

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

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In re)	Chapter 11
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PERSONAL COMMUNICATIONS)	Case No. 13-74303 (AST)
DEVICES, LLC, <i>et al.</i> , ¹)	13-74304 (AST)
)	
Debtors.)	(Jointly Administered)
)	

**STIPULATION AND ORDER BETWEEN THE DEBTORS AND
CIT FINANCE SETTLING PROOFS OF CLAIM**

This Stipulation (the “*Stipulation*”) is entered into by and between Personal Communications Devices, LLC (“*PCD LLC*”) and Personal Communications Devices Holdings, LLC (“*Holdings*” and together with PCD LLC, the “*Debtors*”) and CIT Finance LLC (“*CIT*” and together with the Debtors, the “*Parties*”).

RECITALS

WHEREAS, on August 19, 2013, each of the Debtors filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the “*Bankruptcy Code*”) in the United States Bankruptcy Court for the Eastern District of New York (the “*Bankruptcy Court*”);

WHEREAS, the Debtors and CIT are parties to (i) that certain Lease Agreement **753-1881562-001** (the “*Server Lease*”) dated on or about January 31, 2012, pursuant to which the Debtors leased from CIT certain office equipment, including an S8300 Media Server (the “*Server Equipment*”), (ii) that certain Lease Agreement **036-0032386-000** dated on or about July 2, 2012, pursuant to which the Debtors leased certain copier equipment and (iii) that certain

¹ The Debtors in these chapter 11 cases, along with the last four (4) digits of each Debtor’s federal tax identification number, are: Personal Communications Devices, LLC, a Delaware limited liability company (4171) and Personal Communications Devices Holdings, LLC, a Delaware limited liability company (4096). The Debtors’ mailing address is 80 Arkay Drive, Hauppauge, Suffolk County, NY 11788.

Lease Agreement **036-0027632-000** dated on or about March 21, 2011 (the foregoing two leases, the “*Copier Leases*”) pursuant to which the Debtors leased certain copier equipment (the equipment leased pursuant to the foregoing three leases, the “*Leased Equipment*”);

WHEREAS, in connection with the Server Lease and Lease Agreement **036-0027632-000** , CIT filed UCC Financing Statements asserting a security interest in the Leased Equipment;

WHEREAS, by order dated October 17, 2013 [Docket No. 207], the Bankruptcy Court approved the sale (the “*Sale*”) of substantially all of the Debtors’ assets to Q1W Newco, LLC and Quality One Wireless, LLC (together “*Quality One*”);

WHEREAS, on November 22, 2013, CIT filed (i) Proof of Claim Number 47 in the amount of \$34,753.55 (“*Claim Number 47*”), (ii) Proof of Claim Number 48 in the amount of \$11,640.21 (“*Claim Number 48*”) and (iii) Proof of Claim Number 49 (“*Claim Number 49*” and together with Claim Number 47 and Claim Number 48, the “*CIT Claims*”) in the amount of \$202,550.81;

WHEREAS, Claim Number 47 and Claim Number 49 were filed as secured claims against PCD LLC;

WHEREAS, the Debtors and CIT have worked together to facilitate the transfer of the Leased Equipment other than the Server Equipment back to CIT;

WHEREAS, the Sale closed on October 18, 2013; and

WHEREAS, the Parties have agreed to resolve the CIT Claims on the terms set forth below.

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and between the Parties as follows:

1. The foregoing recitals hereby are fully incorporated into and made an express part of this Stipulation.

2. Within five (5) business days of the date that this Stipulation is “So Ordered” by the Bankruptcy Court (the date “So Ordered” by the Bankruptcy Court, the “*Effective Date*”), Quality One will pay to CIT the sum of Ten Thousand Dollars (\$10,000.00) to purchase the Server Equipment referenced in the Server Lease (Lease Agreement **753-1881562-001**).

3. Upon the Effective Date, (i) each of the Server Lease and the Copier Leases shall be deemed rejected pursuant to section 365(a) of the Bankruptcy Code, (ii) Claim Number 47 shall be reclassified as a general unsecured claim and reduced and allowed in the amount of \$24,049.79, (iii) Claim Number 48 shall be a general unsecured claim and shall be reduced and allowed in the amount of \$9,593.75 and (iv) Claim Number 49 shall be reclassified as a general unsecured claim and reduced and allowed in the amount of \$192,550.81 (together, the “*Allowed CIT Claims*”).

4. Upon the Effective Date, Epiq Bankruptcy Solutions, LLC, the Debtor’s claims and noticing agent, shall be authorized to reflect the foregoing on the official claims register maintained in these chapter 11 cases.

5. Except with respect to the Allowed CIT Claims, upon the Effective Date, CIT, on behalf of itself and its predecessors, successors, assigns, attorneys, representatives, and other agents, shall be deemed to have waived and released any and all claims, including scheduled claims, against the Debtors and their estates.

6. Notwithstanding any provision of this Stipulation, the rights of the Committee and any liquidating trust established pursuant to a plan of liquidation to object to the Allowed CIT Claims are expressly preserved.

7. Notwithstanding any provision of this Stipulation, any and all rights and causes of action that the Debtors or their estates may have against CIT under chapter 5 of the Bankruptcy Code are hereby preserved.

8. Each of the Parties represents that, except for the approval of this Stipulation by the Bankruptcy Court, no consent, approval, or authorization of any other party is required for such Party's valid execution and performance of this Stipulation.

9. The Bankruptcy Court shall retain jurisdiction to hear and determine any and all disputes arising from or relating to the interpretation or implementation of this Stipulation.

10. This Stipulation shall be binding upon all successors and assigns of the Parties.

11. This Stipulation may be executed in one or more counterparts, all of which shall be considered one and the same document, including any facsimile or "PDF" counterparts, and which together shall constitute one and the same agreement.

12. This Stipulation constitutes the entire agreement between the Parties and may not be amended or modified in any manner except by a writing signed by each of the Parties or their counsel.

IN WITNESS WHEREOF, the Parties have executed this Stipulation as of the date hereof.


Dated: February 25, 2014

PERSONAL COMMUNICATIONS DEVICES, LLC By its attorneys, <u>/s/ Matthew L. Curro</u> GOODWIN PROCTER LLP Emanuel C. Grillo Matthew L. Curro Christopher Newcomb The New York Times Building 620 Eighth Avenue New York, New York 10018-1405 Tel: (212) 813-8800 Fax: (212) 355-3333	CIT FINANCE LLC By its attorneys, <u>/s/ Teresa Sadutto-Carley</u> PLATZER, SWERGOLD, KARLIN, LEVINE, GOLDBERG & JASLOW, LLP Teresa Sadutto-Carley 1065 Avenue of the Americas, 18th Floor New York, New York 10018 Tel: (212) 593-3000 ext. 261 Fax: (212) 593-0353
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SO ORDERED:

Dated: March 6, 2014
Central Islip, New York




Alan S. Trust
United States Bankruptcy Judge