



Signed: February 18, 2010

RANDALL J. NEWSOME
U.S. Bankruptcy Judge

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7
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9 Asyst Technologies, Inc.,
10 a California corporation

11 UNITED STATES BANKRUPTCY COURT
12 NORTHERN DISTRICT OF CALIFORNIA
13 OAKLAND DIVISION

14 In re
15 ASYST TECHNOLOGIES, INC., a California
16 corporation,
17 Debtor.

18 Case No. 09-43246
19 Chapter 11

20 **ORDER FINALLY APPROVING
21 DISCLOSURE STATEMENT AND
22 CONFIRMING DEBTOR'S PLAN**

23 **Date: February 3, 2010**
24 **Time: 2:00 p.m.**
25 **Dept: 220**
26 **Judge: Chief Judge Randall J.
27 Newsome**

28 The above-captioned debtor and debtor-in-possession (the "Debtor") filed a voluntary petition for relief (the "Chapter 11 Case") under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the "Bankruptcy Code") on April 20, 2009 (the "Petition Date").

On December 28, 2009, the Debtor proposed the Plan of Liquidation of Asyst Technologies, Inc. (D.N. 520) (as amended, the "Plan").¹

¹ Unless otherwise specified, capitalized terms and phrases used herein have the meanings assigned to them in the Plan.

1 **RECITALS**

2 A. The Debtor, by and through Epiq Bankruptcy Solutions, LLC (“Epiq” or the “Voting
3 Agent”), commenced the plan solicitation process on or about December 28, 2009 by distributing a
4 solicitation package (the “Solicitation Package(s)”) that included the Plan and the Disclosure
5 Statement dated December 23, 2009 (“Disclosure Statement”), notice of the Confirmation Hearing, a
6 ballot, a postage paid return envelope and a copy of the Order dated December 19, 2009 Scheduling
7 Combined Disclosure Statement and Confirming Hearing (D.N. 511) (the “Plan Process Order”) to
8 all parties entitled to vote to accept or reject the Plan. The Plan Process Order (i) authorized the
9 Debtor to solicit votes to accept or reject the Plan; (ii) set a combined hearing to approve the
10 Disclosure Statement and confirm the Plan for February 3, 2010, at 2:00 p.m.; (iii) set January 20,
11 2010, at 4:00 p.m., prevailing Pacific time (the “Objection Deadline”) as the date for filing of any
12 objections to the Disclosure Statement or the Plan (an “Objection”); and (iv) set forth certain
13 procedures regarding balloting of votes on the Plan, and set January 20, 2010, at 4:00 p.m.
14 (prevailing Pacific time) (the “Voting Deadline”) as the date for creditors and interest holders
15 entitled to vote to accept or reject the Plan (collectively, the “Eligible Voters”), to submit votes to
16 accept or reject the Plan.
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19 B. December 28, 2009 was the record date (“Voting Record Date”) set for determining
20 (a) the creditors and interest holders entitled to receive the Solicitation Package pursuant to the
21 Solicitation Procedures (as defined herein); (b) the holders of Claims and Interests entitled to vote to
22 accept or reject the Plan; and (c) whether Claims or Interests have been properly transferred to an
23 assignee pursuant to Bankruptcy Rule 3001(e) such that the assignee can vote as the holder of the
24 Claim or equity Interest.
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1 C. The transmission of the Solicitation Packages to holders of Claims and Interests
2 entitled to vote to accept or reject the Plan was made pursuant to the procedures (the “Solicitation
3 Procedures”) set forth in the Plan Process Order.

4 D. On December 28, 2009, the Debtor filed the Disclosure Statement (D.I. No. 519) and
5 the Plan (D.N. 520), which Plan and Disclosure Statement revised earlier versions of such
6 document(s) filed on November 19, 2009. On January 22, 2010, the Debtor filed the Plan
7 Supplement (D.N. 539) (the “Plan Supplement”). On January 29, 2010, the Debtor filed the *Revised*
8 Plan Supplement (D.N. 540). On February 2, 2010, the Debtor filed the Affidavit of Service (the
9 “Affidavit of Service”) on behalf of Epiq and executed by Karen K. Dinsmore, Esq. (D.N. 545). The
10 Affidavit of service detailed all service matters related to solicitation of the Plan, including (i) the
11 Affidavit of Service of the Notice of Order Scheduling Combined Disclosure Statement and
12 Confirmation Hearing and Setting Date for Objections (Docket 521); (ii) the Affidavit of Service of:
13 (A) the Notice of Filing of Debtor’s Disclosure Statement Dated December 23, 2009 and Plan of
14 Liquidation Dated December 23, 2009; (B) Debtor’ Disclosure Statement Dated December 23, 2009
15 for Plan of Liquidation Dated December 23, 2009; (C) Debtor’s Plan of Liquidation Under Chapter
16 11 of the Bankruptcy Code Dated December 23, 2009; and (D) Ballot for Accepting or Rejecting
17 Plan of Liquidation Contained in the Debtor’s Plan of Liquidation Dated December 23, 2009
18 (Docket 522), (iii) Affidavit of Service of Plan Supplement (D.N. 539) and (iv) Affidavit of Service
19 of the Debtor’s *Revised* Plan Supplement (D.N. 544). On January 29, 2010, the Debtor filed the
20 Declaration of Christina F. Pullo, Esq., of Epiq Bankruptcy Solutions, LLC Regarding Voting on,
21 and Tabulation of, Ballots Accepting and Rejecting the Debtor’s Plan of Liquidation Under Chapter
22 11 of the Bankruptcy Code (Attached as Exhibit E to the Debtor’s Notice of Filing of (i) Revised
23 Plan Supplement; (ii) Revised Form of Proposed Order Confirming Plan; and (iii) Affidavit re
24 Tabulation of Ballots dated January 29, 2010, D.N. 540) (the “Voting Declaration”).
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1 E. The following objections to confirmation of the Plan were received (i) Objection to
2 Confirmation of Plan Filed by Creditor Texas Comptroller of Public Accounts (D.N. 528); Objection
3 / Limited Objection and Reservation of Rights of the Official Committee of Unsecured Creditors
4 (D.N. 530) (“Committee Objection”); Objection to Confirmation of Plan Filed by Interested Party
5 Crossing Automation, Inc. (D.N. 531); Objection to Confirmation of Plan Filed by Creditor Intel
6 Corporation (D.N. 532); Objection to Confirmation of Plan Filed by Creditor Randall D. Clegg
7 (D.N. 536); and Objection to Confirmation of Plan Filed by Creditor Travis County (D.N. 537)
8 (collectively, the “Plan Objections”).

9
10 F. The Committee Objection was withdrawn on February 1, 2010 (D.N. 543).

11 NOW, THEREFORE, this Court having reviewed the Disclosure Statement, the Plan
12 (as supplemented by the *Revised* Plan Supplement), the Voting Declaration, the Affidavits of
13 Service, the Plan Objections, and statements and comments regarding the confirmation of the Plan;
14 this Court having heard statements of counsel in support of and in opposition to confirmation of the
15 Plan at the hearing to consider confirmation of the Plan (the “Confirmation Hearing”); this Court
16 having considered all testimony presented and evidence admitted by affidavits or otherwise at the
17 Confirmation Hearing; this Court having taken judicial notice of the papers and pleadings on file in
18 the Chapter 11 Case; it appearing to this Court that (a) notice of the Confirmation Hearing and the
19 opportunity of any party-in-interest to object to confirmation of the Plan were adequate and
20 appropriate as to all parties to be affected by the Plan and the transactions contemplated thereby, and
21 (b) the solicitation and tabulation of votes, the publication of the Notice of Confirmation Hearing,
22 and all other notices relating to the Plan were carried out in accordance with the Solicitation
23 Procedures; and after due deliberation thereon and good cause appearing therefor, this Court enters
24 this order whereby it makes and issues the following Findings of Fact and Conclusions of Law:²
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2 ² This Confirmation Order constitutes the Bankruptcy Court’s findings of fact and conclusions of law under Fed.

1 **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

2 IT IS HEREBY FOUND AND DETERMINED THAT

3
4 1. Recitals. The Recitals in Paragraphs A-H above are hereby incorporated into the
5 Court’s Findings of Fact and Conclusions of Law.

6
7 2. Exclusive Jurisdiction; Venue; Core Proceeding (28 U.S.C. §§ 157, 1334(a), 1408
8 and 1409). This Court has jurisdiction over the Chapter 11 Case pursuant to 28 U.S.C. §§ 157 and
9 1334. Approval of the Disclosure Statement and Confirmation of the Plan are core proceedings
10 under 28 U.S.C. § 157(b)(2), and this Court has exclusive jurisdiction to determine whether (i) the
11 disclosure statement contains “adequate information” as required by § 1126 of the Bankruptcy Code
12 and (ii) the Plan complies with the applicable provisions of the Bankruptcy Code and should be
13 confirmed. Venue is proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409. Venue in the
14 Northern District of California was proper as of the Petition Date and continues to be proper.
15

16 3. Transmittal and Mailing of Materials, Notice. The Solicitation Packages were
17 transmitted and served in compliance with the Bankruptcy Code, the Solicitation Procedures, the
18 Plan Process Order, the Bankruptcy Rules and applicable nonbankruptcy law. Such transmittal and
19 service and the Solicitation Procedures were adequate and sufficient. Adequate and sufficient notice
20 of the Confirmation Hearing was given in compliance with the Bankruptcy Code, the Bankruptcy
21 Rules and the Plan Process Order, and no other or further notice is or shall be required.
22

23 4. Voting. The period during which the Debtor solicited acceptances to the Plan was
24 a reasonable period of time for Eligible Voters to make an informed decision to accept or reject the
25 Plan. Votes for acceptance and rejection of the Plan were solicited in good faith and such
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28 R. Civ. P. 52, as made applicable by Bankruptcy Rules 7052 and 9014. Any and all findings of fact shall constitute
findings of fact even if they are stated as conclusions of law, and any and all conclusions of law shall constitute
conclusions of law even if they are stated as findings of fact.

1 solicitation complied with sections 1125 and 1126 of the Bankruptcy Code, Rules 3017 and 3018 of
2 the Bankruptcy Rules, the Plan Process Order, all other applicable provisions of the Bankruptcy
3 Code and all other applicable rules, laws and regulations. All procedures used to distribute
4 solicitation materials to the Eligible Voters and to tabulate the ballots were fair and conducted in
5 accordance with the Bankruptcy Code, the Bankruptcy Rules, the Local Bankruptcy Rules and all
6 other applicable rules, laws and regulations. Class 1 is impaired, and voted to accept the Plan in the
7 requisite majorities required under section 1126(c) of the Bankruptcy Code. Holders of Claims or
8 Interests in Classes 2, 3, and 4 are conclusively deemed to have rejected the respective Plans
9 pursuant to section 1126(g) of the Bankruptcy Code (collectively, the “Deemed Rejected Classes”).
10

11 5. Plan Objections. In response to the Plan Objections by Crossing Automation, Inc.
12 (“Crossing”) and Intel Corporation (“Intel” and, together with Crossing, "Crossing/Intel"), on the
13 one hand, the Debtor and Key Bank, as agent for the pre-petition lenders (“Debtor/Key Bank”), on
14 the other hand, agreed on the record that \$254,175.06 shall be paid forthwith by the Debtor to
15 Crossing. Upon such payment, Crossing/Intel on the one hand, and Debtor/Key Bank, on the other,
16 shall generally and mutually release each other from any and all claims whatsoever, known or
17 unknown, arising in or any way related to the Asyst bankruptcy case and the parties expressly waive
18 the protection of Cal. Civ. Code 1542 , which is incorporated herein. Crossing and Intel are not
19 releasing any claims which may exist between each other, KeyBank is not releasing any claims
20 against Crossing or Intel unrelated to the Debtor, Crossing and Intel are not releasing any claims
21 against Key Bank unrelated to the Debtor, and the Debtor is not releasing any claims of the Debtor
22 against Mr. Clegg.
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25 In response to the Plan Objection by Randall D. Clegg (“Clegg”), the Liquidating
26 Trust shall establish an escrow account to hold \$38,646.35. Funds in this account shall be held by
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1 Liquidation Trust, until the estate's disputes with Clegg are resolved, by settlement or further order
2 of this court as to the appropriate payment, if any.

3 The Plan Objections, and each of them, to the extent neither withdrawn nor resolved
4 by the preceding paragraph, are overruled.

5 6. Proper Classification and Treatment of Claims and Interests (11 U.S.C. §§ 1122
6 and 1123(a). The classification and treatment of Claims and Interests satisfies §1122 and
7 subsections (a)(1) through (a)(4) of §1123 of the Bankruptcy Code.

8 9. Contents of Plan (11 U.S.C. § 1123(a)(5) through(7)). The provisions of the Plan
9 satisfy §§ 1123(a)(5) through (a)(7), to the extent applicable.

10 8. Bankruptcy Rule 3017. The Debtor has transmitted the Plan, the Disclosure
11 Statement approved by this Court, notice of the time within which acceptances and rejections of the
12 Plan may be filed, and any other information required by the Court in accordance with Bankruptcy
13 Rule 3017(d).

14 9. Bankruptcy Rule 3018. The solicitation of votes to accept or reject the Plan from
15 Holders of impaired Claims as of the Voting Record Date satisfies Bankruptcy Rule 3018(a).

16 10. Satisfaction of Confirmation Requirements. The Plan satisfies all the
17 requirements for confirmation set forth in section 1129(a) of the Bankruptcy Code, except for
18 section 1129(a)(8).

19 11. Directors, Officers and Insiders. The Plan and Liquidation Trust Agreement
20 provide that the Liquidation Trust shall have both a Liquidation Trustee and a Steering Committee.
21 The name and affiliations of the Liquidation Trustee was disclosed in the Liquidation Trust
22 Agreement (filed as Exhibit A to proposed Plan filed with the *Revised* Plan Supplement), and, on
23 February 2, 2010, the names and affiliations of each proposed member of the Steering Committee
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1 were disclosed to this Court in the Notice of Filing of List of Members of the Steering Committee
2 Pursuant to the Plan of Liquidation (D.N. 548).

3
4 12. Acceptance or Rejection by Certain Classes (11 U.S.C. § 1129(a)(8)). The Plan
5 does not satisfy section 1129(a)(8) of the Bankruptcy Code because the Plan was deemed rejected by
6 the Deemed Rejected Classes. Notwithstanding the lack of compliance with section 1129(a)(8) of
7 the Bankruptcy Code , the Plan is confirmable because, as described below, the Plan satisfies
8 section 1129(b) of the Bankruptcy Code with respect to the Deemed Rejected Classes. As set forth
9 in the Voting Declarations, the Impaired Class entitled to vote voted as follows:
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	<u>Votes to Accept the Plan</u>				<u>Votes to Reject the Plan</u>			
	Number		Amount		Number		Amount	
Class 1	4	100%	\$78,920,289.03	100%	0	0%	\$0	0%

13 13. Principal Purpose (11 U.S.C. § 1129(d)). The principal purpose of the Plan is
14 neither the avoidance of taxes nor the avoidance of section 5 of the Securities Act, and no
15 governmental unit has objected to the confirmation of the Plan on any such grounds. The Plan,
16 therefore, satisfies the requirements of section 1129(d) of the Bankruptcy Code.
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18 14. Modifications to Plan. The modifications set forth in the *Revised Plan*
19 Supplement and this Confirmation Order with respect to the Plan do not materially or adversely
20 affect or change the treatment of any Claim or Interest. Accordingly, pursuant to Rule 3019 of the
21 Bankruptcy Rules, these modifications do not require additional disclosure under section 1125 of the
22 Bankruptcy Code or the resolicitation of acceptances or rejections under section 1126 of the
23 Bankruptcy Code, nor do they require that holders of Claims or Interests be afforded an opportunity
24 to change previously cast acceptances or rejections of the Plan as filed with the Court. Pursuant to
25 Bankruptcy Rule 3019, such modifications shall be deemed accepted by all holders of Claims and
26 Interests who have previously accepted this Plan.
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1 19. Solicitation Procedures. The Solicitation Procedures set forth in the Voting
2 Declaration, including the Ballots and all related Notices, are hereby approved.

3 20. Confirmation. The Plan as modified by the modifications set forth in the *Revised*
4 Plan Supplement and in this Confirmation Order is confirmed under section 1129 of the Bankruptcy
5 Code. Any objections to the confirmation of the Plan have been withdrawn or are hereby overruled
6 in their entirety. [ANY ADDITIONAL PROVISIONS AS MAY BE DETERMINED BY THE
7 COURT IN CONNECTION WITH DISPOSITION OF PLAN OBJECTIONS].
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9 21. Notice of Entry of Confirmation Order. On or before the tenth (10th) day
10 following the date of entry of this Confirmation Order, the Debtor shall serve notice of entry of this
11 Confirmation Order pursuant to Rules 2002(f)(7), 2002(k) and 3020(c) of the Bankruptcy Rules on
12 all creditors, counsel to the Agent for the Lenders, counsel to the Committee, the United States
13 Trustee for the Northern District of California and all entities known by the Debtor to have filed a
14 notice of appearance or a request for receipt of chapter 11 notices and pleadings filed in the Chapter
15 11 Case as of the date hereof, by causing a notice of entry of this Confirmation Order to be delivered
16 to such parties by first class mail, postage prepaid.
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18 22. Effectiveness of Order. Notwithstanding Bankruptcy Rules 3020(e), 6004(g) and
19 6006(d), or any other provision of the Bankruptcy Code or the Bankruptcy Rules, this Confirmation
20 Order shall be effective immediately upon its entry.
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22 23. Substantial Consummation. Substantial consummation of the Plan shall be
23 deemed to occur on the Distribution Date.
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25 24. The Record. The record of the Confirmation Hearing is closed. The findings of
26 fact and conclusions of law of this Court set forth herein and at the Confirmation Hearing shall
27 constitute findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, as made
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1 applicable herein by Bankruptcy Rule 9014, and the findings of fact and conclusions of law of the
2 Court at the Confirmation Hearing are incorporated herein by reference.

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END OF ORDER

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