of the date of their respective terminations; (d) were certified as a class by the Court on April 6, 2010 in the Jackson Adversary Proceeding, and (e) are not WARN Opt-Outs.

12. "Judgment" means the judgment to be rendered by the Court approving this Settlement Agreement in final form, substantially in the form attached hereto as Exhibit 5.

13. "Litigation" means, collectively, the Carey Adversary Proceeding, the Jackson Adversary Proceeding and the Maxey Adversary Proceeding.

14. "Maxey Class" means the group of individuals who: (a) were involuntarily terminated by Defendants in late 2008 or early 2009; (b) did not receive severance payments; (c) are not a member of the Carey Class as defined above; and (d) is not an Opt-Out.

15. "Non-Included Claim" means an individual employee's timely filed proof of claim for unpaid wages, bonuses, deferred comp, paid and unpaid time off, and reimbursable business expenses.

16. "Opt-Out" shall have the meaning ascribed to it in Section 3.5.

17. "Order of Final Approval" means a decision from the Court granting final approval of this Settlement Agreement and dismissing the Litigation with prejudice, substantially in the form attached hereto as Exhibit 6.

18. "Potential Class Member" means an individual who qualifies as a member of the Severance Classes and for whom the time to become an Opt-Out has not expired.

19. "Preliminary Approval Date" means the date on which the Court enters the Preliminary Approval Order.

20. "Preliminary Approval Order" means an order or orders of the Court, substantially in the form attached hereto as Exhibit 4, that shall, among other things:

(i) approve this Settlement Agreement, pursuant to Rule 9019(a) of the Federal Rules of Bankruptcy Procedure, subject to completion of the class action settlement approval process;

(ii) approve a final approval hearing notice pursuant to Fed. R. Bankr. 23(e) to the WARN Class advising members of the proposed settlement and Fairness Hearing;

(iii) certify the Severance Classes, for settlement purposes only, and appoint Class Counsel as counsel for the Severance Class Representatives and the Severance Classes;

(iv) appoint each Severance Class Representative as adequate representatives for the applicable Severance Class for purposes of entering into and implementing this Settlement Agreement;

(v) find that the likelihood of final class action approval of this Settlement Agreement is sufficient to warrant the sending of the Class Notices to the Severance Classes;

(vi) approve the form and methodology of the Severance Class Notices as reasonably and probably calculated, under all of the circumstances, to apprise Potential Class Members of this Settlement Agreement, their rights, among other things, to become an Opt-Out and exclude themselves from the Class or to object to the settlement and to attend the Settlement Hearing, as fully consistent with the requirements of due process under the United States Constitution and the Federal Rules of Civil Procedure; and

(vii) schedule a date for the Fairness Hearing for the purposes of: (i) determining the fairness, adequacy, and reasonableness of this Settlement Agreement and associated settlement pursuant to class action procedures and requirements; and (ii) entering Judgment.

21. "QNA Plan" means any plan of liquidation or reorganization for QNA that is confirmed by the Court and becomes effective by its terms.

22. "Released Claims" means any and all claims, demands, any violations of law, (whether federal, state, local, statutory, foreign, common law, or any other law, rule or regulation), any and all other obligations, suits, judgments, damages, debts, rights, remedies, causes of action, and liabilities of any nature whatsoever (including, without limitation, attorneys', accountants', consultants' and expert witness' fees and expenses), whether liquidated or unliquidated, fixed or contingent, accrued or un-accrued, matured or unmatured, known or unknown, suspected or unsuspected, foreseen or unforeseen, now existing or hereafter arising, in law, equity, or otherwise that have been, could have been, may be, or could be alleged or asserted by any Class Member, either directly or indirectly, on his or her own behalf, or on behalf of the Class, or on behalf of any other person, against the Released Parties, relating to, on the basis of, in connection with, or arising out of, or related in any way to, in whole or in part, (a) the subject matter of any of the claims alleged or that should have been alleged in the Litigation or the Infineon Action or (b) employment by Defendants; provided that the term Released Claim shall not include: (x) any claim that cannot be waived by operation of law,

including the right to file a charge or participate in an investigation by the Equal Employment Opportunity Commission or the National Labor Relations Board; (y) benefits due and owing under any applicable 401K plan; and, (z) with respect to Released Parties other than Infineon AG and Infineon NA, claims for unpaid wages, bonuses, deferred comp, paid and unpaid time off and reimbursable business expenses filed before the date set by the Court for the filing of such claims (provided that the Defendants reserve all rights to object to any such claims, but such claims are not waived by accepting any payments hereunder).

23. "Released Parties" means Defendants, Committee, Infineon AG, and Infineon NA and each of their respective present and former officers, directors, employees, agents, members, principals, attorneys, advisors, consultants, administrators, predecessors, successors and assigns, each in their capacity as such.

24. "Settlement Administrator" means one or more third party vendors that the Class Representatives or Class Counsel may retain to administer the claims process and to assist with the Class Notice and the distribution of payments provided for under this Settlement Agreement.

25. "Settlement Payment" means the payment made to each Class Member as derived from the formulae set forth in Section 2.4, below.

26. "Settling Parties" means the Class Representatives on behalf of the respective Classes, QNA, QR, and Committee.

27. "Severance Classes" shall mean the Carey Class and the Maxey Class.

28. "Severance Class Member" shall mean, collectively, the Class Members that are part of the Carey Class or the Maxey Class only. A list of potential members of the Carey Class and Maxey Class is attached hereto as Exhibit 7.

29. "Severance Class Representatives" shall mean, collectively, the Carey Representatives and the Maxey Representatives.

30. "Termination Right" shall have the meaning ascribed to it in Section 3.6 below.

32. "WARN Class Members" means the Jackson Representatives and the certified WARN Class whose names are listed on the attached Exhibit 8.

ARTICLE II
TERMS AND CONDITIONS OF SETTLEMENT

2.1 Consideration to Class Members

Subject to approval of this Settlement Agreement under Rules 7023 and 9019 of the Federal Rules of Bankruptcy Procedure, the occurrence of the Effective Date and the terms of this Settlement Agreement, the Class Members shall be granted, in full and complete satisfaction of Defendants' liability to the Class Members, subject to the Opt-Out Adjustment, the following consideration (the "Common Fund" and such amount being the "Common Fund Amount"):

(a) an allowed claim against QNA pursuant to sections 507(a)(4) and (a)(5) of the Bankruptcy Code in the amount of $8.0 million (the "Priority Claim"), of which $4.5 million will be paid to the Settlement Administrator, for the benefit of the Class Members within five (5) business days of the Effective Date, and the balance be paid to the Settlement Administrator, for the benefit of the Class Members within five (5) business days after the QNA Plan becomes effective by its terms. To the extent QNA is unable to satisfy such claim at the time such claim must be paid, taking into account a reasonable reserve for QNA to pursue any contingent assets and litigation claims, QR shall be obligated to loan funds to QNA on an unsecured administrative claim basis to ensure such payments on the Priority Claim can be made when due. If QR is required to make such a loan, QR agrees that its administrative claim in respect of such loan can be paid after the effective date of the QNA Plan from proceeds, if any, from QNA contingent assets or litigation claims;

(b) a $10.0 million allowed general unsecured claim against QR (the "QR Claim");

(c) a $17.0 million allowed, general unsecured claim against QNA (the "QNA Claim" and together with the Priority Claim and the QR Claim, the "Settlement Claims"); provided that the first $1.75 million of gross distributions made on account of such claim shall be paid to the Settlement Administrator, for the benefit of the Class Members, and fifty percent (50%) of any gross distributions thereafter shall be paid to the Settlement Administrator for the benefit of the Class Members, and fifty percent (50%) of any such gross distributions shall be paid to QR; and

(d) no additional amounts in respect of attorneys' fees and costs, if any, awarded by the Court.

2.2 Taxes and Costs Related to Administration

(a) QNA shall be liable for the first $200,000 of the costs related to the administration of distributions on account of the Settlement Claims to Class Members and the employer portion of any payroll taxes related to distributions to the Class Members on account of the Settlement Claims; provided that, for any costs or taxes thereafter, QNA and the Class Members will each bear fifty percent (50%) of such costs; provided, further, that QNA's total liability hereunder shall be capped at $300,000 (inclusive of the initial $200,000).

(b) The Common Fund is intended to be treated as a "qualified settlement fund" within the meaning of Treasury Regulation §1.468B-1, et seq., the Defendants will be the "transferors" and the Settlement Administrator will be the "administrator" within the meaning thereof, and the Defendants and the Settlement Administrator shall reasonably cooperate in providing any statements or making any elections or filings necessary or required by applicable law for satisfying the requirements for qualification as a qualified settlement fund.

2.3 Deductions from the Common Fund

Prior to distributions to the respective Class Members, the following amounts will be deducted from the Common Fund. Because there may be multiple distributions, certain deductions will be on a percentage basis of each distribution (*i.e.*, attorney's fees) while others will be on an actual cost basis (*i.e.*, service payments and cost of third party administration). The deductions (collectively, the "Deductions") are:

(i) A $5,000 service payment to each of the 12 lead plaintiffs in Jackson Adversary Proceeding, Maxey Adversary Proceeding, and Carey Adversary Proceeding;

(ii) 33⅓% of the Common Fund for attorneys' fees plus reimbursement of actual out-of-pocket expenses not to exceed $150,000; and

(iii) The first $200,000 of the cost of third party administration and the employer portion of any payroll taxes related to the distributions will be paid by the Defendants. Thereafter 50% of the cost of third party administration and the employer portion of any payroll taxes related to distributions to class members up to $300,000.00. If there are additional distributions that raise the cost of administration or the employer portion of payroll taxes above $300,000.00, 100% of that obligation will be borne by the Common Fund.

2.4 Plan of Allocation

(a) The Class Representatives and Class Counsel shall have the sole responsibility for the administration of the payments made pursuant to this Settlement Agreement for the benefit of all Class Members, or for retaining a Settlement Administrator to do so. Based on the likelihood of success of the competing claims, the Common Fund is being allocated by Class Counsel 70% to the WARN Act Class and 30% to the Severance Act Classes. Furthermore, the severance employees have been divided into the following subclasses:

(i) Maxey Class A (Employees with signed agreements);

(ii) Maxey Class B (Employees without signed agreements, and who did not attend a severance package presentation in the fall of 2008);

(iii) Maxey Class C (Employees who attended severance package presentations in the fall of 2008; were promised a severance package but did not receive a written agreement prior to shutdown; and who are not eligible for a WARN Act distribution);

(iv) Carey Class A (Employees who forewent a severance package for the promise of a job but never started employment because of the shutdown);

(v) Carey Class B (Employees who forewent severance for the promise of a job and worked only for a limited period of time before the shutdown).

The 30% of available funds to be distributed to these Severance Classes will be divided as follows: 77.25% to Maxey Class A, 8% to Maxey Class B, 3.125% to Maxey Class C, 8.125% to Carey Class A and 3.5% to Carey Class B.

(b) For illustration purposes only, the formulas above will result in payments to the classes and sub-classes as follows. From the $8,000,000 (gross) Priority Claim payment, $5,600,000 will go to the WARN Act Class and $2,400,000 will go to the Severance Classes. The payment to the Severance Classes will be further divided in the following manner: Maxey A would receive $1,854,000; Maxey B would receive $192,000; Maxey C would receive $75,000.00; Carey A would receive $195,000 and Carey B would receive $84,000.

(c) Each WARN Class Member will be entitled to a payment derived by allocating a pro rata amount to each WARN Class Member based on the maximum amount of his or her potential claim. The payments to WARN Class Members shall be calculated as follows:

(i) The potential claim of each WARN Class Member will be derived by calculating each WARN Class Member's daily rate (determined by dividing each WARN Class Member's annual wages by (i) 260 days for those employees paid on an hourly basis and; (ii) 365 days for those employees paid on a salary basis) then multiplying each WARN Class Member's daily rate by 60 days (each an "Individual WARN Claim");

(ii) The "Aggregate WARN Claim" will be calculated by adding all of the Individual WARN Claims together;

(iii) Each WARN Class Member's "Pro Rata Factor" will be calculated by dividing (i) each WARN Class Member's Individual WARN Claim by (ii) the Aggregate WARN Claim;

(iv) The amount each WARN Class Member shall receive under this Settlement Agreement shall then be calculated by multiplying (i) the total amount to be distributed from the Common Fund (net of the portion of Deductions allocated to the WARN Class as approved by the Court), by (ii) each WARN Class Member's Pro Rata Factor.

(d) Each Severance Class Member will be entitled to a payment derived by allocating a pro rata amount to each Severance Class Member based on the maximum amount of his or her potential claim. The payments to Severance Class Members shall be calculated as follows:

(i) The potential claim of each Severance Class Member will be calculated based on their years of service and annual compensation (each an "Individual Severance Claim").

(ii) The "Aggregate Severance Claim" will be calculated by adding all of the Individual Severance Claims together.

(iii) Each Severance Class Member's "Pro Rata Factor" will be calculated by dividing (i) each Severance Class Member's Individual Severance Claim by (ii) the Aggregate Severance Claim.

(iv) The amount each Severance Class Member shall receive under this Settlement Agreement shall then be calculated by multiplying (i) the total amount to be distributed from the Common Fund (net of the portion of Deductions allocated to the Severance Class as approved by the Court), by (ii) each Severance Class Member's Pro Rata Factor.

(e) The Claims Administrator shall, within five (5) days after the entry of the Final Judgment, provide to the Debtors, the Committee and Class Counsel, a list of each WARN Class Member and Severance Class Member and the amount each such individual will receive based upon the formulas set forth above (as to each such individual, the "Settlement Payment").

(f) The Settlement Amount received by each Settlement Class Member from the Priority Claim, as set forth in Section 2.4, shall automatically reduce the amount of any priority claims to which any Class Member may be entitled under sections 507(a)(4) and (a)(5) of the Bankruptcy Code on account of Non-Included Claims, if any and to the extent they are allowed, on a dollar-for-dollar basis without further order of the Court, provided, however, that the Debtors and the Committee reserve any and all rights to object to each Class Member's Non-Included Claims, if any, on all grounds. For example, if a Settlement Class Member has an allowed Non-Included Claim in the amount of $10,950 entitled to priority under sections 507(a)(4) or (a)(5) of the Bankruptcy Code, and the Settlement Class Member receives Priority Claim Settlement Payments totaling $2,000, then the priority portion of the Non-Included Claim will be reduced by $2,000 resulting in the Settlement Class Member having an allowed priority Non-Included Claim of $8,950, a Priority Claim Settlement Payment of $2,000, and an unsecured claim of $2,000.

(g) The Claims Administrator shall withhold any employee payroll tax withholdings required by federal, state or local law from the distributions to the Settlement Class Members receiving payments under this Settlement Agreement and shall issue a Form W-2 reflecting such payments to each Settlement Class Member. These amounts shall include the employee portion of all applicable federal, state and local taxes. For purpose of calculating applicable taxes, the Parties agree that 100% of the amounts to be paid to the Settlement Class Members, with the exception of the Service Payments, shall constitute wages reportable on IRS Form W-2. The Service Payments shall be characterized as non-employee compensation to the Class Representatives and shall be reported to the Taxing Authorities on behalf of each Class Representative on a Form 1099 issued to the Class Representative with his or her taxpayer identification number.

(h) Defendants shall have no responsibility or obligation with respect to the apportionment and allocation of payments among the Class Members. Defendants and Committee agree to work in good faith with Class Counsel to reach agreement on necessary reserves and timing of initial and interim distributions on general unsecured claims under the QNA Plan.

2.5 Class Counsel Fees

Subject to final approval by the Court, Class Counsel shall file a petition with the Court to obtain not more than 33 ⅓ % of each distribution to the Class Members (without regard to any Opt-Outs), plus out-of-pocket expenses of up to $150,000.00 (inclusive of the cost of third-party administration), as payment in full for all work completed or to be completed in connection with the Litigation. Class Counsel shall file its fee application along with the Settling Parties' Joint Motion for final approval of this Settlement Agreement. Defendants and Committee will not oppose or undermine the application or solicit others to do so. Class Counsel fees and expenses shall be reported to the taxing authorities on a Form 1099 issued to Class Counsel with his or her taxpayer identification number.

2.6 Reversion of Residual Funds

If any settlement checks mailed to Settlement Class Members have not been claimed for any reason, including settlement checks that have not been deposited, endorsed, or negotiated as of the 180th day after the Claims Administrator mails the settlement checks to the most recent address of the Settlement Class Members, such funds (the "Residual Funds") shall be disbursed first to any Settlement Class Members who were unidentified at the time the Claims Administrator issued the Class Settlement Notices, such claims being paid based on the formulas set forth herein; and then revert to the QNA estate. Class Counsel and the Claims Administrator will work cooperatively to locate updated addresses and promptly re-mail settlement checks to those Settlement Class Members whose settlement checks were returned undeliverable. Settlement checks will also be re-mailed promptly to those Settlement Class Members who report that their settlement checks were lost, inadvertently destroyed or never received. The 180th day will be calculated from the date of the most recent mailing.

2.7 Releases

(a) Release of Released Parties. Upon the Effective Date, each Class Representative and Class Member, on behalf of themselves and their respective attorneys, trustees, heirs, transferees, executors, administrators, personal representatives, legal representatives, predecessors, successors and assigns (in their capacity as such), shall be deemed to fully and forever release, waive and discharge each and every Released Party from, and acknowledge full and complete satisfaction of, the Released Claims; provided, however, that there will be no deemed release of Infineon AG or Infineon NA unless the separate settlement that the Defendants have negotiated with Infineon AG and Infineon NA is approved by the Court prior to the Effective Date. Additionally, any proof of claim filed by a Class Member who is not an Opt Out asserting a claim that is a Released Claim shall be deemed withdrawn as it relates to such Released Claim without further order of the Court.

(b) Dismissal of Avoidance Claims. Upon the Effective Date, the Debtors shall dismiss with prejudice the claims asserted in Adversary Proceeding 11-50810 against all Class Members who are not Opt Outs.

(c) Other than claims expressly not included in Released Claims, the Released Claims cover and include all claims of every kind and nature, past, present, known and unknown, suspected or unsuspected, whether or not related to or arising out of the allegations in the Litigation and the Infineon Action. The parties to this Settlement Agreement further waive any and all rights or claims against each other under §1542 of the California Civil Code which provides

> "A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially effected his settlement with the debtor."

(d) Each of the parties does hereby waive and relinquish all rights and benefits he has or may have under §1542 of the California Civil Code to the full extent that he may lawfully waive all such rights and benefits pertaining to the subject matters of this Settlement Agreement.

(e) Upon and after the Effective Date, each Class Representative and Class Member agrees that if any court, government agency, tribunal, or adjudicative body assumes jurisdiction over any Released Claim, then such Class Member, at his or her own cost, will take all reasonable actions to ensure that the court, government agency, tribunal, or adjudicative body dismisses the matter with prejudice and will indemnify and hold harmless any Released Party for any liability related thereto.

2.8 Denial and No Admission of Liability

(a) Defendants believe that the Class Representatives' factual and legal allegations are incorrect and specifically deny all liability to the Class Representatives and the Class Members. Defendants have raised a number of defenses to the claims asserted in the Litigation.

(b) The Settling Parties understand and agree that, by entering into this Settlement Agreement, Defendants expressly deny all of the claims asserted in the Litigation as to liability, damages, penalties, interest, fees, restitution, and any and all other forms of relief as well as the class action allegations. Neither the contents nor the existence of this Settlement Agreement may be admitted into evidence in the Litigation or in any other action or proceeding, except as may be required to (a) approve, implement, or enforce this Settlement Agreement, (b) support or defend this Settlement Agreement on any appeal from the Judgment, or (c) enforce or assert a claim of res judicata, collateral estoppel, claim or issue preclusion, settlement, release, merger, bar, or any similar claim or defense against a Class Member.

(c) This Settlement Agreement may not serve as evidence that Defendants have admitted liability to any Class Member or any other person or entity on any ground.

(d) If this Settlement Agreement does not become effective by its terms, Defendants expressly retain and reserve (and Class Representatives and Class Counsel agree that Defendants retain and reserve these rights, and agree not to take a position to the contrary) all rights to challenge all claims and allegations in the Litigation upon all legal, procedural, and factual grounds, including but not limited to the ability to assert any defense, privilege, claim, or counterclaim, including without limitation: (1) a *de novo* challenge to class certification in the Maxey Adversary Proceeding or the Carey Adversary Proceeding; (2) the assertion that the "faltering company" or "unforeseeable business circumstances" defenses under 29 U.S.C. §§ 2102(b)(1) and 2102(b)(2)(A) to preclude certain claims; (3) the assertion, in the event Defendants are found liable under the WARN Act, that the discretionary "good faith" exception at 29 U.S.C. § 2104(a) should apply to reduce or eliminate Defendants' liability; (4) the denial of the existence or legal status of the alleged "Qimonda Severance Plan"; (5) the assertion that QR, QNA, Qimonda AG, Infineon NA and Infineon AG, or any combination of two or more of such entities, were never a "joint employer" or "single employer" of any Potential Class Member; (6) the assertion that none of Plaintiffs' claims or any portion thereof is entitled to priority under the Bankruptcy Code or otherwise; and (7) the assertion that to the extent QNA assumed any obligation to pay severance benefits, such agreement would be voidable as a fraudulent obligation under Section 548(a) of the Bankruptcy Code.

ARTICLE III
APPROVAL, NOTICE, AND OPT-OUTS

3.1 Preliminary Approval

The Settling Parties shall file a joint motion for approval of this settlement with the Court pursuant to 11 U.S.C. § 105(a), Federal Rule of Civil Procedure 23, and Federal Rules of Bankruptcy Procedure 7023 and 9019, requesting an order: (i) approving this Settlement Agreement; (ii) certifying the Carey Class and the Maxey Class for settlement purposes only; (iii) granting preliminary approval of the terms of this Settlement Agreement for class action settlement purposes; (iv) approving the form and manner of notices to WARN Class and Potential Class Members; (v) and scheduling a Fairness Hearing date approximately sixty (60) days after the Preliminary Approval Date.

3.2 Class Notices

Class Notices shall provide Class Members with notice of the terms of this Settlement Agreement, and the date of the Fairness Hearing, and (i) for WARN Class Members the procedures and dates for filing objections, and (ii) for Severance Class Members the procedure for becoming an Opt Out of the Carey or Maxey Class, or objecting to this Settlement Agreement. Within ten (10) days of the Preliminary Approval Date, at the sole cost of Class Counsel, Class Counsel shall mail a Class Notice to each Class Representative and Class Member at his or her last address of record with Defendants.

3.3 Objections and Statements of Intent to Appear

The Class Notices shall provide that Class Members who wish to object to entry of the Order of Final Approval and Judgment must do so in writing, specifying their objections in detail and including any and all supporting documents. Written objections and any statement of intent to appear at the Fairness Hearing must be sent so as to be actually received at least ten (10) days before the date of the Fairness Hearing by the Clerk of Court for the United States Court for the District of Delaware, 824 North Market Street, 3rd Floor, Wilmington, Delaware 19801, and (1) Class Counsel for the Jackson Class, Outten & Golden LLP, 3 Park Avenue, 29th Floor, New York, New York 10016, Attn: René S. Roupinian, Esq., (2) Class Counsel for the Maxey Class and the Carey Class, Klehr Harrison Harvey Branzburg, LLP, 1835 Market Street, Philadelphia, PA 19103, Attn: Charles A. Ercole, Esq., (3) counsel for Defendants, Richards Layton & Finger, P.A., One Rodney Square, 920 North King Street, Wilmington, Delaware 19801, Attn: Robert J. Stearn, Jr., Esq., and (4) counsel for Committee, Jones Day, 2727 N. Harwood, Dallas, Texas 75201, Attn: Daniel P. Winikka, Esq. (collectively, the "Notice Parties"). Any objection of a Potential Class Member that is not received timely shall be barred from seeking review of the settlement by appeal or otherwise.

The filing of a statement of intent to appear does not guarantee the right to enter an appearance or participate at the Fairness Hearing; the Court alone will determine which, if any, Potential Class Members will be permitted to appear at and participate in the Settlement Hearing.

3.4 Responses

Class Representatives, Defendants, and Committee may file responses to any objection with the Clerk of Court no later than ten (10) days before the Fairness Hearing.

3.5 Opt-Outs

Potential Class Members that do not opt out of the applicable Class pursuant to the procedures set forth below (such person or persons, who opt-out are defined as "Opt-Outs") shall be deemed a party to this Settlement Agreement and receive distributions hereunder. Completed forms to become an Opt-Out must be sent so as to be received by Class Counsel no later than ten (10) days prior to the Fairness Hearing. Any Opt-Out shall retain its rights against Defendants and shall not be deemed to be a party to this Settlement Agreement, and all of Defendants' rights, claims, defenses, and counterclaims against such Opt-Outs shall be preserved. No Opt-Out may use the fact of this Settlement Agreement or any provision thereof for any purpose whatsoever in pursuing relief against Defendants.

Notwithstanding anything to the contrary in this Settlement Agreement, the Common Fund Amount shall be reduced by the net amount of payments the Opt-Outs would have received had such persons not become Opt-Outs.

3.6 Defendants' Option to Terminate

Class Counsel shall provide to the Debtors and to the Committee a report no later than eight (8) days prior to the Fairness Hearing listing all Opt-Outs timely received. If the gross amount of claims against Defendants held by the Opt-Outs is greater than five percent (5%) of the gross amount of claims against Defendants asserted in the Litigation, Defendants, in their sole and absolute discretion, shall have the right to terminate, cancel and withdraw from this Settlement Agreement (the "Opt-Out Termination Right"); provided that Defendants must exercise the Termination Right no later than three (3) days prior to the Fairness Hearing. If Defendants do not exercise the Opt-Out Termination Right and the gross amount of claims against Defendants held by the Opt-Outs is greater than five percent (5%) of the gross amount of claims against Defendants asserted in the Litigation, the Settlement Claims shall be reduced by a percentage, the numerator of which is the gross amount of claims against Defendants held by the Opt-Outs and the denominator of which is the gross amount of claims against Defendants asserted in the Litigation (the "Opt-Out Adjustment").

If, for whatever reason, and unless extended by written agreement of the Settling Parties, the Court does not enter the Order of Final Approval and Judgment within 120 days after the Fairness Hearing, any Settling Party may terminate this Settlement Agreement by providing written notice to the Notice Parties (together with the Opt-Out Termination Right, the "Termination Right").

Upon the exercise of the Termination Right, this Settlement Agreement shall be deemed null and void *ab initio*, shall have no legal force or effect whatsoever and shall not be referred to or utilized whatsoever, and the negotiations, terms, and entry of this Settlement Agreement shall remain subject to the provisions of Federal Rule of Evidence 408 and any similar state laws that may apply to it. The Settling Parties agree that if this Settlement Agreement is terminated by the

exercise of the Termination Right, the Litigation shall proceed as if no party had ever agreed to settle.

3.7 Fairness Hearing

The Settling Parties shall request that the Court schedule the Fairness Hearing for a date approximately sixty 60 days after the Preliminary Approval Date. Prior to the Fairness Hearing and consistent with any orders of the Court, (a) the Settling Parties shall jointly move the Court for entry of the Order of Final Approval (and the associated entry of Judgment), and (b) Class Counsel shall file a Motion for Fees and Costs, consistent with this Settlement Agreement. To the extent possible, the motion seeking entry of the Order of Final Approval shall be noticed for the same day as the Fairness Hearing. The Settling Parties shall use commercially reasonable efforts to secure entry of the Order of Final Approval.

ARTICLE IV
MISCELLANEOUS PROVISIONS

4.1 Complete Agreement

This Settlement Agreement constitutes the entire agreement and understanding of the Settling Parties, and merges and supersedes any and all prior agreements or understandings (whether written or oral) between them regarding the subject matter set forth herein. No representations, warranties, or inducements have been made to any party concerning this Settlement Agreement or its exhibits other than those set forth herein. No Settling Party shall be bound by any condition, definition, warranty, or representation other than those expressly set forth herein.

4.2 Execution of Counterparts

This Settlement Agreement may be executed in one more counterparts, but each and every executed counterpart shall be deemed to be part of the same instrument. Delivery of an executed signature page of this Settlement Agreement by facsimile transmission shall be effective as delivery of a manually executed counterpart hereof. All exhibits to this Settlement Agreement are material and integral parts thereof and are fully incorporated into this Settlement Agreement by this reference.

4.3 Authority

Each undersigned individual represents and warrants that he or she has authority to execute this Settlement Agreement and all related documentation on behalf of the persons or entities listed by such signatory's signature block. Class Counsel represents and warrants that they are expressly authorized by the Class Representatives to take all necessary and appropriate action required or permitted to be taken by the Class Members pursuant to this Settlement Agreement, and that they are expressly authorized to enter into any modifications or amendments to this Settlement Agreement that they deem to be appropriate.

4.4 Binding Effect

4.4.1 The Settling Parties represent that they have read this Settlement Agreement, that they know, understand, and fully appreciate their rights and responsibilities under this Settlement Agreement, and that they have voluntarily executed this agreement with the intent to be bound by its terms and conditions. The Settling Parties further state that they have been represented by counsel of their own choosing in this matter, and that they have had a full and reasonable opportunity to consult with this counsel prior to entering into this Settlement Agreement.

4.4.2 This Settlement Agreement shall be binding upon, and inure to the benefit of, the Settling Parties as well as their respective heirs, transferees, executors, administrators, personal representatives, legal representative, agents, attorneys, predecessors, successors, and assigns.

4.4.3 This Settlement Agreement is not designed to create, and in fact does not create, any third-party beneficiaries.

4.5 Ownership

The Class Representatives (and the Potential Class Members that become Class Members) each represent and warrant that such Class Representative or Class Member is the sole legal and beneficial owner of the claims asserted by such person in the applicable Litigation.

4.6 Cooperation

The Settling Parties recognize and acknowledge their shared intent to consummate this Settlement Agreement. As such, the Settling Parties agree to use commercially reasonable efforts to cooperate with one another to: (1) seek the Court's approval of this Settlement Agreement, including through obtaining any further assurances or additional instruments that are necessary to confirm and accomplish the purposes of this Settlement Agreement; (2) obtain entry of the Order of Final Approval and Judgment and for such order and judgment to become a Final Order; (3) defend against any appeal from the Judgment; and (4) prosecute any appeal from the denial of approval of the settlement; provided that neither Defendants nor Committee are obligated to take any position with respect to any attorneys' fees, costs, disbursements, or incentive payments awarded or not awarded by the Court, or with respect to the apportionment and allocation of payments among the Class Members.

4.7 Amendment or Modification of the Agreement

This Settlement Agreement may not be altered, amended or modified except by written instrument executed by or on behalf of all Settling Parties.

4.8 Settlement Discussions

This Settlement Agreement is part of a proposed settlement of disputes. Nothing herein shall be deemed to be an admission of any kind. Pursuant to Federal Rule of Evidence 408 and any applicable state rules of evidence, this Settlement Agreement and the documents and

negotiations relating thereto shall not be admissible into evidence in any proceeding other than a proceeding to enforce the terms of this Settlement Agreement.

4.9 Invalidity

If one or more provisions of this Settlement Agreement are for any reason rendered invalid, illegal, or unenforceable, in whole or in part, the remaining provisions of this Settlement Agreement shall continue in force and effect.

4.10 Negotiation and Drafting of the Agreement and Rules of Construction

The Settling Parties agree that they have equal bargaining power and that they negotiated this Settlement Agreement at arm's length. Class Counsel and counsel for Defendants and Committee drafted this Settlement Agreement jointly. None of the Settling Parties shall have any term or provision construed against such Settling Party solely by reason of such party having drafted the same. The language of all parts of this Settlement Agreement shall be construed as a whole and according to the fair and reasonable meaning of the terms used, and shall not be construed for or against any party. Any canon of contract interpretation that leads to a contrary result shall not be applied in interpreting this Settlement Agreement.

4.11 Reliance on Information

Each Settling Party has conducted and is relying upon his, her, or its own investigation, counsel, and advisors in entering into this Settlement Agreement, and waives the right to assert any claim of fraud in the inducement related to the decision to enter into this Settlement Agreement.

4.12 Continuing Jurisdiction

The Court shall retain jurisdiction to implement and enforce the terms of this Settlement Agreement. The Settling Parties submit to the continuing jurisdiction of the Court for these purposes.

4.13 Attorneys' Fees, Costs, and Expenses; Taxes

Except as otherwise explicitly provided herein, each Settling Party and Class Member shall bear its own attorneys' fees, costs and expenses. Additionally, except as otherwise explicitly provided herein, Class Representatives, Class Members, and Class Counsel shall each be responsible for the timely payment of all federal, state, local, and foreign taxes owed on any payments received pursuant to this Settlement Agreement.

4.14 Choice of Law

This Settlement Agreement and the exhibits hereto shall be considered to have been negotiated, executed, delivered, and wholly performed in the State of Delaware. As such, the Settling Parties' rights and obligations shall be construed and enforced in accordance with and governed by the laws of the State of Delaware, without giving effect to that State's choice of law principles.

IN WITNESS WHEREOF, and intending to be legally bound hereby, the parties hereto have caused this Settlement Agreement to be executed.

DATED: _____, 2011 By: _____
CARL JACKSON

Plaintiff and Jackson Class Representative

DATED: _____, 2011 By: _____
JULIA LEE

Plaintiff and Jackson Class Representative

DATED: _____, 2011 By: _____
LAKITA BLAIR

Plaintiff and Jackson Class Representative

DATED: _____, 2011 By: _____
LINDA FRAZIER

Plaintiff and Jackson Class Representative

DATED: _____, 2011 By: _____
BONNIE WRIGHT

Plaintiff and Jackson Class Representative

DATED: _____, 2011 By: _____
CHRISTOPHER SHULL

Plaintiff and Jackson Class Representative

DATED: _____, 2011 By: _____
CHERYL MAXEY

Plaintiff and Maxey Class Representative

DATED: _____, 2011 By: _____
LAWRENCE D. MEYER

Plaintiff and Maxey Class Representative

DATED: _____, 2011 By: _____
JACOB EVANS

Plaintiff and Maxey Class Representative

DATED: _____, 2011 By: _____
CLAUDE EDMONDS

Plaintiff and Maxey Class Representative

DATED: _____, 2011 By: _____
BRIAN CAREY

Plaintiff and Carey Class Representative

DATED: _____, 2011 By: _____
JOHN EARLE

Plaintiff and Carey Class Representative

DATED: _____, 2011 By: _____
JACK A. RAISNER
RENÉ S. ROUPINIAN

Attorneys for Jackson Class

DATED: _____, 2011 By: _____
CHARLES A. ERCOLE
GIANNA M. KARAPELOU
MICHAEL W. YURKEWICZ

Attorneys for Jackson, Maxey, and Carey Classes

DATED: _____, 2011 By: _____
SCOTT RYAN

Vice President and General Counsel for Qimonda North America Corp. and Qimonda Richmond, LLC

DATED: _____, 2011 By: _____
ROBERT J. STEARN, JR.
JENNIFER C. JAUFFRET

Attorneys for Qimonda North America Corp. and Qimonda Richmond, LLC

DATED: _____, 2011 By: _____
CRAIG F. SIMON
DANIEL P. WINIKKA

Attorneys for the Official Committee of Unsecured Creditors

EXHIBIT 1

Form of Notice For Jackson Class

NOTICE OF PROPOSED SETTLEMENT OF CLASS ACTION, DATE AND TIME OF FINAL FAIRNESS HEARING, AND RIGHT TO OBJECT TO THE PROPOSED SETTLEMENT

PLEASE READ THIS NOTICE CAREFULLY AS IT MAY AFFECT YOUR RIGHTS.

TO: Former employees of Qimonda North America Corporation ("QNA") who worked at or reported to QNA in Cary, North Carolina, or Qimonda Richmond, LLC ("QR") in Sandston, Virginia, who were involuntarily terminated without cause on or about February 3, 2009, and who did not receive at least 60 days' advance written notice of the date of their respective terminations.

SUBJECT: Proposed settlement of claims to recover up to 60 days' wages and Employee Retirement Income Security Act ("ERISA") benefits pursuant to the Worker Adjustment and Retraining Notification Act, 29 U.S.C. § 2101 et seq. (the "WARN Act").

DATE: _____, 2011

TO PARTICIPATE IN THE SETTLEMENT AND RECEIVE YOUR DISTRIBUTION, YOU DO NOT NEED TO DO ANYTHING.

Introduction

A class action lawsuit entitled *Carl Jackson, Julia Lee, Lakita Blair, Linda Frazier, Bonnie Wright, and Christopher Shull, on behalf of themselves and all others similarly situated v. Qimonda North America Corp. and Qimonda Richmond, LLC*, Adversary Proceeding No. 09-50192 (MFW) (the "WARN Act Lawsuit"), is currently pending in the United States Bankruptcy Court for the District of Delaware (the "Court"). The parties to the WARN Act Lawsuit have reached agreement on terms for a proposed settlement, which are outlined in a settlement agreement (the "Settlement Agreement"), under which, among other things, the Class Representatives, Class Members, and Class Counsel as defined below would receive payments.

The Court has preliminarily approved the settlement. Accordingly, the Court has ordered that this Notice be sent to all who may be affected by it before the Court grants final approval.

You are receiving this Notice because you were previously informed that you were a Class Member in the WARN Act Lawsuit and that you had the right to opt out of the Class if you so desired. You elected not to opt out, choosing to remain a member of the Class. Therefore, this Notice informs you of the developments in the WARN Act Lawsuit, summarizes the principal terms of the Settlement Agreement, and explains your rights under the settlement, including your right to file objections to it.

The Nature of the Lawsuit

Carl Jackson, Julia Lee, Lakita Blair, Bonnie Wright, and Christopher Shull (collectively, "Plaintiffs"), on behalf of themselves and other allegedly similarly situated former

employees of QNA and QR (collectively, "Defendants"), alleged in a Second Amended Complaint, filed on November 6, 2009, that they were terminated without cause due to mass layoffs and/or plant closings carried out on or about February 3, 2009 at QNA and QR. Plaintiffs claim that, under the WARN Act, they were entitled to receive written notice 60 days in advance of their respective terminations. Plaintiffs contend that they did not receive proper notice and believe that they therefore are entitled to an award of 60 days' wages and benefits, reduced by the value of wages and benefits for the number of days of any advance written notice that Defendants properly provided. Plaintiffs also allege that QNA and QR are a "single employer" as defined by the WARN Act.

The Defendants' Response

Defendants filed an Answer to the Plaintiffs' Second Amended Complaint. In the Answer, Defendants strongly denied the Plaintiffs' allegations. Defendants contend that they are not a "single employer" as defined by the WARN Act or otherwise, and that QR employed no employees. QNA asserts that any failure to comply with the WARN Act is excused because, among other things (a) it was or they were a liquidating fiduciary, (b) it was or they were a faltering company that was actively seeking capital, (c) unforeseeable business circumstances prevented it or them from providing required notice, (d) it or they gave notice as soon as practicable, and (e) it or they attempted in good faith to comply with the WARN Act.

Certification of the Class

On April 6, 2010, the Court granted a Joint Motion filed by Plaintiffs and Defendants to certify a Class in the WARN Act Lawsuit. The members of the WARN Act Lawsuit Class ("Class Members") include Plaintiffs and the other former employees of QNA (i) who worked at or reported to QNA in Cary, North Carolina, or QR in Sandston, Virginia, and who allegedly were involuntarily terminated without cause as part of, or as the result of, mass layoffs or plant closings as defined by the WARN Act, on or about February 3, 2009, and who allegedly are affected employees, within the meaning of 29 U.S.C. § 2101(a)(5), and who allegedly did not receive at least sixty (60) days' advance written notice of their respective terminations and (ii) who have not filed a timely request to opt out of the class.

No Admission of Liability

Defendants have agreed to the proposed settlement solely for settlement purposes. This Notice shall not be read or interpreted as an admission of liability by Defendants. To the contrary, Defendants deny that they violated any laws or engaged in any wrongdoing.

Class Counsel and Class Representatives

Plaintiffs who initiated the WARN Act Lawsuit are represented by the law firms of Outten & Golden LLP, 3 Park Avenue, 29th Floor, New York, New York 10016, (212) 245-1000, and Klehr Harrison Harvey Branzburg, LLP, 919 Market Street, Suite 1000, Wilmington, DE 19801, (302) 426-1189 (collectively, "Class Counsel"). The Court

appointed Carl Jackson, Julia Lee, Lakita Blair, Linda Frazier, Bonnie Wright, and Christopher Shull as Class Representatives.

The Settlement and the Final Fairness Hearing

Plaintiffs and Defendants recently agreed to the terms of a settlement that, with the Court's final approval, would resolve the WARN Act Lawsuit and two other lawsuits that former employees filed against the Defendants in the Court asserting claims in respect of alleged severance obligations: (1) *Cheryl Maxey, Lawrence D. Meyer, Jacob Evans, and Claude Edmonds, individually and as Class Representatives v. Qimonda North America Corp., Qimonda Richmond, LLC, and Qimonda Severance Plan*, Adversary Proceeding No. 09-50199 (MFW) (the "Maxey Lawsuit") and (2) *Brian Carey and John Earle, individually and as Class Representatives v. Qimonda North America Corp., Qimonda Richmond, LLC, and Qimonda Severance Plan*, Adversary Proceeding No. 09-50200 (MFW) (the "Carey Lawsuit"). The Maxey Lawsuit and the Carey Lawsuit are collectively referred to as the "Severance Lawsuits."

The terms of the settlement are set out in full in the Settlement Agreement. You may request the complete text of the Settlement Agreement by contacting René S. Roupinian of Outten & Golden, LLP, through the contact information above. The information below explains the principal terms of the Settlement Agreement. This section is only a summary, though, and the terms as set forth in the Settlement Agreement control if there is any inconsistency.

Under the Settlement Agreement:

- The parties agree to seek certification of classes in the Severance Lawsuits for settlement purposes only. All of the individuals in these classes, along with the members of the WARN Act Lawsuit Class, will share in the settlement proceeds. As such, any reference to "Class Members" in this summary of the settlement terms applies to the combined group of individuals in the WARN Act Lawsuit Class and the Severance Lawsuit Classes.

- The Debtors agree to provide Plaintiffs with the following consideration (the "Common Fund"):

  (1) An allowed priority claim against QNA pursuant to section 507(a)(5) of the Bankruptcy Code in the total amount of $8.0 million. Of this amount, $4.5 million will be paid within five business days after the settlement becomes effective, and the remaining $3.5 million will be paid within five business days after a QNA plan of liquidation becomes effective. If QNA is ultimately unable to satisfy such claim, QR will be liable to satisfy any shortfall.

  (2) A $10 million allowed, general unsecured claim against QR.

(3) A $17 million allowed, general unsecured claim against QNA; provided that the first $1.75 million of any distributions made on account of this claim will be paid to the Settlement Administrator, for the benefit of the Class Members, and any distribution thereafter will be paid fifty percent (50%) to the Settlement Administrator, for the benefit of the Class Members, and fifty percent (50%) to QR.

- The Class Representatives and Class Counsel shall have the sole responsibility for administering the payments made under this settlement for the benefit of all Class Members, or for retaining an administrator to do so. Defendants shall have no responsibility or obligation with respect to the apportionment and allocation of payments among the Class Members.

- Deductions from the Common Fund. Prior to distributions to the respective Class Members, the following amounts will be deducted from the Common Fund. Because there may be multiple distributions, some of the deductions will be on a percentage basis of each distribution (*i.e.*, attorney's fees) while others will be on an actual cost basis (i.e., cost of third party administration). The deductions are:

  (1) A $5,000 service payments to each of the 12 lead plaintiffs in Jackson Adversary Proceeding, Maxey Adversary Proceeding, and Carey Adversary Proceeding;

  (2) 33⅓% of the Common Fund for attorney's fees plus reimbursement of actual out-of-pocket expenses not to exceed $150,000;

  (3) Costs of third party administration and the employer portion of any payroll taxes related to the distributions, provided, however, that QNA will pay up to $300,000 of such costs as described below.

- Allocation of payments among the WARN Act Class and Severance Classes. Based on the likelihood of success of the competing claims, the Common Fund is being allocated 70% to the WARN Act Lawsuit Class and 30% to the Severance Classes. Thus, for illustration purposes only and before the deductions from the Common Fund outlined above, the $8,000,000 (gross) Priority Claim payment would be allocated $5,600,000 to the WARN Act Lawsuit Class and $2,400,000 to the Severance Classes.

- Allocation of payments among the WARN Act Lawsuit Class Members. Each WARN Act Lawsuit Class Member will be entitled to a payment derived by allocating a pro rata amount to each Class Member based on the maximum amount of his or her potential claim. The payments to WARN Act Lawsuit Class Members shall be calculated as follows:

(1) The potential claim of each WARN Act Lawsuit Class Member will be derived by calculating each WARN Act Lawsuit Class Member's daily rate (determined by dividing each Class Member's annual wages by (i) 260 days for those employees paid on an hourly basis and; (ii) 365 days for those employees paid on a salary basis) then multiplying each Class Member's daily rate by 60 days (each an "Individual WARN Claim");

(2) The "Aggregate WARN Claim" will be calculated by adding all of the Individual WARN Claims together;

(3) Each WARN Act Lawsuit Class Member's "Pro Rata Factor" will be calculated by dividing (i) each WARN Act Lawsuit Class Member's Individual WARN Claim by (ii) the Aggregate WARN Claim;

(4) The amount each WARN Act Lawsuit Class Member will receive under the Settlement Agreement will then be calculated by multiplying (i) the total amount to be distributed from the Common Fund (net of the portion of Deductions allocated to the WARN Act Lawsuit Class as approved by the Bankruptcy Court), by (ii) each WARN Act Lawsuit Class Member's Pro Rata Factor.

- Reduction of priority portion of other claims. The Settlement Amount received by each Settlement Class Member from the Priority Claim shall automatically reduce the amount of any priority claims to which any Class Member may be entitled to on account of claims for unpaid wages, bonuses, deferred compensation, paid and unpaid time off and reimbursable business expenses ("Non-Included Claims"), if any and to the extent they are allowed, on a dollar-for-dollar basis, provided, however, that the Debtors and the Committee reserve any and all rights to object to each Class Member's Non-Included Claims, if any, on all grounds. For example, if a Settlement Class Member has an allowed Non-Included Claim in the amount of $10,950 entitled to priority under sections 507(a)(4) or (a)(5) of the Bankruptcy Code, and the Settlement Class Member receives Priority Claim Settlement Payments totaling $2,000, then the priority portion of the Non-Included Claim will be reduced by $2,000 resulting in the Settlement Class Member having an allowed priority Non-Included Claim of $8,950, a Priority Claim Settlement Payment of $2,000, and an unsecured claim of $2,000.

- Cost of administration and taxes. The parties will share the cost of administering the payments and the cost of the Employer portion of payroll taxes related to settlement distributions to the Class Members in the following manner: QNA's estate will pay the first $200,000 of these combined costs, with the remainder being shared equally between QNA's estate and the Class Members (each paying fifty percent (50%) of these

costs), provided, however, that QNA's total contribution shall be no more than $300,000 inclusive of the initial $200,000 payment.

- Plaintiffs and all Participating Class Members agree to release any and all claims against QR, QNA, and the alleged "Qimonda Severance Plan" that arise from or relate to the facts and circumstances of this litigation or any other claims against QR or QNA other than claims for wages, salary or benefits or claims that cannot be waived by operation of law. In addition, assuming the Court approves a separate settlement QR and QNA have negotiated with Infineon Technologies AG ("Infineon AG") and Infineon Technologies North America ("Infineon NA"), Plaintiffs and all Participating Class Members agree to release any and all claims against Infineon AG and Infineon NA that arise from or relate to the facts and circumstances of this litigation other than claims that cannot be waived by operation of law.

- Class Counsel will seek approval for attorneys' fees of 33 1/3% percent of each distribution to the Class Members (without regard to any opt-outs) plus out of pocket expenses of up to $150,000 as payment in full for their work in these cases. These fees and expenses, if granted, will come out of each distribution to the Class Members; individual Class Members will not have to pay Class Counsel on their own.

- Although the time for opting out of the WARN Act Lawsuit Class has expired, members of the Severance Classes may still opt out. If the combined value of all "opt out claims" (including opt outs from all three Classes) exceeds five percent (5%) of the gross value of the claims against the Defendants, the Defendants will have the option to cancel or withdraw from the Settlement Agreement if they so desire. If the Settlement Agreement is cancelled, the Settling Parties shall continue in the WARN Act Lawsuit as if no agreement had ever been reached.

- If the settlement remains in place under any circumstances, though, the settlement consideration will be reduced by the net value of the claims (net of attorneys' fees) of those Class Members who elect to opt out.

The Court has preliminarily approved the Settlement Agreement for the purposes of notifying all Class Members, but the Settlement Agreement will not take final effect unless and until the Court decides, at a Final Fairness Hearing, that it is a fair, reasonable, and adequate resolution for each case. The Final Fairness Hearing will take place on _____, 2011 at _____ _.m. in Courtroom 4 of the United States Bankruptcy Court for the District of Delaware, 824 North Market Street, 5th Floor, Wilmington, Delaware 19801. If the Court decides not to approve the Settlement Agreement at the Final Fairness Hearing, the Parties have agreed to continue with the litigation as if the settlement had never been reached, and nothing in the Settlement Agreement will be considered to be an admission of liability or a waiver of rights.

How Do I Participate In The Settlement?

TO PARTICIPATE IN THE SETTLEMENT AND RECEIVE YOUR DISTRIBUTION, YOU DO NOT NEED TO DO ANYTHING.

Objections

If you approve of this settlement and do not wish to object to it, you need not do anything at this time. However, if you believe that the settlement is unfair, unreasonable, or otherwise improper for any reason, including because of the amount of Class Counsel's request for attorneys' fees, you must make a formal objection to it. To object, you must state, in writing: (1) the name and case number of this case as it appears on the first page of this document; (2) your name, address, and telephone number; (3) your specific objection(s) to the settlement, providing in detail the reason(s) why you believe that the settlement is improper; and (4) whether you intend to appear either in person or through an attorney of your choosing to make the objection at the Final Fairness Hearing.

All objections must be mailed to the Clerk of Court for the United States Bankruptcy Court for the District of Delaware, 824 North Market Street, 3rd Floor, Wilmington, Delaware 19801. Additionally, copies of each objection must be mailed to (1) class counsel, ATTN: René S. Roupinian, Outten & Golden LLP, 3 Park Avenue, 29th Floor, New York, New York 10016, (2) counsel for the Defendants, ATTN: Jennifer C. Jauffret, Richards, Layton & Finger, P.A., One Rodney Square, 920 North King Street, Wilmington, Delaware 19801 and (3) counsel for the Official Committee of Unsecured Creditors, ATTN: Daniel P. Winikka, Jones Day, 2727 North Harwood Street, Dallas, Texas 75201. All objections must be received by both the Clerk and counsel for both parties no later than _____, 2011.

As noted above, if you choose to make an objection, you have the right to appear either in person or through an attorney of your choosing at the Final Fairness Hearing to make your objection before the Court. You are not required to make your objection either in person or through an attorney. If you elect to retain an attorney for this purpose, though, your attorney must file an appearance and a statement of your objections with the court no later than _____, 2011. Copies of that appearance and the written objections must be mailed to Class Counsel and counsel for the Defendants at their addresses above.

Right to Appear by Counsel

In addition to the right to hire an attorney of your choosing to file objections, you also have the right to be represented by an attorney of your choosing in all other stages of this case. If you elect to hire an attorney, you may be responsible to pay any fees and costs that the attorney charges.

The Court Has No Position on the Merits

Although it has preliminarily approved the settlement, the Court has taken no position on the merits of Plaintiffs' claims or Defendants' defenses.

Additional Information

If you wish to receive any additional information or if you need assistance in this matter, please contact René S. Roupinian of Outten & Golden LLP at (212) 245-1000. *Please do not call or contact the Court or Defendants' Counsel for information about this case.*

EXHIBIT 2

Form of Notice For Maxey Class

NOTICE OF PROPOSED SETTLEMENT OF CLASS ACTION, DATE AND TIME OF FINAL FAIRNESS HEARING, AND RIGHT TO OBJECT TO THE PROPOSED SETTLEMENT

PLEASE READ THIS NOTICE CAREFULLY AS IT MAY AFFECT YOUR RIGHTS.

TO: Former employees of Qimonda North America Corporation ("QNA") or Qimonda Richmond, LLC ("QR"), who worked in California, North Carolina, Texas, Vermont, and Virginia as of January 1, 2009, who were involuntarily terminated in late 2008 or early 2009, who did not receive severance benefits, and who did not accept new employment with QNA or QR in exchange for forgoing severance benefits.

SUBJECT: Claims to recover severance benefits under breach of contract and Employee Retirement Income Security Act, 29 U.S.C. § 1001 et seq. ("ERISA") theories of relief.

DATE: _____, 2011

TO PARTICIPATE IN THE SETTLEMENT AND RECEIVE YOUR DISTRIBUTION, YOU DO NOT NEED TO DO ANYTHING.

Introduction

A class action lawsuit entitled *Cheryl Maxey, Lawrence D. Meyer, Jacob Evans, and Claude Edmonds, on behalf of themselves and all others similarly situated v. Qimonda North America Corp., Qimonda Richmond, LLC, and Qimonda Severance Plan*, Adversary Proceeding No. 09-50199 (MFW) (the "Maxey Severance Lawsuit"), is currently pending in the United States Bankruptcy Court for the District of Delaware (the "Court"). The parties to the Maxey Severance Lawsuit have reached agreement on terms for a proposed settlement, which are outlined in a settlement agreement (the "Settlement Agreement"), under which, among other things, the Class Representatives, Class Members, and Class Counsel as defined below would receive payments.

The Court has tentatively certified a class in the Maxey Severance Lawsuit (the "Maxey Severance Class"), and has preliminarily approved the settlement. Accordingly, the Court has ordered that this Notice be sent to all who may be affected by it before the Court grants final approval.

You are receiving this Notice because you have been identified as a member of the Maxey Severance Class. This Notice informs you of the developments in the Maxey Severance Lawsuit; explains what a class action is and who qualifies as a Class Member in the Maxey Severance Lawsuit; summarizes the principal terms of the Settlement Agreement; and explains your rights under the class certification (including your right to opt of out of the Class) and the settlement (including your right to file objections to it).

The Nature of the Lawsuit

Cheryl Maxey, Lawrence D. Meyer, Jacob Evans, and Claude Edmonds (collectively, "Plaintiffs"), on behalf of themselves and other allegedly similarly situated former employees of QNA and QR (collectively, "Defendants"), alleged in an Amended Complaint filed on April 3, 2009 that the Defendants involuntarily terminated them in mass layoffs and that they did not receive severance benefits to which they were entitled. Plaintiffs claim that they are entitled to severance benefits on a class-wide basis because either (1) Plaintiffs signed separation agreements that provided for severance benefits; (2) the Defendants had given severance benefits to other similarly situated employees in the past and were required to do so in the future; or (3) Plaintiffs had been promised such benefits orally or in writing. Plaintiffs alleged that the Defendants breached express or implied contracts and committed ERISA violations. Plaintiffs also claim that an entity called the "Qimonda Severance Plan" exists, and they list this plan as a defendant in their Amended Complaint.

The Defendants' Response

Defendants have not filed an Answer to the Plaintiffs' Amended Complaint, but they deny Plaintiffs' allegations. Defendants maintain that ERISA does not apply to Plaintiffs' claims and that no written or implied contract required them to provide Plaintiffs with severance benefits. Additionally, Defendants deny that the "Qimonda Severance Plan" is an actual entity.

What is a Class Action and Who Is Involved?

In a class action lawsuit, one or more individuals called Class Representatives (in this case, Cheryl Maxey, Lawrence D. Meyer, Jacob Evans, and Claude Edmonds) sue on behalf of themselves and other people who have similar claims. The people together are called a "Class" or "Class Members." The company or companies sued (in this case QNA and QR) are called the Defendant(s). One court resolves the issues for everyone in the Class, except for those people who choose to exclude themselves from the Class. The Class Members' claims are legally and factually similar, and, as such, resolving those claims through a class action can be more efficient than having many individual lawsuits.

Who is a Class Member?

On _____, the Court tentatively certified a Class in the Maxey Severance Lawsuit for settlement purposes only. That means that Plaintiffs and Defendants have agreed to recognize that a Class exists so that they can settle the case, but if the settlement does not become final for any reason, Plaintiffs will have to prove that a Class should be recognized again, and Defendants may argue that a Class should not be recognized. Additionally, Plaintiffs must still demonstrate that the Class meets all of the requirements for a class under federal law.

For these purposes, the Court has decided that the Class Members in the Maxey Severance Lawsuit include each Plaintiff and any other former employee of QNA and QR who (1) was involuntarily terminated by QNA or QR in late 2008 or early 2009; (2)

did not receive severance payments; and (3) is not a member of the class in a separate, but similar, severance lawsuit titled *Brian Carey and John Earle, individually and as Class Representatives v. Qimonda North America Corp., Qimonda Richmond, LLC, and Qimonda Severance Plan*, Adversary Proceeding No. 09-50200 (MFW) (the "Carey Severance Lawsuit"). The Carey Severance Lawsuit includes individuals who accepted new positions with QNA or QR in exchange for forgoing severance payments and then either never commenced employment in those new positions or briefly commenced employment in those positions before being terminated again (the "Carey Severance Class").

No Admission of Liability

Defendants have agreed to the certification of the Maxey Severance Class and to the proposed settlement solely for settlement purposes. This Notice shall not be read or interpreted as an admission of liability by Defendants. To the contrary, Defendants deny that they violated any laws or engaged in any wrongdoing.

Class Counsel and Class Representatives

The Plaintiffs who initiated the Maxey Severance Lawsuit are represented by the law firm of Klehr Harrison Harvey Branzburg, LLP, 1835 Market Street, Philadelphia, PA 19103, (215) 569-2700 ("Class Counsel"). The Court appointed Cheryl Maxey, Lawrence D. Meyer, Jacob Evans, and Claude Edmonds as Class Representatives.

The Settlement and the Final Fairness Hearing

The Plaintiffs and Defendants recently agreed to the terms of a settlement that, with the Court's final approval, would resolve the Maxey Severance Lawsuit as well as the Carey Severance Lawsuit and another lawsuit that former employees filed against the Defendants in the Court alleging violations of the Worker Adjustment Retraining Notification Act (the "WARN Act") titled: *Carl Jackson, Julia Lee, Lakita Blair, Linda Frazier, Bonnie Wright, and Christopher Shull, individually and as Class Representatives v. Qimonda North America Corp. and Qimonda Richmond, LLC*, Adversary Proceeding No. 09-50192 (MFW) (the "WARN Act Lawsuit").

The terms of the settlement are set out in full in the Settlement Agreement. You may request the complete text of the Settlement Agreement by contacting Charles A. Ercole of Klehr Harrison Harvey Branzburg, LLP, through the contact information above. The information below explains the principal terms of the settlement. This section is only a summary, though, and the terms in the Settlement Agreement control if there is any inconsistency.

Under the Settlement Agreement:

- The parties agree to seek certification of the Maxey Severance and Carey Severance Classes for settlement purposes only. All of the individuals in the WARN Act Class and Carey Severance Class, along with the members of the Maxey Severance Class, will share in the settlement proceeds. As

such, any reference to "Class Members" in this summary of the settlement terms applies to the combined group of individuals in the WARN Act, the Maxey Severance and Carey Severance Classes.

- The Debtors agree to provide Plaintiffs with the following consideration (the "Common Fund"):

  (1) An allowed priority claim against QNA pursuant to section 507(a)(5) of the Bankruptcy Code in the total amount of $8.0 million. Of this amount, $4.5 million will be paid within five business days after the settlement becomes effective, and the remaining $3.5 million will be paid within five business days after a QNA plan of liquidation becomes effective. If QNA is ultimately unable to satisfy such claim, QR will be liable to satisfy any shortfall.

  (2) A $10 million allowed, general unsecured claim against QR.

  (3) A $17 million allowed, general unsecured claim against QNA; provided that the first $1.75 million of any distributions made on account of this claim will be paid to the Settlement Administrator, for the benefit of the Class Members, and any distribution thereafter will be paid fifty percent (50%) to the Settlement Administrator, for the benefit of the Class Members, and fifty percent (50%) to QR.

- The Class Representatives and Class Counsel shall have the sole responsibility for administering the payments made under the settlement for the benefit of all Class Members, or for retaining an administrator to do so. Defendants shall have no responsibility or obligation with respect to the apportionment and allocation of payments among the Class Members.

- Deductions from the Common Fund. Prior to distributions to the respective Class Members, the following amounts will be deducted from the Common Fund. Because there may be multiple distributions, some of the deductions will be on a percentage basis of each distribution (i.e., attorney's fees) while others will be on an actual cost basis (i.e., cost of third party administration). The deductions are:

  (1) A $5,000 service payment to each of the 12 lead plaintiffs in the WARN Act Lawsuit, Maxey Severance Lawsuit, and Carey Severance Lawsuit;

  (2) 33⅓% of the Common Fund for attorney's fees plus reimbursement of actual out-of-pocket expenses not to exceed $150,000;

(3) Costs of third party administration and the employer portion of any payroll taxes related to the distributions, provided, however, that QNA will pay up to $300,000 of such costs as described below.

- Allocation of payments among the WARN Act Class and Severance Classes. Based on the likelihood of success of the competing claims, the Common Fund is being allocated 70% to the WARN Act Class and 30% to the Maxey Severance and Carey Severance Classes. Thus, for illustration purposes only and before the deductions from the Common Fund outlined above, the $8,000,000 (gross) Priority Claim payment would be allocated $5,600,000 to the WARN Act Class and $2,400,000 to the Severance Classes.

- Allocation of payments among the Severance Classes. The members of the Maxey Severance and Carey Severance Classes will be divided into the following subclasses (each a "Severance Sub-Class"):

  (1) Maxey Class A (Employees with signed agreements);

  (2) Maxey Class B (Employees without signed agreements, and who did not attend a severance package presentation in the fall of 2008);

  (3) Maxey Class C (Employees who attended severance package presentations in the fall of 2008; were promised a severance package but did not receive a written agreement prior to shutdown; and who are not eligible for a WARN Act distribution);

  (4) Carey Class A (Employees who forewent a severance package for the promise of a job but never started employment because of the shutdown);

  (5) Carey Class B (Employees who forewent severance for the promise of a job and worked only for a limited period of time before the shutdown).

  The available funds to be distributed to these Severance Classes will be divided as follows: 77.25% to Maxey Class A, 8% to Maxey Class B, 3.125% to Maxey Class C, 8.125% to Carey Class A, and 3.5% to Carey Class B. [1]

[1] The % of distribution to each Severance Sub-Class was determined on several factors, but primarily, on the number of employees and/or the strength or weakness of the claims. For example, Maxey A has over 600 members and each had a signed severance agreement.

- Allocation of payments among the members of the respective Severance Sub-Classes. Each Severance Sub-Class Member will be entitled to a payment derived by allocating a pro rata amount to each Severance Sub-Class Member based on the maximum amount of his or her potential claim. The payments to Severance Sub-Class Members will be calculated as follows:

  (1) The potential claim of each Severance Sub-Class Member will be calculated based on their years of service and annual compensation (each an "Individual Severance Claim").

  (2) The "Aggregate Severance Claim" will be calculated by adding all of the Individual Severance Claims for the applicable Severance Sub-Class together (e.g., all Individual Severance Claims for Maxey Class A).

  (3) Each Severance Sub-Class Member's "Pro Rata Factor" will be calculated by dividing (i) each Severance Sub-Class Member's Individual Severance Claim by (ii) the Aggregate Severance Claim in the applicable Sub-Class.

  (4) The amount each Sub-Severance Class Member will receive under the Settlement Agreement will then be calculated by multiplying (i) the total amount to be distributed from the Common Fund to the applicable Severance Sub-Class (net of the portion of Deductions allocated to the applicable Severance Sub-Class as approved by the Court), by (ii) each Severance Class Member's Pro Rata Factor.

- Reduction of priority portion of other claims. The Settlement Amount received by each Settlement Class Member from the Priority Claim will automatically reduce the amount of any priority claims to which that Class Member may be entitled to on account of claims for unpaid wages, bonuses, deferred compensation, paid and unpaid time off and reimbursable business expenses ("Non-Included Claims") on a dollar-for-dollar basis, provided, however, that the Debtors and the Committee reserve any and all rights to object to each Class Member's Non-Included Claims, if any, on all grounds. For example, if a Settlement Class Member has an allowed Non-Included Claim in the amount of $10,950 entitled to priority under sections 507(a)(4) or (a)(5) of the Bankruptcy Code, and the Settlement Class Member receives Priority Claim Settlement Payments totaling $2,000, then the priority portion of the Non-Included Claim will be reduced by $2,000 resulting in the Settlement Class Member having an allowed priority Non-Included Claim of $8,950, a Priority Claim Settlement Payment of $2,000, and an unsecured claim of $2,000.

- Cost of administration and taxes. The parties will share the cost of administering the payments and the cost of the employer portion of payroll taxes related to settlement distributions to the Class Members in the following manner: QNA's estate will pay the first $200,000 of these combined costs, with the remainder being shared equally between QNA's estate and the Class Members (each paying fifty percent (50%) of these costs), provided, however, that QNA's total contribution shall be no more than $300,000 inclusive of the initial $200,000 payment.

- Plaintiffs and all Participating Class Members agree to release any and all claims against QR, QNA, and the alleged "Qimonda Severance Plan" that arise from or relate to the facts and circumstances of this litigation or any other claims against QR or QNA other than claims for wages, salary or benefits or claims that cannot be waived by operation of law. In addition, assuming the Court approves a separate settlement QR and QNA have negotiated with Infineon Technologies AG ("Infineon AG") and Infineon Technologies North America ("Infineon NA"), Plaintiffs and all Participating Class Members agree to release any and all claims against Infineon AG and Infineon NA that arise from or relate to the facts and circumstances of this litigation other than claims that cannot be waived by operation of law.

- Class Counsel will seek approval for attorneys' fees of 33 1/3% of each distribution to the Class Members (without regard to any opt-outs) plus out of pocket expenses of up to $150,000 as payment in full for their work in these cases. These fees, if granted, will come out of each distribution to the Class Members; individual Class Members will not have to pay Class Counsel on their own.

- You are free to opt out of the Maxey Severance Class and the settlement if you so desire by following the procedure discussed below. If the combined value of all "opt out claims" (including opt outs from all Classes) exceeds five percent (5%) of the gross value of the claims against the Defendants, the Defendants will have the option to cancel or withdraw from the agreement if they so desire. If the settlement is cancelled, the Settling Parties shall continue in the Maxey Severance Lawsuit as if no agreement had ever been reached.

- If the settlement remains in place under any circumstances, though, the settlement consideration will be reduced by the net value of the claims (net of attorneys' fees) of those Class Members who elect to opt out.

The Court has preliminarily approved the settlement for the purposes of notifying all Class Members, but the settlement will not take final effect unless and until the Court decides, at a Final Fairness Hearing, that it is a fair, reasonable, and adequate resolution for each case. The Final Fairness Hearing will take place on _____, 2011 at _____.m. in Courtroom 4 of the United States Bankruptcy Court for the District of

Delaware, 824 North Market Street, 5th Floor, Wilmington, Delaware 19801. If the Court decides not to approve the settlement at the Final Fairness Hearing, the Parties have agreed to continue with the litigation as if the settlement had never been reached, and nothing in the Settlement Agreement will be considered to be an admission of liability or a waiver of rights.

How Do I Participate In The Settlement?

TO PARTICIPATE IN THE SETTLEMENT AND RECEIVE YOUR DISTRIBUTION, YOU DO NOT NEED TO DO ANYTHING.

Your Right to be Excluded from the Class

If you wish to be excluded from the Maxey Severance Class—which also means to remove yourself from the Class, and is sometimes called "opting out" of the Class—you will not get any money or benefits from the Maxey Severance Lawsuit under the settlement. Likewise, if the Court does not approve the settlement and the litigation continues, you will not be entitled to any money or benefits that Class Members receive later. If you opt out, though, you will have the right to bring a claim on your own, through an attorney of your own choosing, against QNA and/or QR for their alleged breach of contract and ERISA violations. However, QNA and/or QR may have defenses to your claims, including that the date for filing such claims has passed. If you opt out, you will not be legally bound by the Court's judgments in the Maxey Severance Lawsuit.

If you want to opt out of the Maxey Severance Class, you must sign and mail the attached Exclusion Form by certified mail, return receipt requested, to Klehr Harrison Harvey Branzburg, LLP, 1835 Market Street, Philadelphia, Pennsylvania 19103, ATTN: Charles A. Ercole. The Exclusion Form must be postmarked by no later than _____, 2011. All Exclusion Forms postmarked after that date will not be effective, and any person who sends a late Exclusion Form will nevertheless be a member of the Maxey Severance Class and will be bound in the same way and to the same extent as all other Class Members, provided that he or she otherwise qualifies as a Class Member.

Objections

If you want to remain a member of the Maxey Severance Lawsuit, you must next decide whether you approve of the settlement. If you do, and do not wish to object to it, you need not do anything at this time. However, if you believe that the settlement is unfair, unreasonable, or otherwise improper for any reason, including because of the amount of attorneys' fees, you must make a formal objection to it. To object, you must state, in writing: (1) the name and case number of this case as it appears on the first page of this document; (2) your name, address, and telephone number; (3) your specific objection(s) to the settlement, providing in detail the reason(s) why you believe that the settlement is improper; and (4) whether you intend to appear either in person or through an attorney of your choosing to make the objection at the Final Fairness Hearing.

All objections must be mailed to the Clerk of Court for the United States Bankruptcy Court for the District of Delaware, 824 North Market Street, 3rd Floor, Wilmington, Delaware 19801. Additionally, copies of each objection must be mailed to (1) Class Counsel, ATTN: Charles A. Ercole, Klehr Harrison Harvey Branzburg, LLP, 1835 Market Street, Philadelphia, Pennsylvania 19103, (2) counsel for the Defendants, ATTN: Jennifer C. Jauffret, Richards, Layton & Finger, P.A., One Rodney Square, 920 North King Street, Wilmington, Delaware 19801 and (3) counsel for the Official Committee of Unsecured Creditors, ATTN: Daniel P. Winikka, Jones Day, 2727 North Harwood Street, Dallas, Texas 75201. All objections must be received by both the Clerk and counsel for both parties no later than _____, 2011.

As noted above, if you choose to make an objection, you have the right to appear either in person or through an attorney of your choosing at the Final Fairness Hearing to make your objection before the Court. You are not required to make your objection either in person or through an attorney. If you elect to retain an attorney for this purpose, though, your attorney must file an appearance and a statement of your objections with the court no later than _____, 2011. Copies of that appearance and the written objections must be mailed to Class Counsel and counsel for the Defendants at their addresses above.

Right to Appear by Counsel

In addition to the right to hire an attorney of your choosing to file objections, you also have the right to be represented by an attorney of your choosing in all other stages of this case. If you elect to hire an attorney, you may be responsible to pay any fees and costs that the attorney charges.

The Court Has No Position on the Merits

Although it has preliminarily approved the settlement, the Court has taken no position on the merits of Plaintiffs' claims or Defendants' defenses.

Additional Information

If you wish to receive any additional information or if you need assistance in this matter, please contact Charles A. Ercole, Klehr Harrison Harvey Branzburg, LLP at cercole@klehr.com, (215) 569-2700. *Please do not call or contact the Court or Defendants' counsel for information about this case.*

EXCLUSION FORM

Maxey, et al. v. Qimonda North America Corp., et al.
United States Bankruptcy Court for the District of Delaware
Adversary Proceeding No. 09-50199

I, the undersigned, have read the foregoing Notice of Proposed Settlement of Class Action, Date and Time of Final Fairness Hearing, and Right to Object to the Proposed Settlement.

☐ I **do not** want to participate in the above Class Action and **do not** wish to be bound by the outcome of the Class Action or receive any potential benefits of the Class Action.

Signature	Address
Name (print or type)	Telephone
Date	

Send completed form to:
Klehr Harrison Harvey Branzburg, LLP
260 S. Broad Street
Philadelphia, PA 19102-5003

Attn: Charles A. Ercole

EXHIBIT 3

Form of Notice For Carey Class

NOTICE OF PROPOSED SETTLEMENT OF CLASS ACTION, DATE AND TIME OF FINAL FAIRNESS HEARING, AND RIGHT TO OBJECT TO THE PROPOSED SETTLEMENT

PLEASE READ THIS NOTICE CAREFULLY AS IT MAY AFFECT YOUR RIGHTS.

TO: Former employees of Qimonda North America Corporation ("QNA") or Qimonda Richmond, LLC ("QR"), who worked in Richmond, Virginia, or Cary, North Carolina, who were terminated without cause in late 2008 or early 2009, who accepted new positions with QNA or QR in exchange for forgoing severance payments offered to them, and who either never commenced employment in those new positions or briefly commenced employment in those positions before being terminated again.

SUBJECT: Claims to recover severance benefits under fraud, equitable estoppel, breach of contract, and Employee Retirement Income Security Act, 29 U.S.C. § 1001 et seq. ("ERISA") theories of relief.

DATE: _____, 2011

TO PARTICIPATE IN THE SETTLEMENT AND RECEIVE YOUR DISTRIBUTION, YOU DO NOT NEED TO DO ANYTHING.

Introduction

A class action lawsuit entitled *Brian Carey and John Earle, on behalf of themselves and all others similarly situated v. Qimonda North America Corp., Qimonda Richmond, LLC, and Qimonda Severance Plan*, Adversary Proceeding No. 09-50200 (MFW) (the "Carey Severance Lawsuit"), is currently pending in the United States Bankruptcy Court for the District of Delaware (the "Court"). The parties to the Carey Severance Lawsuit have reached agreement on terms for a proposed settlement, which are outlined in a settlement agreement (the "Settlement Agreement"), under which, among other things, the Class Representatives, Class Members, and Class Counsel as defined below would receive payments.

The Court has tentatively certified a class in the Carey Severance Lawsuit (the "Carey Severance Class"), and has preliminarily approved the settlement. Accordingly, the Court has ordered that this Notice be sent to all who may be affected by it before the Court grants final approval.

You are receiving this Notice because you have been identified as a member of the Carey Severance Class. This Notice informs you of the developments in the Carey Severance Lawsuit; explains what a class action is and who qualifies as a Class Member in this case; summarizes the principal terms of the settlement; and explains your rights under the class certification (including your right to opt of out of the Class) and the settlement (including your right to file objections to it).

The Nature of the Lawsuit

Brian Carey and John Earle (collectively, "Plaintiffs"), on behalf of themselves and other allegedly similarly situated former employees of QNA and QR (collectively, "Defendants"), alleged in a Complaint filed on February 22, 2009 that they were terminated without cause as a result of layoffs at QR's Sandston, VA facility. Plaintiffs allege that they were offered severance pursuant to written separation agreements, and that they declined severance payments in exchange for continued employment at another of Defendants' facilities, but then were terminated again either before or shortly after commencing work in their new positions. Plaintiffs claim that they are entitled to severance benefits on a class-wide basis on theories of fraud, equitable estoppel, breach of contract, and ERISA violations. Plaintiffs also claim that an entity called the "Qimonda Severance Plan" exists, and they list this plan as a defendant in their Complaint.

The Defendants' Response

Defendants filed an Answer to the Plaintiffs' Complaint. In the Answer, Defendants denied the Plaintiffs' allegations and asserted several defenses, including that ERISA does not apply to Plaintiffs' claims. Additionally, Defendants denied that the "Qimonda Severance Plan" is an actual entity.

What is a Class Action and Who Is Involved?

In a class action lawsuit, one or more individuals called Class Representatives (in this case, Brian Carey and John Earle) sue on behalf of themselves and other people who have similar claims. The people together are called a "Class" or "Class Members." The company or companies sued (in this case QNA and QR) are called the Defendant(s). One court resolves the issues for everyone in the Class, except for those people who choose to exclude themselves from the Class. The Class Members' claims are legally and factually similar, and, as such, resolving those claims through a class action can be more efficient than having many individual lawsuits.

Who is a Class Member?

On _____, the Court tentatively certified a Class in the Carey Severance Lawsuit for settlement purposes only. That means that Plaintiffs and Defendants have agreed to recognize that a Class exists so that they can settle the case, but if the settlement does not become final for any reason, Plaintiffs will have to prove that a Class should be recognized again, and Defendants may argue that a Class should not be recognized. Additionally, Plaintiffs must still demonstrate that the Class meets all of the requirements for a class under federal law.

For these purposes, the Court has decided that the Class Members in the Carey Severance Lawsuit include each Plaintiff and any other former employee of QNA and QR who (1) was involuntarily terminated by QNA or QR in late 2008 or early 2009; (2) was offered a Separation Agreement as part of that termination, which Separation Agreement provided for severance payments upon signing a release of claims; (3) was offered a new

position with QNA or QR in exchange for declining to execute and return the Separation Agreement and release of claims and, thus, waiving a right to severance payments; (4) did not execute and return the Separation Agreement and, instead, accepted the new position; (5) either never commenced employment in the new position or briefly commenced employment in the new position before being terminated again.

No Admission of Liability

Defendants have agreed to the certification of the Carey Severance Class and to the proposed settlement solely for settlement purposes. This Notice shall not be read or interpreted as an admission of liability by Defendants. To the contrary, Defendants deny that they violated any laws or engaged in any wrongdoing.

Class Counsel and Class Representatives

The Plaintiffs who initiated the Carey Severance Lawsuit are represented by the law firm of Klehr Harrison Harvey Branzburg, LLP, 1835 Market Street, Philadelphia, PA 19103, (215) 569-2700 ("Class Counsel"). The Court appointed Brian Carey and John Earle as Carey Severance Class Representatives.

The Settlement and the Final Fairness Hearing

The Plaintiffs and Defendants recently agreed to the terms of a settlement that, with the Court's final approval, would resolve the Carey Severance Lawsuit as well as two other lawsuits that former employees filed against the Defendants in the Court: (1) *Carl Jackson, Julia Lee, Lakita Blair, Linda Frazier, Bonnie Wright, and Christopher Shull, individually and as Class Representatives v. Qimonda North America Corp. and Qimonda Richmond, LLC*, Adversary Proceeding No. 09-50192 (MFW) (the "WARN Act Lawsuit"), alleging violations of the Worker Adjustment and Retraining Notification Act (the "WARN Act") and (2) *Cheryl Maxey, Lawrence D. Meyer, Jacob Evans, and Claude Edmonds, individually and as Class Representatives v. Qimonda North America Corp., Qimonda Richmond, LLC, and Qimonda Severance Plan*, Adversary Proceeding No. 09-50199 (MFW) (the "Maxey Severance Lawsuit"), asserting claims in respect of certain alleged severance obligations. The Maxey Severance Lawsuit alleges that the plaintiffs in that case are entitled to severance benefits because (1) the plaintiffs signed separation agreements that provided for severance benefits; (2) the Defendants had given severance benefits to other similarly situated employees in the past and were required to do so in the future; or (3) the plaintiffs had been promised such benefits orally or in writing. The Court also tentatively, for settlement purposes only, certified a class in the Maxey Severance Lawsuit (the "Maxey Severance Class") that includes the plaintiffs in that case and any other former employee of QNA and QR who (1) was involuntarily terminated by QNA or QR in late 2008 or early 2009; (2) did not receive severance payments; and (3) is not a member of the Carey Severance Class.

The terms of the settlement are set out in full in the Settlement Agreement. You may request the complete text of the Settlement Agreement by contacting Charles A. Ercole of Klehr Harrison Harvey Branzburg, LLP, through the contact information above. The

information below explains the principal terms of the settlement. This section is only a summary, though, and the terms in the Settlement Agreement control if there is any inconsistency.

Under the Settlement Agreement:

- The parties agree to seek certification of the Maxey Severance and Carey Severance Classes for settlement purposes only. All of the individuals in the WARN Act Class and Maxey Severance Class, along with the members of the Carey Severance Class will share in the settlement proceeds. As such, any reference to "Class Members" in this summary of the settlement terms applies to the combined group of individuals in the WARN Act, Maxey Severance and Carey Severance Classes.

- The Debtors agree to provide Plaintiffs with the following consideration (the "Common Fund"):

  (1) An allowed priority claim against QNA pursuant to section 507(a)(5) of the Bankruptcy Code in the total amount of $8.0 million. Of this amount, $4.5 million will be paid within five business days after the settlement becomes effective, and the remaining $3.5 million will be paid within five business days after a QNA plan of liquidation becomes effective. If QNA is ultimately unable to satisfy such claim, QR will be liable to satisfy any shortfall.

  (2) A $10 million allowed, general unsecured claim against QR.

  (3) A $17 million allowed, general unsecured claim against QNA; provided that the first $1.75 million of any distributions made on account of this claim will be paid to the Settlement Administrator, for the benefit of the Class Members, and any distribution thereafter will be paid fifty percent (50%) to the Settlement Administrator, for the benefit of the Class Members, and fifty percent (50%) to QR.

- The Class Representatives and Class Counsel shall have the sole responsibility for administering the payments made under this Settlement Agreement for the benefit of all Class Members, or for retaining an administrator to do so. Defendants shall have no responsibility or obligation with respect to the apportionment and allocation of payments among the Class Members.

- Deductions from the Common Fund. Prior to distributions to the respective Class Members, the following amounts will be deducted from the Common Fund. Because there may be multiple distributions, some of the deductions will be on a percentage basis of each distribution (i.e.,

attorney's fees) while others will be on an actual cost basis (i.e., cost of third party administration). The deductions are:

(1) A $5,000 service payment to each of the 12 lead plaintiffs in the WARN Act Lawsuit, Maxey Severance Lawsuit, and Carey Severance Lawsuit;

(2) 33⅓% of the Common Fund for attorney's fees plus reimbursement of actual out-of-pocket expenses not to exceed $150,000;

(3) Costs of third party administration and the employer portion of any payroll taxes related to the distributions, provided, however, that QNA will pay up to $300,000 of such costs as described below.

- Allocation of payments among the WARN Act Class and Severance Classes. Based on the likelihood of success of the competing claims, the Common Fund is being allocated 70% to the WARN Act Class and 30% to the Maxey Severance and Carey Severance Classes. Thus, for illustration purposes only and before the deductions from the Common Fund outlined above, the $8,000,000 (gross) Priority Claim payment would be allocated $5,600,000 to the WARN Act Class and $2,400,000 to the Severance Classes.

- Allocation of payments among the Severance Classes. The members of the Maxey Severance and Carey Severance Classes will be divided into the following subclasses (each a "Severance Sub-Class"):

  (1) Maxey Class A (Employees with signed agreements);

  (2) Maxey Class B (Employees without signed agreements, and who did not attend a severance package presentation in the fall of 2008);

  (3) Maxey Class C (Employees who attended severance package presentations in the fall of 2008; were promised a severance package but did not receive a written agreement prior to shutdown; and who are not eligible for a WARN Act distribution);

  (4) Carey Class A (Employees who forewent a severance package for the promise of a job but never started employment because of the shutdown);

  (5) Carey Class B (Employees who forewent severance for the promise of a job and worked only for a limited period of time before the shutdown).

  The available funds to be distributed to these Severance Classes will be divided as follows: 77.25% to Maxey Class A, 8% to Maxey Class B,

3.125% to Maxey Class C, 8.125% to Carey Class A, and 3.5% to Carey Class B.[1]

- Allocation of payments among the members of the respective Severance Sub-Classes. Each Severance Sub-Class Member will be entitled to a payment derived by allocating a pro rata amount to each Severance Sub-Class Member based on the maximum amount of his or her potential claim. The payments to Severance Sub-Class Members will be calculated as follows:

  (1) The potential claim of each Severance Sub-Class Member will be calculated based on their years of service and annual compensation (each an "Individual Severance Claim").

  (2) The "Aggregate Severance Claim" will be calculated by adding all of the Individual Severance Claims for the applicable Severance Sub-Class together (e.g., all Individual Severance Claims for Maxey Class A).

  (3) Each Severance Sub-Class Member's "Pro Rata Factor" will be calculated by dividing (i) each Severance Sub-Class Member's Individual Severance Claim by (ii) the Aggregate Severance Claim in the applicable Sub-Class.

  (4) The amount each Sub-Severance Class Member will receive under the Settlement Agreement will then be calculated by multiplying (i) the total amount to be distributed from the Common Fund to the applicable Severance Sub-Class (net of the portion of Deductions allocated to the applicable Severance Sub-Class as approved by the Court), by (ii) each Severance Class Member's Pro Rata Factor.

- Reduction of priority portion of other claims. The Settlement Amount received by each Settlement Class Member from the Priority Claim will automatically reduce the amount of any priority claims to which that Class Member may be entitled to on account of claims for unpaid wages, bonuses, deferred compensation, paid and unpaid time off and reimbursable business expenses ("Non-Included Claims") on a dollar-for-dollar basis, provided, however, that the Debtors and the Committee reserve any and all rights to object to each Class Member's Non-Included Claims, if any, on all grounds. For example, if a Settlement Class Member has an allowed Non-Included Claim in the amount of $10,950 entitled to priority under sections 507(a)(4) or (a)(5) of the

[1] The % of distribution to each Severance Sub-Class was determined on several factors, but primarily, on the number of employees and/or the strength or weakness of the claims. For example, Maxey A has over 600 members and each had a signed severance agreement.

Bankruptcy Code, and the Settlement Class Member receives Priority Claim Settlement Payments totaling $2,000, then the priority portion of the Non-Included Claim will be reduced by $2,000 resulting in the Settlement Class Member having an allowed priority Non-Included Claim of $8,950, a Priority Claim Settlement Payment of $2,000, and an unsecured claim of $2,000.

- Cost of administration and taxes. The parties will share the cost of administering the payments and the cost of the employer portion of payroll taxes related to settlement distributions to the Class Members in the following manner: QNA's estate will pay the first $200,000 of these combined costs, with the remainder being shared equally between QNA's estate and the Class Members (each paying fifty percent (50%) of these costs), provided, however, that QNA's total contribution shall be no more than $300,000 inclusive of the initial $200,000 payment.

- Plaintiffs and all Participating Class Members agree to release any and all claims against QR, QNA, and the alleged "Qimonda Severance Plan" that arise from or relate to the facts and circumstances of this litigation or any other claims against QR or QNA other than claims for wages, salary or benefits or claims that cannot be waived by operation of law. In addition, assuming the Court approves a separate settlement QR and QNA have negotiated with Infineon Technologies AG ("Infineon AG") and Infineon Technologies North America ("Infineon NA"), Plaintiffs and all Participating Class Members agree to release any and all claims against Infineon AG and Infineon NA that arise from or relate to the facts and circumstances of this litigation other than claims that cannot be waived by operation of law.

- Class Counsel will seek approval for attorneys' fees of 33 1/3% of each distribution to the Class Members (without regard to any opt-outs) plus out of pocket expenses of up to $150,000 as payment in full for their work in these cases. These fees, if granted, will come out of each distribution to the Class Members; individual Class Members will not have to pay Class Counsel on their own

- You are free to opt out of the Carey Severance Class and the settlement if you so desire by following the procedure discussed below. If the combined value of all "opt out claims" (including opt outs from all three Classes) exceeds five percent (5%) of the gross value of the claims against the Defendants, the Defendants will have the option to cancel or withdraw from the agreement if they so desire. If the settlement is cancelled, the Settling Parties shall continue in the Carey Severance Lawsuit as if no agreement had ever been reached.

- If the agreement remains in place under any circumstances, though, the settlement consideration will be reduced by the net value of the claims (net of attorneys' fees) of those Class Members who elect to opt out.

The Court has preliminarily approved the settlement for the purposes of notifying all Class Members, but the settlement will not take final effect unless and until the Court decides, at a Final Fairness Hearing, that it is a fair, reasonable, and adequate resolution for each case. The Final Fairness Hearing will take place on _____, 2011 at _____.m. in Courtroom 4 of the United States Bankruptcy Court for the District of Delaware, 824 North Market Street, 5th Floor, Wilmington, Delaware 19801. If the Court decides not to approve the settlement at the Final Fairness Hearing, the Parties have agreed to continue with the litigation as if the settlement had never been reached, and nothing in the Settlement Agreement will be considered to be an admission of liability or a waiver of rights.

How Do I Participate In The Settlement?

TO PARTICIPATE IN THE SETTLEMENT AND RECEIVE YOUR DISTRIBUTION, YOU DO NOT NEED TO DO ANYTHING.

Your Right to be Excluded from the Class

If you wish to be excluded from the Carey Severance Class—which also means to remove yourself from the Class, and is sometimes called "opting out" of the Class—you will not get any money or benefits from the Carey Severance Lawsuit under the settlement. Likewise, if the Court does not approve the settlement and the litigation continues, you will not be entitled to any money or benefits that Class Members receive later. If you opt out, though, you will have the right to bring a claim on your own, through an attorney of your own choosing, against QNA and/or QR on theories of fraud, equitable estoppel, breach of contract and ERISA violations. However, QNA and/or QR may have defenses to your claims, including that the date for filing such claims has passed. If you opt out, you will not be legally bound by the Court's judgments in the Carey Severance Lawsuit.

If you want to opt out of the Class, you must sign and mail the attached Exclusion Form by certified mail, return receipt requested, to Klehr Harrison Harvey Branzburg, LLP, 1835 Market Street, Philadelphia, Pennsylvania 19103, ATTN: Charles A. Ercole. The Exclusion Form must be postmarked by no later than _____, 2011. All Exclusion Forms postmarked after that date will not be effective, and any person who sends a late Exclusion Form will nevertheless be a member of the Class in the Action and will be bound in the same way and to the same extent as all other Class Members, provided that he or she otherwise qualifies as a Class Member.

Objections

If you want to remain a member of the Carey Severance Class, you must next decide whether you approve of the settlement. If you do, and do not wish to object to it, you

need not do anything at this time. However, if you believe that the settlement is unfair, unreasonable, or otherwise improper for any reason, including because of the amount of attorneys' fees, you must make a formal objection to it. To object, you must state, in writing: (1) the name and case number of this case as it appears on the first page of this document; (2) your name, address, and telephone number; (3) your specific objection(s) to the settlement, providing in detail the reason(s) why you believe that the settlement is improper; and (4) whether you intend to appear either in person or through an attorney of your choosing to make the objection at the Final Fairness Hearing.

All objections must be mailed to the Clerk of Court for the United States Bankruptcy Court for the District of Delaware, 824 North Market Street, 3rd Floor, Wilmington, DE 19801. Additionally, copies of each objection must be mailed to (1) Class Counsel, ATTN: Charles A. Ercole, Klehr Harrison Harvey Branzburg, LLP, 1835 Market Street, Philadelphia, Pennsylvania 19103, (2) counsel for the Defendants, ATTN: Jennifer C. Jauffret, Richards, Layton & Finger, P.A., One Rodney Square, 920 North King Street, Wilmington, Delaware 19801 and (3) counsel to the Official Committee of Unsecured Creditors, ATTN: Daniel P. Winikka, Jones Day, 2727 North Harwood Street, Dallas, Texas 75201. All objections must be received by both the Clerk and counsel for both parties no later than _____, 2011.

As noted above, if you choose to make an objection, you have the right to appear either in person or through an attorney of your choosing at the Final Fairness Hearing to make your objection before the Court. You are not required to make your objection either in person or through an attorney. If you elect to retain an attorney for this purpose, though, your attorney must file an appearance and a statement of your objections with the court no later than _____, 2011. Copies of that appearance and the written objections must be mailed to Class Counsel and counsel for the Defendants at their addresses above.

Right to Appear by Counsel

In addition to the right to hire an attorney of your choosing to file objections, you also have the right to be represented by an attorney of your choosing in all other stages of this case. If you elect to hire an attorney, you may be responsible to pay any fees and costs that the attorney charges.

The Court Has No Position on the Merits

Although it has preliminarily approved the settlement, the Court has taken no position on the merits of Plaintiffs' claims or Defendants' defenses.

Additional Information

If you wish to receive any additional information or if you need assistance in this matter, please contact Charles A. Ercole, Klehr Harrison Harvey Branzburg, LLP, at cercole@klehr.com, (215) 569-2700. *Please do not call or contact the Court or Defendants' counsel for information about this case.*

EXCLUSION FORM

Carey, et al. v. Qimonda North America Corp., et al.
United States Bankruptcy Court for the District of Delaware
Adversary Proceeding No. 09-50200

I, the undersigned, have read the foregoing Notice of Proposed Settlement of Class Action, Date and Time of Final Fairness Hearing, and Right to Object to the Proposed Settlement.

☐ **not** want to participate in the above Class Action and **do not** wish to be bound by the outcome of the Class Action or receive any potential benefits of the Class Action.

Signature	Address
Name (print or type)	Telephone
Date	

Send completed form to:
Klehr Harrison Harvey Branzburg, LLP
260 S. Broad Street
Philadelphia, PA 19102-5003

Attn: Charles A. Ercole

EXHIBIT 4

Form of Preliminary Approval Order

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: QIMONDA NORTH AMERICA CORP. and QIMONDA RICHMOND, LLC, Debtors,	Chapter 11 Case No. 09-10589 (MFW) (Jointly Administered)
CARL JACKSON, JULIA LEE, LAKITA BLAIR, LINDA FRAZIER, BONNIE WRIGHT, and CHRISTOPHER SHULL, on behalf of themselves and all others similarly situated, Plaintiffs, v. QIMONDA NORTH AMERICA CORP. and QIMONDA RICHMOND, LLC, Defendants.	Adv. Proc. No. 09-50192 (MFW)
CHERYL MAXEY, LAWRENCE D. MEYER, JACOB EVANS, and CLAUDE EDMONDS, on behalf of themselves and all others similarly situated, Plaintiffs, v. QIMONDA NORTH AMERICA CORP., QIMONDA RICHMOND, LLC, and QIMONDA SEVERANCE PLAN, Defendants.	Adv. Proc. No. 09-50199 (MFW)

BRIAN CAREY and JOHN EARLE, on behalf of themselves and all others similarly situated, Plaintiffs, v. QIMONDA NORTH AMERICA CORP., QIMONDA RICHMOND, LLC, and QIMONDA SEVERANCE PLAN, Defendants.	)	Adv. Proc. No. 09-50200 (MFW)

[PROPOSED] ORDER GRANTING PRELIMINARY APPROVAL OF THE PROPOSED CLASS ACTION SETTLEMENT

Upon considering the Joint Motion (the "Joint Motion") (D.I. ____) of the Plaintiffs and Defendants in the above-captioned adversary proceedings and the Official Committee of Unsecured Creditors (collectively, the "Parties") seeking, *inter alia*, an Order that (1) certifies the remaining uncertified classes for settlement purposes only, subject to Plaintiffs' obligation to demonstrate that the classes satisfy all of the applicable requirements of Federal Rule of Civil Procedure 23 prior to final approval of the settlement; (2) grants preliminary approval of the settlement terms outlined in the settlement agreement (the "Settlement Agreement"), a copy of which is attached as Exhibit A to the Joint Motion; (3) approves the form and manner of notice to class members; and (4) schedules a final fairness hearing for review and final approval of the settlement terms outlined in the Settlement Agreement to take place approximately [90] days after the Preliminary Approval Date, the Court finds as follows:

IT IS HEREBY ORDERED THAT:

1. The Joint Motion is GRANTED as provided herein.

2. In addition to the class that this Court certified in *Jackson et al. v. Qimonda North Am. Corp. et al.*, Adv. Proc. No. 09-50192 (MFW) (D.I. 51), the Court hereby tentatively certifies, for settlement purposes only, classes in the cases of *Maxey et al. v. Qimonda North Am. Corp. et al.*, Adv. Proc. No. 09-50199 (MFW), and *Carey et al. v. Qimonda North Am. Corp. et al.*, Adv. Proc. 09-50200 (MFW). The Court recognizes that the *Maxey* and *Carey* Classes likely meet all of the requirements for class certification in Federal Rule of Civil Procedure ("Federal Rule") 23(a)(1)–(4) and (b)(3). For this certification to become final, however, Plaintiffs must demonstrate that the classes satisfy all of the applicable requirements of Federal Rule 23 prior to final approval of the settlement.

3. The *Maxey* and *Carey* Classes are defined as follows:

a. The "*Maxey* Class" shall consist of any individual who (1) was involuntarily terminated by QNA or QR in late 2008 or early 2009; (2) did not receive severance payments; and (3) is not a member of the *Carey* Class as defined below.

b. The "*Carey* Class" shall consist of any individual who (1) was involuntarily terminated by QNA or QR in late 2008 or early 2009; (2) was offered a Separation Agreement as part of that termination, which Separation Agreement provided for severance payments upon signing a release of claims; (3) was offered a new position with QNA or QR in exchange for declining to execute and return the Separation Agreement and release of claims and, thus, waiving a right to severance payments; (4) did not execute and return the Separation Agreement and, instead, accepted the new position; (5) either never commenced employment in the new position or briefly commenced employment in the new position before being terminated again.

4. The law firm of Klehr Harrison Harvey Branzburg, LLP is appointed to be Class Counsel for both the *Maxey* and *Carey* Classes.

5. In *Maxey*, named plaintiffs Cheryl Maxey, Lawrence D. Meyer, Jacob Evans, and Claude Edmonds are appointed to be Class Representatives.

6. In *Carey*, named plaintiffs Brian Carey and John Earle are appointed to be Class Representatives.

7. The Settlement Agreement is approved as fair and reasonable under the Federal Rule of Bankruptcy Procedure 9019(a) and, subject to ultimate approval at the Fairness Hearing scheduled herein, the Settlement Agreement is preliminarily approved for class action settlement purposes.

8. Notice in the form proposed in the Joint Motion and the Brief in Support and attached to the Settlement Agreement as Exhibits 1 through 3 shall be served by first class mail, postage prepaid, to each potential Class Member at his or her last known address. This form of notice is reasonably and probably calculated, under all of the circumstances, to apprise the Class Members of the settlement and their rights to opt out or object to it and to attend the Fairness Hearing, consistent with the due process requirements under the United States Constitution and Federal Rule 23(c)(2)(B) and 23(e).

9. Class Counsel shall mail this notice to all potential class members within 10 days of the date of this Order.

10. Within 10 days after mailing this notice, Class Counsel shall file and serve a statement under oath constituting proof of such mailing.

11. Class Members must file any objections or elect to opt out of the class on or before _____, 2011.

12. Within 10 days after the opt-out deadline has expired, Class Counsel shall file and serve a statement under oath listing the names of all potential class members who elected to opt out of either the *Maxey* or *Carey* Classes.

13. The Parties shall file any responses to any objections filed by Class Members on or before _____, 2011.

14. The Parties shall be responsible for sending any and all legally mandated notices of the settlement, including those required under Bankruptcy Rule 2002(a)(3) and 28 U.S.C. § 1715(b).

15. The Court shall hold a Fairness Hearing, at which it shall consider whether to grant final approval to the settlement, on _____, 2011 at _____.m. The Court shall hear any objections to the settlement at this time.

IT IS SO ORDERED.

DATED:_____

_____
The Honorable Mary F. Walrath
United States Bankruptcy Court Judge

EXHIBIT 5

Form of Judgment

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: QIMONDA NORTH AMERICA CORP. and QIMONDA RICHMOND, LLC, Debtors,	Chapter 11 Case No. 09-10589 (MFW) (Jointly Administered)
CARL JACKSON, JULIA LEE, LAKITA BLAIR, LINDA FRAZIER, BONNIE WRIGHT, and CHRISTOPHER SHULL, on behalf of themselves and all others similarly situated, Plaintiffs, v. QIMONDA NORTH AMERICA CORP. and QIMONDA RICHMOND, LLC, Defendants.	Adv. Proc. No. 09-50192 (MFW)
CHERYL MAXEY, LAWRENCE D. MEYER, JACOB EVANS, and CLAUDE EDMONDS, on behalf of themselves and all others similarly situated, Plaintiffs, v. QIMONDA NORTH AMERICA CORP., QIMONDA RICHMOND, LLC, and QIMONDA SEVERANCE PLAN, Defendants.	Adv. Proc. No. 09-50199 (MFW)

BRIAN CAREY and JOHN EARLE, on behalf of themselves and all others similarly situated, Plaintiffs, v. QIMONDA NORTH AMERICA CORP., QIMONDA RICHMOND, LLC, and QIMONDA SEVERANCE PLAN, Defendants.	)	Adv. Proc. No. 09-50200 (MFW)

[PROPOSED] JUDGMENT

This matter came for hearing upon the Joint Motion (D.I. __) submitted by the Plaintiffs and Defendants in the above-captioned adversary proceedings and the Official Committee of Unsecured Creditors (collectively, the "Parties") for approval of the settlement set forth in the settlement agreement (the "Settlement Agreement"), a copy of which is attached as Exhibit A to the Joint Motion. Due and adequate notice has since been provided to each of the classes of claimants in the above-captioned adversary proceedings. The Court has reviewed and considered the Settlement Agreement; all of the papers and proceedings in these cases; all of the oral and written comments that it received regarding the terms of the proposed settlement as set forth in the Settlement Agreement; and the record in each of the above-captioned adversary proceedings. With good cause appearing,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:

1. For the purposes of this Judgment, the Court adopts all of the defined terms as they are set forth in the Settlement Agreement.

2. The Court has jurisdiction over the subject matter of each of the above-captioned adversary proceedings, along with jurisdiction over each of the Class Representatives, the Class Members, and the Defendants.

3. As set forth more fully in the Order Granting Final Approval of the Class Action Settlement entered on _____, 2011, the Court has determined that the Class Members received fair and adequate notice of the settlement, and that the settlement represents a fair, just, reasonable, and adequate resolution to these matters. The Parties are therefore directed to perform in accordance with the terms set forth in the Settlement Agreement.

4. Except for the claims of those individuals who have validly and timely requested to be excluded from one of the Classes in this Litigation, all of the Released Claims as specifically defined in the Settlement Agreement are dismissed with prejudice as to the Class Representatives and the other Class Members. The Class Members are hereby ordered to take any steps necessary to comply with all other releases that appear in the Settlement Agreement. Within 5 business days of receiving written notice from the Defendants that their separate settlement with Infineon has become effective and they have received the settlement payment from Infineon, the Class Representatives shall dismiss the Infineon Action with prejudice as to Infineon AG and Infineon NA.

5. Neither the Settlement Agreement nor any act performed or document executed pursuant to or in furtherance of it: (a) is or may be deemed to be or may be used as an admission of, or evidence of, the validity of any Released Claim, or of any wrongdoing or liability of the Released Parties; or (b) is or may be deemed to be or may be used as an admission of, or evidence of, any fault or omission of the Released Parties

in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal. The Released Parties may file the Settlement Agreement and/or this Judgment in any other action that has been or may be brought against them in order to support a defense or counterclaim based on principles of res judicata, collateral estoppel, release, good faith settlement, judgment bar or reduction, claim preclusion, issue preclusion, or any similar defense or counterclaim.

6. Only those Class Members who elected not to opt out of their respective Classes shall be entitled to relief under this Judgment, or to take under the settlement. Neither the Settlement Agreement nor this Judgment create any unpaid residue or residual.

7. For good cause shown, the Court orders that Class Counsel shall receive attorneys' fees of 33 1/3% of each distribution to the Class Members plus reimbursement of out of pocket expenses of up to $150,000 as payment in full for their work in these cases. The Court finds that this fee request is fair and reasonable under the circumstances of these cases.

8. The Court reserves exclusive and continuing jurisdiction over each of the above-captioned adversary proceedings and all of the parties thereto for the sole purpose of supervising the implementation, enforcement, construction, administration, and interpretation of the settlement terms as set forth in the Settlement Agreement and this Judgment.

9. This document shall constitute a judgment for purposes Federal Rule of Civil Procedure 58.

IT IS SO ORDERED.

DATED:_____

_____
The Honorable Mary F. Walrath
United States Bankruptcy Court Judge

EXHIBIT 6

Form of Final Approval Order

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
QIMONDA NORTH AMERICA CORP. and QIMONDA RICHMOND, LLC,	Case No. 09-10589 (MFW)
Debtors,	(Jointly Administered)
CARL JACKSON, JULIA LEE, LAKITA BLAIR, LINDA FRAZIER, BONNIE WRIGHT, and CHRISTOPHER SHULL, on behalf of themselves and all others similarly situated,	
Plaintiffs,	Adv. Proc. No. 09-50192 (MFW)
v.	
QIMONDA NORTH AMERICA CORP. and QIMONDA RICHMOND, LLC,	
Defendants.	
CHERYL MAXEY, LAWRENCE D. MEYER, JACOB EVANS, and CLAUDE EDMONDS, on behalf of themselves and all others similarly situated,	
Plaintiffs,	Adv. Proc. No. 09-50199 (MFW)
v.	
QIMONDA NORTH AMERICA CORP., QIMONDA RICHMOND, LLC, and QIMONDA SEVERANCE PLAN,	
Defendants.	

BRIAN CAREY and JOHN EARLE, on behalf of themselves and all others similarly situated, Plaintiffs, v. QIMONDA NORTH AMERICA CORP., QIMONDA RICHMOND, LLC, and QIMONDA SEVERANCE PLAN, Defendants.	)	Adv. Proc. No. 09-50200 (MFW)

[PROPOSED] ORDER GRANTING FINAL APPROVAL OF THE CLASS ACTION SETTLEMENT

Upon considering the Joint Motion (the "Joint Motion") (D.I. ____) of the Plaintiffs and Defendants in the above-captioned adversary proceedings and the Official Committee of Unsecured Creditors (collectively, the "Parties"), seeking, *inter alia*, an order granting final approval of the settlement terms outlined in the settlement agreement (the "Settlement Agreement") attached to the Joint Motion as Exhibit A, the Court finds as follows:

1. In addition to the class that the Court certified on April 6, 2010, in *Jackson et al. v. Qimonda North Am. Corp. et al.*, Adv. Proc. No. 09-50192 (MFW), the Court tentatively certified classes in *Maxey et al. v. Qimonda North Am. Corp. et al.*, Adv. Proc. No. 09-50199 (MFW), and *Carey v. Qimonda North Am. Corp. et al.*, Adv. Proc. 09-50200 (MFW), for settlement purposes only in its Order Granting Preliminary Approval of the Proposed Class Action Settlement entered on _____, 2011 (D.I. ___). This certification was subject to the Plaintiffs' obligation to demonstrate that the classes

satisfy all of the applicable requirements of Federal Rule of Civil Procedure ("Federal Rule") 23 prior to final approval of the settlement.

2. For good cause shown, the Court finds that the *Maxey* and *Carey* Classes should be certified for settlement purposes only. In this regard, the Court finds that, pursuant to the requirements of Federal Rule 23(a)(1)–(4) and (b)(3) and for the sole purpose of effectuating this settlement:

a. The Members of the *Maxey* and *Carey* Classes are ascertainable and so numerous that joinder of all Class Members is impracticable;

b. There are questions of law or fact common to each Class;

c. The claims of the defined *Maxey* and *Carey* Class Representatives are typical of the claims of their respective Class Members;

d. The *Maxey* and *Carey* Class Representatives have fairly and adequately protected the interests of their respective Class Members;

e. The law firm of Klehr Harrison Harvey Branzburg, LLP, which is serving as Class Counsel for both the *Maxey* and *Carey* Classes, is qualified and well-suited to serve as counsel in these actions; and

f. A class action is superior to other available methods for efficient adjudication of these controversies and common issues predominate over the individual issues in each matter.

3. The members of these classes received due notice of the proposed settlement, as well as information regarding their rights to opt out of the classes, object to

the settlement, and appear in person or by counsel at the Final Fairness Hearing. This notice was proper and sufficient under the circumstances, constitutes the best notice practicable under the circumstances for all of the Class Members, and fully satisfies all due process requirements under the United States Constitution. The Court finds that no other notice is required.

4. The Court held a Final Fairness Hearing on _____, 2011, at which it considered whether to grant final approval to the settlement, offered Class Members the opportunity to raise objections, and gave Plaintiffs, Defendants, and the Committee the opportunity to respond to these objections.

5. After conducting this hearing, the Court specifically finds, based on the test for evaluating fairness under Federal Rule 23(e) set forth in *Girsh v. Jepson*, 521 F.2d 153, 157 (3d Cir. 1975), that:

a. Further litigation in this matter will be complex, expensive, and protracted;

b. The Class Members have reacted favorably to the settlement;

c. Plaintiffs and Defendants engaged in significant discovery to define their positions before entering the settlement;

d. Plaintiffs would have faced significant risks in establishing liability in these cases at trial;

e. Plaintiffs would have faced significant risks in establishing damages in these cases at trial;

f. Plaintiffs would have faced significant risks in maintaining the class action form through trial;

g. It is doubtful that the Defendants could withstand a judgment greater than the amount set forth in the settlement;

h. The settlement falls well within the range of reasonableness when considering the best recovery possible under the circumstances of these cases; and

i. The settlement falls well within the range of reasonableness when considering the risks of continued litigation.

6. Having analyzed the additional factors set forth in *In re Prudential Ins. Co. Am. Sales Litig. Agent Actions*, 148 F.3d 283, 323 (3d Cir. 1998), the Court also finds that the settlement provides a satisfactory method for Class Members to opt out if they so desire; that the amount of attorneys' fees requested is reasonable; and that the procedure for processing individual claims under the settlement is reasonable.

THEREFORE, IT IS HEREBY ORDERED THAT:

1. The *Maxey* and *Carey* Classes are certified for settlement purposes only.

2. The settlement is APPROVED under Federal Rule 23(e) as a fair, just, reasonable, and adequate resolution to these matters. The Parties are hereby authorized to implement the settlement according to its specified terms as outlined in the Settlement Agreement.

3. The Class Members who did not opt out of the settlement, along with their successors and assigns, have fully released and discharged any and all claims as set forth in the Settlement Agreement. Any proof of claim asserting a Released Claim and filed by a Class Member who did not opt out is deemed withdrawn as it relates to such Released Claim.

IT IS SO ORDERED.

DATED:_____

_____
The Honorable Mary F. Walrath
United States Bankruptcy Court Judge

EXHIBIT 7

Listing of Potential Members of the Severance Classes

TO BE FILED

EXHIBIT 8

Listing of Potential Members of the WARN Class

TO BE FILED

CERTIFICATE OF SERVICE

I, Amanda M. Winfree, hereby certify that on May 13, 2011, I caused one copy of the foregoing document to be served upon the parties on the attached service list via first class mail.

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Multi Case Docketing :

09-10589-MFW Qimonda Richmond, LLC
Type: bk Chapter: 11 v Office: 1 (Delaware)
Assets: y Judge: MFW
Case Flag: CLMSAGNT, MEGA, PlnDue, DsclsDue, LEAD, APPEAL

09-50192-MFW Jackson et al v. Qimonda Richmond, LLC et al
Type: ap Office: 1 (Delaware) Judge: MFW
Lead Case: 1-09-bk-10589 Case Flag: NONPREF

09-50199-MFW Maxey et al v. Qimonda North America Corp., et al
Type: ap Office: 1 (Delaware) Judge: MFW
Lead Case: 1-09-bk-10589 Case Flag: ANSDue

09-50200-MFW Carey et al v. Qimonda North America Corp., et al
Type: ap Office: 1 (Delaware) Judge: MFW
Lead Case: 1-09-bk-10589

U.S. Bankruptcy Court

District of Delaware

Notice of Electronic Filing

The following transaction was received from Amanda Marie Winfree entered on 5/13/2011 at 5:37 PM EDT and filed on 5/13/2011
Case Name: Qimonda Richmond, LLC
Case Number: 09-10589-MFW
Document Number: 2290
Case Name: Jackson et al v. Qimonda Richmond, LLC et al
Case Number: 09-50192-MFW
Document Number: 55
Case Name: Maxey et al v. Qimonda North America Corp., et al
Case Number: 09-50199-MFW
Document Number: 38
Case Name: Carey et al v. Qimonda North America Corp., et al
Case Number: 09-50200-MFW
Document Number: 33

Docket Text:
Motion to Approve *// Joint Motion for Preliminary Approval of Class Action Settlement* Filed by OFFICIAL COMMITTEE OF UNSECURED CREDITORS. Hearing scheduled for 6/3/2011 at 10:30 AM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #4, Wilmington, Delaware. Objections due by 5/27/2011. (Winfree, Amanda)

The following document(s) are associated with this transaction:

Document description:Main Document
Original filename:C:\fakepath\q motion (00517049).PDF
Electronic document Stamp:
[STAMP bkecfStamp_ID=983460418 [Date=5/13/2011] [FileNumber=9651958-0] [3ea80f280a64e5edb6c7d20dcac0bd25e9ebb6d4bbf8277840ce36e86d8474789deb 515e554331cdbd32b834bc3db8f2c56d8b952b2d105e16055ec23103c60b]]
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[STAMP bkecfStamp_ID=983460418 [Date=5/13/2011] [FileNumber=9651958-1] [798b3ee44dc1fa175eea65e204b164cd991961fb30f7d618c88699301cae5a6cea2f aad7c7a9020efa303911b5fc72505b7c6e35c3ec4e0597addd3a47fff833]]
Document description:Exhibit A
Original filename:C:\fakepath\q motion A (00517051).PDF
Electronic document Stamp:
[STAMP bkecfStamp_ID=983460418 [Date=5/13/2011] [FileNumber=9651958-2] [9e4f0c04e30ce8288fed0d67ff41d6a39ac4c9b0a9827b6b5927976c08424a22eb27

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	
QIMONDA NORTH AMERICA CORP. and QIMONDA RICHMOND, LLC,	Chapter 11
Debtors,	Case No. 09-10589 (MFW)
	(Jointly Administered)
	Hearing Date: June 3, 2011 at 10:30 a.m. **Objection Deadline: May 27, 2011 at 4:00 p.m.**
CARL JACKSON, JULIA LEE, LAKITA BLAIR, LINDA FRAZIER, BONNIE WRIGHT, and CHRISTOPHER SHULL, on behalf of themselves and all others similarly situated,	
Plaintiffs,	
v.	Adv. Proc. No. 09-50192 (MFW)
QIMONDA NORTH AMERICA CORP. and QIMONDA RICHMOND, LLC,	
Defendants.	
CHERYL MAXEY, LAWRENCE D. MEYER, JACOB EVANS, and CLAUDE EDMONDS, on behalf of themselves and all others similarly situated,	
Plaintiffs,	
v.	Adv. Proc. No. 09-50199 (MFW)
QIMONDA NORTH AMERICA CORP., QIMONDA RICHMOND, LLC, and QIMONDA SEVERANCE PLAN,	
Defendants.	

DKT. NO. 2291/56/39/34

DT. FILED 5/13/11

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BRIEF IN SUPPORT OF JOINT MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

The Parties,[1] by and through their undersigned counsel, collectively submit this Brief in Support of their Joint Motion seeking, among other relief, preliminary approval of the terms of the class action settlement, as set forth in the settlement agreement attached to the Joint Motion as Exhibit A ("Settlement Agreement") that the parties have negotiated. The proposed Settlement Agreement provides valuable consideration to the named Plaintiffs and the members of the classes in each of the above-captioned adversary proceedings; provides adequate and appropriate notice to all affected persons; and provides a mechanism for members of the class and putative classes to opt out of, or object to, the terms of the Settlement Agreement. The Parties agree that the terms of the settlement are fair, just, and reasonable, and that preliminary approval of the Settlement Agreement is warranted.

This Court has jurisdiction over the Joint Motion pursuant to 28 U.S.C. §§ 157(b)(1)-(2), 1331, and 1334. This Court is a proper venue for this proceeding pursuant to 28 U.S.C. §§ 1408(2) and 1409(e). Section 105 of the Bankruptcy Code, Federal Rules of Bankruptcy Procedure 7023 and 9019 ("Bankruptcy Rule"), and Federal Rule of Civil Procedure 23 ("Federal Rule") provide the predicates for the relief sought herein.

[1] For the purposes of the Joint Motion and the related documents, the term "Parties" refers to: (1) the collective group of "Plaintiffs," including (a) Carl Jackson, Julia Lee, Lakita Blair, Linda Frazier, Bonnie Wright, and Christopher Shuli, on behalf of themselves and all others similarly situated (collectively, the "*Jackson* Plaintiffs"); (b) Cheryl Maxey, Lawrence D. Meyer, Jacob Evans, and Claude Edmonds, on behalf of themselves and all others similarly situated (collectively, the "*Maxey* Plaintiffs"); and (c) Brian Carey and John Earle, on behalf of themselves and all others similarly situated (collectively, the "*Carey* Plaintiffs"); (2) the Defendants and Debtors, Qimonda North America Corp. ("QNA") and Qimonda Richmond, LLC ("QR") (collectively, the "Debtors"); and (3) the Official Committee of Unsecured Creditors (the "Committee").

I. PROCEDURAL HISTORY

A. Jackson

On February 20, 2009, QNA and QR filed voluntary petitions with this Court for relief under Chapter 11 of Title 11 of the United States Code. Shortly thereafter, three groups of plaintiffs filed Class Action Adversary Proceedings against the Debtors.[2]

The *Jackson* Plaintiffs[3] filed a Complaint on February 20, 2009, claiming that they, along with other similarly situated individuals, were involuntarily terminated without cause from their employment at Debtors' Cary, North Carolina and Sandston, Virginia facilities on or about February 3, 2009, without receiving at least 60 days' advance written notice as required by the Worker Adjustment and Retraining Notification Act, 29 U.S.C. § 2101 et seq. (the "WARN Act"). (Adv. Proc. No. 09-50192 ("*Jackson*") D.I. 1.) The *Jackson* Plaintiffs filed a First Amended Complaint on June 15, 2009 (*Jackson* D.I. 20), which the Debtors answered on July 8, 2009 (*Jackson* D.I. 25). On November 3, 2009, the *Jackson* Plaintiffs filed a Second Amended Complaint (*Jackson* D.I. 34), which the Debtors answered on November 16, 2009 (*Jackson* D.I. 36). The Debtors have denied liability and asserted several affirmative defenses, including that the Debtors were exempt from the WARN Act's notice requirements pursuant to the "faltering company" and "unforeseeable business circumstances" exceptions to the WARN Act, and that even if the Debtors were found to have violated the WARN Act, the Act's "good faith" exception would apply to reduce or eliminate the Debtors' liability.

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[2] "Qimonda Severance Plan" is also named as a defendant in the *Maxey* and *Carey* actions. The Debtors contend that no such entity exists.

[3] As filed originally, the *Jackson* suit featured only two named plaintiffs—Carl Jackson and Julia Lee. The other named plaintiffs in that action as it stands today—Lakita Blair, Linda Frazier, and Bonnie Wright—filed a virtually identical action on the same day, Adv. Proc. No. 09-50193. The Court consolidated those actions on June 15, 2009. (*Jackson* D.I. 20.)

On April 6, 2010, pursuant to a joint motion filed by the Plaintiffs and the Debtors, the Court certified a class of litigants in *Jackson* (the "*Jackson* Class") and appointed the law firms of Outten & Golden LLP and Klehr Harrison Harvey Branzburg, LLP, as class counsel. (*Jackson* D.I. 51.) Notice was sent to 1,280 class members on April 26, 2010. (*Jackson* D.I. 52, 53.) Only five elected to opt out of the class. Thus, the *Jackson* Class currently consists of 1,275 former employees of the Debtors.

B. Maxey

On February 22, 2009, the *Maxey* Plaintiffs filed a Complaint, claiming that, as a result of layoffs at various facilities of the Debtors throughout North America in late 2008 and early 2009, they and a class of similarly situated individuals were terminated without cause and without receiving severance that the Debtors were legally obligated to pay pursuant to written agreements, an ERISA plan, or a policy and practice of paying severance. (Adv. Proc. No. 09-50199 ("*Maxey*") D.I. 1.) As set forth in the Settlement Agreement, these individuals are distinct from those in the *Carey* case discussed below.

The *Maxey* Plaintiffs filed an Amended Complaint on April 3, 2009. (*Maxey* D.I. 9.) Due to ongoing settlement discussions and an agreed-upon informal stay of proceedings between the Plaintiffs and the Debtors, the Debtors have not yet answered the Amended Complaint, which alleges breach of contract and ERISA claims. The Debtors, however, have indicated to the Plaintiffs that they plan to assert various defenses to the claims raised in *Maxey*, including that: (1) the Amended Complaint fails to state a cause of action; (2) the claims are barred by waiver, unjust enrichment, accord and satisfaction, failure to mitigate damages, or failure of consideration; (3) attorneys' fees are inappropriate and may not be awarded in view of, among other things, Bankruptcy

Rule 7008(b); (4) none of the claims in *Maxey* are entitled to priority under the Bankruptcy code or otherwise; (5) the Plaintiffs' claims against QR are barred because QR was not the Plaintiffs' employer and it did not enter into a written separation agreement with any employee of QNA; (6) the Plaintiffs' claims against the Qimonda Severance Plan are barred because such plan does not exist, is not a legal entity, and is not a proper party to this action; (7) ERISA does not apply in this case as no ERISA-covered severance plan, or any other severance plan, existed, and in any event the Plaintiffs' claims are barred by their failure to satisfy the administrative prerequisites to maintenance of a civil action under ERISA; and (8) to the extent that QNA assumed any obligation to pay severance benefits, the agreement to provide those benefits would be voidable as a fraudulent transfer under Section 548(a) of the Bankruptcy Code. The Parties have not yet sought to certify a class in *Maxey*.

C. Carey

Finally, the *Carey* Plaintiffs also filed a Complaint on February 22, 2009, alleging that they and a class of similarly situated individuals were terminated without cause as a result of layoffs at QR's Sandston, Virginia facility in late 2008 or early 2009. Each *Carey* Plaintiff claims that he or she: (1) was offered a Separation Agreement as part of that termination, which Separation Agreement provided for severance payments upon signing a release of claims; (2) was offered a new position with one of the Debtors in exchange for declining to execute and return the Separation Agreement and release of claims and, thus, waiving a right to severance payments; (3) did not execute and return the Separation Agreement and, instead, accepted the new position; and (4) either never commenced employment in the new position or briefly commenced employment in the

new position before being terminated again. (*Carey* D.I. 1.) The Complaint alleges ERISA violations as well as fraud and equitable estoppel. The Debtors answered the Complaint on April 23, 2009, denying liability and asserting various affirmative defenses, including that: (1) the Complaint fails to state a cause of action; (2) the claims are barred by waiver, estoppel, and/or unclean hands; (3) attorneys' fees are inappropriate and may not be awarded in view of Bankruptcy Rule 7008(b); (4) none of the claims in *Carey* are entitled to priority under the Bankruptcy Code or otherwise; (5) the claims are barred because the Debtors acted truthfully and in good faith, any reliance by the *Carey* Plaintiffs was unreasonable, and the *Carey* Plaintiffs failed to mitigate damages; (6) the Plaintiffs' claims against the Qimonda Severance Plan are barred because such plan does not exist, is not a legal entity, and is not a proper party to this action; (7) ERISA does not apply in this case as no ERISA-covered severance plan, or any other severance plan, existed, and in any event the Plaintiffs' claims are barred by their failure to satisfy the administrative prerequisites to maintenance of a civil action under ERISA; and (8) the claims are barred by the statute of frauds, failure of consideration, and/or accord and satisfaction. (*Carey* D.I. 13.) The Parties have not yet sought to certify a class in *Carey*.

D. Settlement Process

A joint status conference was held on February 22, 2010, with respect to all three cases. The Court entered identical Stipulated Confidentiality Agreements and Protective Orders in each case on March 19, 2010. (*Jackson* D.I. 40, 48; *Maxey* D.I. 31, 34; *Carey* D.I. 26, 29.)

Recognizing the costs and risks attendant to litigation, as well as the uncertainties inherent in the bankruptcy process, the Parties have been discussing potential settlement

terms in *Jackson*, *Maxey*, and *Carey* for more than a year. In furtherance of these discussions, the Plaintiffs and the Debtors have engaged in extensive informal exchanges of information, including determination of the scope of each class, comprehensive analysis of possible damages in all three cases, and production of thousands of pages of documents relating to the merits of the Plaintiffs' claims, the strength of Debtors' defenses, and the ultimate scope of potential damages.

In April and May of 2010, the Plaintiffs and the Debtors exchanged detailed position papers outlining their legal positions. The Parties then met on May 20, 2010, for a first round of settlement discussions. These discussions continued on and off throughout the summer and fall of 2010. On November 22, 2010, the Parties took part in a full day of mediation in New York, presided over by James L. Garrity, Jr., Esq., a former Judge of the U. S. Bankruptcy Court for the Southern District of New York. Extensive settlement negotiations continued in the weeks following the mediation and culminated in a settlement in principle on or about February 11, 2011.

II. TERMS OF THE SETTLEMENT AGREEMENT

The Parties fully memorialized the terms of the settlement in the Settlement Agreement, attached to the Joint Motion as Exhibit A. The principal terms of the Settlement Agreement are as follows:[4]

- The parties agree to certification, for settlement purposes only, of the following additional classes:[5]

[4] The summary of the principal terms of the Settlement Agreement set forth herein is solely for the convenience of the Court and parties in interest and shall not be construed to modify terms of the Settlement Agreement in any respect. If there is any inconsistency between the summary and the Settlement Agreement, the terms of the Settlement Agreement control. Capitalized terms not otherwise defined herein have the meanings given to such terms in the Settlement Agreement.

[5] As noted above, the *Jackson* Class was certified on April 6, 2010. (*Jackson* D.I. 51.)

- The "*Maxey* Class" shall consist of any individual who: (1) was involuntarily terminated by QNA or QR in late 2008 or early 2009; (2) did not receive severance payments; and (3) is not a member of the *Carey* Class as defined below. Named Plaintiffs Cheryl Maxey, Lawrence D. Meyer, Jacob Evans, and Claude Edmonds shall be appointed Class Representatives for the *Maxey* Class.

- The "*Carey* Class" shall consist of any individual who: (1) was involuntarily terminated by QNA or QR in late 2008 or early 2009; (2) was offered a Separation Agreement as part of that termination, which Separation Agreement provided for severance payments upon signing a release of claims; (3) was offered a new position with QNA or QR in exchange for declining to execute and return the Separation Agreement and release of claims and, thus, waiving a right to severance payments; (4) did not execute and return the Separation Agreement and, instead, accepted the new position; (5) either never commenced employment in the new position or briefly commenced employment in the new position before being terminated again. Named Plaintiffs Brian Carey and John Earle shall be appointed Class Representatives for the *Carey* Class.

- Plaintiffs and all Participating Class Members agree to release any and all claims against QR, QNA, and the alleged "Qimonda Severance Plan" that arise from or relate to the facts and circumstances of this litigation or any other claims against QR or QNA other than claims for wages, salary or benefits or claims that cannot be waived by operation of law. In addition, assuming the Court approves a separate settlement QR and QNA have negotiated with Infineon Technologies AG ("Infineon AG") and Infineon Technologies North America ("Infineon NA"), Plaintiffs and all Participating Class Members agree to release any and all claims against Infineon AG and Infineon NA that arise from or relate to the facts and circumstances of this litigation other than claims that cannot be waived by operation of law.

- The Debtors agree to provide Plaintiffs with the following:

  - An allowed claim against QNA pursuant to section 507(a)(5) of the Bankruptcy Code in the total amount of $8.0 million. Of this amount, $4.5 million will be paid within five business days after the Settlement Agreement becomes effective by its terms, and the remaining $3.5 million will be paid within five business days after a QNA plan of liquidation becomes effective. If QNA is ultimately unable to satisfy such claim, QR will be liable to satisfy any shortfall.

  - A $10 million allowed, general unsecured claim against QR.

- A $17 million allowed, general unsecured claim against QNA; provided that the first $1.75 million of any distributions made on account of this claim will be paid to the Settlement Administrator, for the benefit of the Class Members, and any distribution thereafter will be paid fifty percent (50%) to the Settlement Administrator, for the benefit of the Class Members, and fifty percent (50%) to QR.

- Fees and costs the Court may award to Plaintiffs' counsel will be paid solely out of payments or distributions on the three claims outlined above.

- The Debtors and the Committee will work with Plaintiffs' counsel in good faith to reach agreement on necessary reserves and timing on initial and interim distributions on general unsecured claims under any QNA liquidation plan.

- Payments shall be allocated among the Class Representatives and Class Members as set forth in the Settlement Agreement. The Class Representatives and Class Counsel shall have the sole responsibility for administering these payments for the benefit of all Class Members, or for retaining an administrator to do so. The Debtors shall have no responsibility or obligation with respect to the apportionment and allocation of payments among the Class Members.

- The parties will share the cost of administering the payments and the cost of the Employer portion of payroll taxes related to settlement distributions to the Class Members in the following manner: QNA' estate will pay the first $200,000 of these combined costs, with the remainder being shared equally between QNA's estate and the Class Members (each paying fifty percent (50%) of these costs), provided, however, that QNA's total contribution shall be no more than $300,000 inclusive of the initial $200,000 payment.

- Class Counsel will file a motion seeking Court approval for attorneys' fees of 33 1/3% of each distribution to the Class Members, as well as reimbursement for out-of-pocket costs of $150,000 (including $50,000 towards cost of third party administration of the settlement), as payment in full for their work in these cases. The Debtors and the Committee will not oppose Class Counsel's request.

- The settlement consideration will be reduced by the net value of the claims (net of attorneys' fees) of those Class Members who elect to opt out.

- The settlement is contingent on the value of opt-outs equaling less than five percent (5%) of the gross amount of claims; if opt-outs total more

than 5% of the gross amount of claims, the Debtors will have the option to cancel or withdraw from the settlement.

- The settlement will become effective only after: (1) the Court preliminarily approves the Settlement Agreement; (2) the Court approves the Settlement Agreement on a final basis by entering an Order and Judgment dismissing the *Jackson*, *Maxey*, and *Carey* actions with prejudice; and (3) the Order and Judgment is either affirmed on appeal, the last remaining appeal challenging it is dismissed with prejudice, or, if no appeal is filed, the time for filing an appeal expires; provided, however, that the parties may agree to have the settlement become effective notwithstanding a pending appeal of the order approving the settlement on a final basis.

- If the Court does not approve the settlement, the Debtors expressly reserve all rights to challenge all claims and allegations in *Jackson*, *Maxey* and *Carey* upon all legal, procedural, and factual grounds, including but not limited to the ability to assert any defense, privilege, or counterclaim.

The Class Representatives and Class Counsel believe that this settlement is fair and reasonable, and that it offers satisfactory consideration for the class members in exchange for a full release of liability related to the facts and circumstances underlying this litigation. Likewise, the Debtors and the Committee believe that the settlement falls well within the range of reasonableness, and that resolving these matters through settlement is in the best interest of Debtors' estates and their creditors.

III. BASIS FOR RELIEF SOUGHT

In this Joint Motion, the Parties respectfully request that the Court enter an order that: (1) certifies the remaining uncertified classes for settlement purposes only, subject to the Plaintiffs' obligation to demonstrate that the classes satisfy all of the applicable requirements of Federal Rule 23 prior to final approval of the settlement; (2) grants preliminary approval of the settlement terms as outlined in the Settlement Agreement; (3) grants approval of the settlement under Bankruptcy Rule 9019(a); (4) approves the form and manner of notice to class members; and (5) schedules a final fairness hearing

for review and final approval of the settlement terms as outlined in the Settlement Agreement to take place approximately 60 days after the Preliminary Approval Date. A proposed order to that effect is attached to the Joint Motion as Exhibit B.

A. The Court should recognize that the *Maxey* and *Carey* classes likely satisfy the requirements for class certification, subject to Plaintiffs' duty to demonstrate as much prior to final approval of the settlement.

The approval process for a class settlement includes two components—certifying any uncertified classes and granting final approval. As discussed above, this Court has certified the *Jackson* Class, but has not yet certified the *Maxey* and *Carey* Classes, which it must do before granting final approval of the settlement. A class may only be certified if it meets each of the four prerequisites for certification in Federal Rule 23(a)(1) through (4) and at least one of the requirements in Federal Rule 23(b). *See Baby Neal v. Casey*, 43 F.3d 48, 55 (3d Cir. 1994). These requirements must be met regardless of whether the parties seek certification for trial or for settlement purposes only. *In re Prudential Ins. Co. Am. Sales Litig. Agent Actions*, 148 F.3d 283, 307–08 (3d Cir. 1998).

At this stage, the Parties ask the Court to acknowledge that these standards are likely satisfied for the purposes of granting preliminary approval of the Settlement Agreement. However, the Parties acknowledge that the Plaintiffs have an obligation to demonstrate that the *Maxey* and *Carey* classes satisfy all of the applicable requirements of Federal Rule 23 prior to final approval of the Settlement Agreement.

B. The Court should grant preliminary approval of the Settlement Agreement and schedule a final fairness hearing.

The Court should also preliminarily approve the Settlement Agreement and schedule a final fairness hearing. Ordinarily, a court reviewing a proposed class action settlement will evaluate whether the agreement was obtained fairly before issuing notice

to class members. *See In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prods. Liability Litig.*, 55 F.3d 768, 785 (3d Cir. 1995) ("*GM Trucks*"). "The judge must make a preliminary determination on the fairness, reasonableness, and adequacy of the settlement terms and must direct the preparation of notice of the certification, proposed settlement, and date of the final fairness hearing." Manual for Complex Litigation (Fourth) § 21.632 (2004).

This inquiry is free from the strictures involved in the final review process; the Court "is required to determine only whether the proposed settlement discloses grounds to doubt its fairness or other obvious deficiencies such as unduly preferential treatment of class representatives or segments of the class, or excessive compensation of attorneys, and whether it appears to fall within the range of possible approval." *Mehling v. New York Life Ins. Co.*, 246 F.R.D. 467, 472 (E.D. Pa. 2007) (quotation omitted). Indeed, the analysis is satisfied with basic indicia of fairness, including that: (1) the negotiations were conducted at arm's length; (2) the parties engaged in sufficient discovery; (3) the settling parties (through their counsel) have experience in class litigation; and (4) only a fraction of class members object. *See GM Trucks*, 55 F.3d at 785. The settlement falls well "within the range of possible approval" under this standard, e considering the strong judicial policy favoring resolution of litigation before trial. *See id.* at 805.

First, the Parties engaged in arm's length negotiations, each with representation by competent, experienced counsel who engaged in extensive bargaining for over a year, including a formal mediation with a former U. S. Bankruptcy Court Judge and multiple informal sessions conducted in person as well as via letter, e-mail, and telephone

conference. The proposed Settlement Agreement is the result of these hard-fought, non-collusive efforts.

Second, the Parties engaged in significant informal exchanges of information prior to reaching the proposed Settlement Agreement, including determination of the scope of the class, comprehensive analysis of potential damages, and production of thousands of pages of documents relating to the merits of the Plaintiffs' claims, to the Debtors' defenses, and to damages. These efforts helped elucidate the range of possible issues for all Parties, and made it clear to the Parties that settlement is preferable to continued litigation over the complex matters involved in these cases.

Third, the Plaintiffs' counsel are highly skilled practitioners with decades of relevant experience between them. The attorneys for the Debtors and the Committee are similarly familiar with class action litigation. Counsel for all parties understand the significance of settlement in this arena, and have advised their clients of the benefits and drawbacks of settlement.

Finally, because the *Maxey* and *Carey* Classes have not yet been certified, it is impossible to state with certainty whether putative Class Members will object to the class format. But the *Jackson* Class has been certified, and only five out of 1,280 putative class members (approximately 0.4% of the total class) elected to opt out. This minuscule number demonstrates that the *Jackson* Class is generally satisfied with the approach taken in this matter. The Parties expect similar results with the *Maxey* and *Carey* Classes.

Accordingly, the Parties respectfully submit that the Court should preliminarily approve the Settlement Agreement and send notice to the Class Members in the form described in Section II.C below.

C. The Court should approve the settlement under Bankruptcy Rule 9019(a).

In bankruptcy cases, a court must also review a settlement to determine whether it is in the best interests of the debtor's estate, and it may approve a settlement on a motion by the debtor and after notice and a hearing have occurred. *See* Bankruptcy Rule 9019(a); *In re Nationwide Sports Distribs., Inc.*, 227 B.R. 455, 461 (Bankr. E.D. Pa. 1998); *see also* 11 U.S.C. § 105(a) (empowering the Court to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions" of the Bankruptcy Code). Settlements are preferred in bankruptcy proceedings because they minimize the costs of litigation and aid in the administration of the debtor's estate. *Myers v. Martin*, 91 F.3d 389, 393 (3d Cir. 1996) ("To minimize litigation and expedite the administration of a bankruptcy estate, '[c]ompromises are favored in bankruptcy.'" (quoting 9 Collier on Bankruptcy ¶ 9019.03[1] (15th ed. 1993))); *In re Coram Healthcare Corp.*, 315 B.R. 321, 329 (Bankr. D. Del. 2004) ("Compromises are generally favored in bankruptcy.").

In reviewing a proposed settlement, the Court must determine whether the proposed compromise is "fair and equitable." *Protective Comm. for In. Stockholders of TMT Trailer Ferr, Inc. v. Anderson*, 390 U.S. 414, 424 (1968). Courts have described the ultimate inquiry to be whether "the compromise is fair, reasonable, and in the interest of the estate." *In re Louise's, Inc.*, 211 B.R. 798, 801 (D. Del. 1997); *see also In re Marvel Entm't Group, Inc.*, 222 B.R. 243, 250 (D. Del. 1998) (finding that the terms of a settlement agreement were "fair and reasonable," and settlement did "not unfairly impact unsecured creditors" and was "in the best interests of the estate"). Bankruptcy Rule 9019(a) commits the approval or rejection of a proposed settlement to the sound

discretion of the bankruptcy court. *Louise's* 211 B.R. at 801; *In re Michael*, 183 B.R. 230, 232 (Bankr. D. Mont. 1995).

Of course, a court must carefully review a settlement to determine whether it is a reasonable compromise, but it need not determine that the parties reached the best possible settlement under the facts. *In re Key3Media Group, Inc.*, 336 B.R. 87, 92–93 (Bankr. D. Del. 2005). "The court is not supposed to have a 'mini-trial' on the merits, but should 'canvass the issues to see whether the settlement falls below the lowest point in the range of reasonableness.'" *In re Jasmine, Ltd.*, 258 B.R. 119, 123 (D.N.J. 2000) (quotation omitted); *see also In re Coram Healthcare Corp.*, 315 B.R. at 330 (noting that a settlement should be approved unless it falls below "the lowest point in the range of reasonableness."). In this inquiry, bankruptcy courts should consider: "(i) the probability of success in litigation; (ii) the likely difficulties in collection; (iii) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; and (iv) the paramount interest of the creditors." *Fry's Metals, Inc. v. Gibbons (In re RFE Indus., Inc.)*, 283 F.3d 159, 165 (3d Cir. 2002) (citing *Martin*, 91 F.3d at 393); *In re Etoys, Inc.*, 331 B.R. 176, 198 (Bankr. D. Del. 2005); *In re Coram Healthcare Corp.*, 315 B.R. at 330.

Here, approval of the Settlement Agreement is manifestly in the best interests of the Debtors' estates and will both minimize litigation and expedite the administration of the chapter 11 cases. Specifically, the Settlement Agreement avoids the need for complex and expensive class-action litigation. Furthermore, because such litigation would potentially be drawn out over several years and would have a material effect on the aggregate amount of priority claims that may be allowed, litigation rather than

settlement would engender a delay that could postpone the ability to proceed with a plan of liquidation and the ultimate liquidation of the Debtors' estates. The Debtors and the Committee have determined, based on their business judgment, that the Settlement Agreement, which both the Debtors and the Committee jointly negotiated, is fair, reasonable and strikes the approximate balance between the potential upside benefits and downside risks of pursuing such litigation.

The Debtors and their advisors have spent more than a year working closely with the Committee and its professionals to research the merits of the Plaintiffs' claims as well as the strength of the Debtors' defenses. While the Debtors and the Committee believe that there are strong arguments to defeat most, if not all, of the Plaintiffs' claims, the ultimate outcome of litigation over those claims is uncertain. In addition, the terms of the Settlement Agreement were reached through protracted and arm's length negotiations and each of the Debtors, the Committee and the Plaintiffs was represented by competent counsel throughout the process.

Moreover, each factor that courts have used to determine whether a settlement falls within the adequate range of reasonableness weighs in favor of approving the Settlement Agreement. First, as discussed above, the potential results at trial are by no means certain. The Plaintiffs in these three actions have raised numerous complex allegations and claims, including ERISA violations as well as claims of fraud and equitable estoppel, and the Debtors have offered numerous affirmative defenses, many of which, like "faltering company," "unforeseen business circumstances" and fraudulent transfer, are fact intensive. Success on the merits can hardly be guaranteed for either party, making settlement a particularly attractive option in this case.

The second factor plays a less significant role here given that the litigation does not involve affirmative claims of the Debtors to collect from the Plaintiffs, and the Plaintiffs' difficulties in collection are the hurdles inherent in the bankruptcy process. Still, the settlement will minimize litigation expenses and will also facilitate the Debtors' ability to proceed with plans of liquidation, which should both increase the chance that the estates will be able to make distributions to claimants in a timely manner.

Third, because litigation in these cases will be complex and expensive, settlement at an early stage makes sense. If the Parties were required to resolve these disputes at trial, they would face an extended period of additional litigation, with all of the attendant costs and time commitments. Resolving these matters now makes financial sense for all involved, and it ensures that these disputes will be resolved in a matter of months, not years.

Finally, as evidenced by the Committee's support of this Joint Motion, the terms of the Settlement Agreement are in the best interest of creditors. The ultimate approval of the Settlement Agreement will remove one of the key impediments to the liquidation of the Debtors' estates and the corresponding distributions to creditors, and it will remove any risk of diminished recoveries if the Debtors and Committee were ultimately unable to prevail on the underlying actions.

For all of these reasons, the Court should approve the Settlement Agreement under Bankruptcy Rule 9019(a).

D. The proposed form of notice to the Class Members is the best notice practicable under the circumstances.

If the Court preliminarily approves the Settlement Agreement and schedules a final fairness hearing, then the Class Members must be notified. *See* Federal Rule

23(c)(2) and (e)(1). For classes certified under Federal Rule 23(b)(3), "the court must direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." Federal Rule 23(c)(2)(B). Such notice must be sent to the Class Members in advance of the final fairness hearing so that these individuals may have a full and fair opportunity to object.

The Parties submit that sending this notice by first class mail, postage prepaid, to each potential Class Member at his or her last known address is the best notice practicable under the circumstances. *See Parks v. Portnoff Law Assocs.*, 243 F. Supp. 2d 244, 250 (E.D. Pa. 2003) (noting that this form of notice is appropriate); Manual for Complex Litigation (Fourth) § 21.311 (2004) (stating that such notice is preferred when the names and addresses of most class members are known).

As for content, the notices must explain in clear, concise, and easily understood language: (1) "the nature of the action"; (2) "the definition of the class certified"; (3) "the class claims, issues, or defenses"; (4) "that a class member may enter an appearance through an attorney if the member so desires"; (5) "that the court will exclude from the class any member who requests exclusion"; (6) "the time and manner for requesting exclusion"; and (7) "the binding effect of a class judgment on members under Rule 23(c)." Federal Rule 23(c)(2)(B)(i)–(vii). The notices also must reasonably inform class members of the settlement and their rights under it. Federal Rule 23(e)(1); *In re Prudential Ins. Co.*, 148 F.3d at 327.

Mindful of these standards, the Parties propose that the Notices of Class Certification of Proposed Settlement of Class Action and Fairness Hearing attached to the

Settlement Agreement as Exhibits 1 through 3 be used for these purposes and be sent by first class mail, postage prepaid, to each potential Class Member at his or her last known address. These notices meet all of the above requirements by briefly summarizing the litigation and the terms of the settlement; by explaining the bounds of the classes and their claims against the Debtors; by providing information on opting out, filing objections, and appearing through counsel; by noting the relevant time limits; and by explaining the binding nature of this settlement if the member elects not to opt out.

As for timing, no "standard" notice period exists; rather, courts have broad discretion to fashion a reasonable time frame under the circumstances. *See Harris v. Reeves*, 761 F. Supp. 382, 393 (E.D. Pa. 1991). In this regard, the Parties propose that Class Counsel will send the notices to class members within 10 days of the date that this Court issues an Order Granting Preliminary Approval of the Proposed Settlement. Class Counsel will then file and serve a statement under oath in this Court within 10 days after mailing these notices as proof of mailing.

The Parties propose that Class Members must file any objections at least 20 days prior to the final approval hearing (which will be at least 30 days from mailing of the notices) and make any election to opt out of the class at least 10 days prior to the final approval hearing. Within 2 business days after the opt-out deadline has expired, Class Counsel shall file and serve a statement under oath listing the names of all potential class members who elected to opt out of either the *Maxey* or *Carey* Classes. Likewise, the Parties request that they have the option to file responses to any objections no later than 10 days prior to the hearing on final approval. These deadlines provide all involved with a reasonable amount of time to weigh their options without unduly delaying these cases.

The Parties also request that the Court schedule the final fairness hearing to take place approximately 60 days after the preliminary approval date.

Finally, under Bankruptcy Rule 2002(a)(3), the debtor, the United States Trustee, and all creditors of an estate in bankruptcy are entitled to 21 days' notice of a hearing on a settlement agreement; and under 28 U.S.C. § 1715(b), the Debtors in class action suits must send notices of class settlement agreements to appropriate state and federal officials within 10 days after filing such agreements in court. The Parties will ensure that these legally mandated notices are sent in a timely manner.

IV. CONCLUSION

WHEREFORE, the Parties respectfully request that this Court enter an order that: (1) certifies the remaining uncertified classes for settlement purposes only, subject to the Plaintiffs' obligation to demonstrate that the classes satisfy all of the applicable requirements of Federal Rule 23 prior to final approval of the settlement; (2) grants preliminary approval of the settlement terms as outlined in the Settlement Agreement; (3) grants approval of the Settlement Agreement under Bankruptcy Rule 9019(a); (4) approves the form and manner of notice to Class Members; and (5) schedules a final fairness hearing for review and final approval of the settlement terms as outlined in the Settlement Agreement to take place approximately 60 days after the Preliminary Approval Date. Following the final fairness hearing, the Court should, after reviewing all objections, enter a second order finally approving the Settlement Agreement and granting any other relief that is just and proper.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Amanda M. Winfree, hereby certify that on May 13, 2011, I caused one copy of the foregoing document to be served upon the parties on the attached service list via first class mail.

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File a Court document:

09-50200-MFW Carey et al v. Qimonda North America Corp., et al
Type: ap Office: 1 (Delaware) Judge: MFW
Lead Case: 1-09-bk-10589

U.S. Bankruptcy Court

District of Delaware

Notice of Electronic Filing

The following transaction was received from Amanda Marie Winfree entered on 5/13/2011 at 5:50 PM EDT and filed on 5/13/2011

Case Name: Carey et al v. Qimonda North America Corp., et al
Case Number: 09-50200-MFW
Document Number: 34

Docket Text:
Brief *in Support of Joint Motion for Preliminary Approval of Class Action Settlement* (related document(s)[33]) Filed by OFFICIAL COMMITTEE OF UNSECURED CREDITORS. (Attachments: # (1) Certificate of Service) (Winfree, Amanda)

The following document(s) are associated with this transaction:

Document description: Main Document
Original filename:C:\fakepath\q brief (00517052).PDF
Electronic document Stamp:
[STAMP bkecfStamp_ID=983460418 [Date=5/13/2011] [FileNumber=9652015-0]
[065db0ea37417c05168cd140dc4849ea9c8ca4e4a8c0f95ca657ffbd6635b655e03c
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Original filename:C:\fakepath\q motion cos (00517050).PDF
Electronic document Stamp:
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09-10589-MFW Qimonda Richmond, LLC
Type: bk Chapter: 11 v Office: 1 (Delaware)
Assets: y Judge: MFW
Case Flag: CLMSAGNT, MEGA, PlnDue, DsclsDue, LEAD, APPEAL

U.S. Bankruptcy Court

District of Delaware

Notice of Electronic Filing

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Case Name: Qimonda Richmond, LLC
Case Number: 09-10589-MFW
Document Number: 2291

Docket Text:
Brief *in Support of Joint Motion for Preliminary Approval of Class Action Settlement* (related document(s)[2290]) Filed by OFFICIAL COMMITTEE OF UNSECURED CREDITORS. (Attachments: # (1) Certificate of Service) (Winfree, Amanda)

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Document description: Main Document
Original filename:C:\fakepath\q brief (00517052).PDF
Electronic document Stamp:
[STAMP bkecfStamp_ID=983460418 [Date=5/13/2011] [FileNumber=9651988-0]
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Document description: Certificate of Service
Original filename:C:\fakepath\q motion cos (00517050).PDF
Electronic document Stamp:
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File a Court document:

09-50192-MFW Jackson et al v. Qimonda Richmond, LLC et al
Type: ap Office: 1 (Delaware) Judge: MFW
Lead Case: 1-09-bk-10589 Case Flag: NONPREF

U.S. Bankruptcy Court

District of Delaware

Notice of Electronic Filing

The following transaction was received from Amanda Marie Winfree entered on 5/13/2011 at 5:46 PM EDT and filed on 5/13/2011
Case Name: Jackson et al v. Qimonda Richmond, LLC et al
Case Number: 09-50192-MFW
Document Number: 56

Docket Text:
Brief *In Support of Joint Motion for Preliminary Approval of Class Action Settlement* (related document(s)[55]) Filed by OFFICIAL COMMITTEE OF UNSECURED CREDITORS. (Attachments: # (1) Certificate of Service) (Winfree, Amanda)

The following document(s) are associated with this transaction:

Document description: Main Document
Original filename:C:\fakepath\q brief (00517052).PDF
Electronic document Stamp:
[STAMP bkecfStamp_ID=983460418 [Date=5/13/2011] [FileNumber=9651997-0]
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Document description: Certificate of Service
Original filename:C:\fakepath\q motion cos (00517050).PDF
Electronic document Stamp:
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File a Court document:

09-50199-MFW Maxey et al v. Qimonda North America Corp., et al

Type: ap Office: 1 (Delaware) Judge: MFW
Lead Case: 1-09-bk-10589 Case Flag: ANSDue

U.S. Bankruptcy Court

District of Delaware

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The following transaction was received from Amanda Marie Winfree entered on 5/13/2011 at 5:48 PM EDT and filed on 5/13/2011

Case Name: Maxey et al v. Qimonda North America Corp., et al
Case Number: 09-50199-MFW
Document Number: 39

Docket Text:
Brief *in Support of Joint Motion for Preliminary Approval of Class Action Settlement* (related document(s)[38]) Filed by OFFICIAL COMMITTEE OF UNSECURED CREDITORS. (Attachments: # (1) Certificate of Service) (Winfree, Amanda)

The following document(s) are associated with this transaction:

Document description: Main Document
Original filename:C:\fakepath\Q BRIEF (00517052).PDF
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09-50199-MFW Notice will be electronically mailed to:

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