

UNITED STATES BANKRUPTCY COURT District of Delaware		PROOF OF CLAIM
Name of Debtor: <u>Qimonda North America</u>		Case Number: <u>09-10589</u>
NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A request for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.		
Name of Creditor (the person or other entity to whom the debtor owes money or property): <u>Edgar Ayerbe</u>		<input type="checkbox"/> Check this box to indicate that this claim amends a previously filed claim.
Name and address where notices should be sent: <u>Edgar & Jeannette Ayerbe</u> <u>2621 Coxindale Drive</u> <u>Raleigh, N.C. 27615</u>		Court Claim Number: <u>09-10589</u> (If known)
Telephone number: <u>919 844 5308</u>		Filed on: <u>02/20/2009</u>
Name and address where payment should be sent (if different from above): <u>Edgar & Jeannette Ayerbe</u> <u>2621 Coxindale Drive</u> <u>Raleigh, N.C. 27615</u>		<input type="checkbox"/> Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.
Telephone number: <u>919 844 5308</u>		<input type="checkbox"/> Check this box if you are the debtor or trustee in this case.
1. Amount of Claim as of Date Case Filed: \$ <u>41,058.65</u>		5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount. Specify the priority of the claim.
If all or part of your claim is secured, complete item 4 below; however, if all of your claim is unsecured, do not complete item 4. If all or part of your claim is entitled to priority, complete item 5. <input type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of claim. Attach itemized statement of interest or charges.		
2. Basis for Claim: <u>SEVERANCE PAY</u> (See instruction #2 on reverse side.)		<input type="checkbox"/> Domestic support obligations under 11 U.S.C. §507(a)(1)(A) or (a)(1)(B).
3. Last four digits of any number by which creditor identifies debtor: <u>8747</u>		<input type="checkbox"/> Wages, salaries, or commissions (up to \$10,950*) earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier – 11 U.S.C. §507 (a)(4).
3a. Debtor may have scheduled account as: <u>IB in ASSETS</u> (See instruction #3a on reverse side.)		<input type="checkbox"/> Contributions to an employee benefit plan – 11 U.S.C. §507 (a)(5).
4. Secured Claim (See instruction #4 on reverse side.) Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information. Nature of property or right of setoff: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other Describe: Value of Property: \$ _____ Annual Interest Rate: _____ % Amount of arrearage and other charges as of time case filed included in secured claim, if any: \$ _____ Basis for perfection: _____ Amount of Secured Claim: \$ _____ Amount Unsecured: \$ _____		<input type="checkbox"/> Up to \$2,425* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use – 11 U.S.C. §507 (a)(7).
6. Credits: The amount of all payments on this claim has been credited for the purpose of making this proof of claim.		<input type="checkbox"/> Taxes or penalties owed to governmental units – 11 U.S.C. §507 (a)(8).
7. Documents: Attach redacted copies of orders, invoices, itemized statement. You may also attach a summary. Attach a security interest. You may also attach a security interest. You may also attach a security interest.		<input type="checkbox"/> Other – Specify applicable paragraph of 11 U.S.C. §507 (a)(____).
DO NOT SEND ORIGINAL DOCUMENTS FOR SCANNING.		Amount entitled to priority: \$ _____
If the documents are not available, please explain:		*Amounts are subject to adjustment on 4/1/10 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.
Date: <u>2/23/09</u>	Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any. <u>Edgar Ayerbe</u> <u>Engineering Manager</u>	

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

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AGREEMENT AND GENERAL RELEASE

THIS AGREEMENT AND GENERAL RELEASE, dated January 30, 2009 (the "Agreement") is made and entered into by and between Edgar Ayerbe and Qimonda North America Corp. (the "Company").

RECITALS:

- A. WHEREAS, Edgar Ayerbe has been employed by the Company for a period of time; and,
- B. WHEREAS, Edgar Ayerbe's employment with the Company terminated effective January 30, 2009 ("the Termination Date"), and he will receive his normal pay through the last date of employment; and,
- C. WHEREAS, Edgar Ayerbe and the Company wish to sever the employment relationship in a way that will resolve any and all claims that do or may exist;

NOW, THEREFORE, for and in consideration of the promises, covenants and undertakings described below, and for the other good and sufficient consideration, the parties agree as follows:

AGREEMENTS:

- 1 week + PTO + 07/08 VLP*
- Bonus 07/08*
1. The Company has or will pay Edgar Ayerbe all accrued wages and PTO due to Edgar Ayerbe on or around February 13, 2009. The employee acknowledges that this payment has or will constitute full satisfaction of all accrued salary, PTO pay, or other compensation to which Edgar Ayerbe may be entitled by virtue of his employment with the Company or his separation from the Company. This does not include any vested amounts in any 401(k), deferred compensation, pension or retirement plans, or stock option accounts, as applicable, to which the employee is otherwise entitled.
 2. In addition, for Edgar Ayerbe's agreement to the waiver of claims set forth in Paragraph 3(D), below, the Company agrees to provide Edgar Ayerbe the payments and benefits described in Paragraphs 2(A)-(B), below. Edgar Ayerbe acknowledges that, but for his agreement to the waiver of claims below, he would not be entitled to receive the payments and benefits described in Paragraphs 2(A)-(B):
 - A. The Company will pay Edgar Ayerbe the gross amount of ~~\$41,058.65~~, less applicable withholdings and deductions;
 - B. Unless the employee elected to waive health insurance coverage during his employment and was not covered by any of the Company's health insurance programs at the time of his termination, and provided Edgar Ayerbe actively enrolls in COBRA per instructions mailed to him following termination, then the Company shall make the Company portion of payments necessary to cause any Company health insurance programs that covered the employee at the time of his termination to continue for three months coincident with COBRA. Edgar Ayerbe will be direct-billed for the employee portion of the health insurance premiums during this time.
- 27th earliest*
- 27th*
- 6/1*



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- C. Note: Edgar Ayerbe must notify the Company if he receives comparable health insurance coverage from another source (e.g., a new employer) before these three months elapse, at which time the Company will discontinue the coverage. If COBRA is elected, Edgar Ayerbe will be responsible for the full premium cost following the first three months.
3. Edgar Ayerbe for himself, his heirs, executors, administrators, assigns and successors, agrees as follows:
- A. Except as may otherwise be required by a lawful court order, Edgar Ayerbe agrees to keep the terms of the Agreement, including the payments made hereunder, confidential, and not to disclose such terms to anyone with the exception of his immediate family members and professional advisors.
 - B. Edgar Ayerbe acknowledges and agrees upon the payment described in the first sentence of paragraph 1 above, that he has or will have received all sums to which he is entitled by reason of his employment with the Company, including (but not limited to) all accrued wages and vacation pay. This does not include any vested amounts in any 401(k), deferred compensation, pension or retirement plans, or stock option accounts, as applicable, to which the employee is otherwise entitled.
 - C. Edgar Ayerbe understands that, except as is otherwise expressly provided in the Agreement, his vacation accrual and eligibility for Company benefits will cease on his last day of employment.
 - D. Edgar Ayerbe hereby releases and waives any other claims he may have against Company and its owners, agents, officers, shareholders, employees, directors, attorneys, subscribers, subsidiaries, affiliates, successors and assigns (collectively "Releasees"), whether known or not known, including, without limitation, claims under any federal, state or local employment laws, including, but not limited to, claims of unlawful discharge, breach of contract, breach of the covenant of good faith and fair dealing, fraud, violation of public policy, defamation, physical injury, emotional distress, claims for additional compensation or benefits arising out of his employment or his separation of employment, claims under Title VII of the 1964 Civil Rights Act, and any other laws and/or regulations relating to employment or employment discrimination, including, without limitation, claims based on age or under the Age Discrimination in Employment Act or Older Workers Benefit Protection Act.
 - E. Edgar Ayerbe agrees that he shall not in any way disparage the Company, or any of its related or affiliated entities, officers, employees, technology or products.
 - F. Edgar Ayerbe represents and warrants that he has returned to the Company all Company documents and/or property in his possession or subject to his custody or control. Edgar Ayerbe further acknowledges that as a result of his employment with the Company, he has had access to the Company's proprietary and confidential information (collectively, "Proprietary Information"). Edgar Ayerbe agrees that he is bound by the Software Licensing, Information Protection and Non-Disclosure Agreement and/or Patent & Secrecy Agreement executed by him upon commencement of employment, that he will hold all such Proprietary Information in strictest confidence, that he will not make use of such Proprietary Information on behalf of anyone, and that he will not disclose such Proprietary Information to anyone. Edgar Ayerbe further confirms that he has delivered to the Company all documents and data of any nature



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- containing or pertaining to such Proprietary Information and that he has not taken with him any such documents or data or any reproduction thereof.
- G. The agreement is not and shall not be construed or contended by Edgar Ayerbe to be an admission or evidence of any wrongdoing or liability on the part of Releasees, their representatives, heirs, executors, attorneys, agents, partners, officers, shareholders, directors, employees, subsidiaries, affiliates, divisions, successors or assigns.
- H. Edgar Ayerbe agrees, understands, and recognizes that, by executing the Agreement, he hereby expressly waives all rights afforded by any Statute that limits the effect of a release with respect to unknown claims. Edgar Ayerbe understands the significance of his release of unknown claims.
- I. If Qimonda, in its sole discretion subject to business need and its applicable policies, should decide to rehire Edgar Ayerbe and the weeks of severance paid exceeds the weeks of break in service between termination and rehire, then Edgar Ayerbe agrees to repay to Qimonda the equivalent of the gross severance pay received for the weeks in excess of the break in service.
4. The Company and Edgar Ayerbe agree that, in the event of any breach of the Agreement, the prevailing party shall be entitled to pursue all available legal and equitable remedies under the agreement, including injunctive relief, and shall have the right to recover reasonable attorneys' fees and costs.
5. The Agreement shall be deemed to have been entered into in the States of North Carolina, Texas, Vermont or Virginia depending on Edgar Ayerbe's place of employment and shall be construed and interpreted in accordance with the laws of the state in which Edgar Ayerbe's was employed by Qimonda.
6. The provisions of the Agreement shall be deemed severable, and if any part of any provision is held illegal, void or invalid under any applicable law, such provision may be changed to the extent reasonably necessary to make the provision, as changed, legal, valid and binding. If any provision of the Agreement is held illegal, void or invalid in its entirety, all of the remaining provisions of the Agreement shall not in any way be affected or impaired but shall remain legally binding in accordance with their terms.
7. Edgar Ayerbe understands that he may take up to forty-five (45) days to consider the agreement and, by signing below, affirms that he was advised to consult with an attorney prior to signing the Agreement. Edgar Ayerbe is free to execute and return the Agreement at any time before the expiration of the forty-five day period, however. Edgar Ayerbe also understands that he may revoke the Agreement within seven (7) days after signing the document or after 1/30/2009, whichever is later, and that the payments and benefits to be provided to him pursuant to Paragraphs 2(A)-(B) will be provided only after that seven (7) day revocation period.
8. Edgar Ayerbe hereby acknowledges that he has read and understands the terms of the Agreement, and that he is signing it voluntarily and without coercion. He further acknowledges that he has been



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encouraged to consult with an attorney of his own choosing concerning the terms of the Agreement, and that the waivers he has made in the Agreement are knowing, conscious and made with full appreciation that he is forever foreclosed from pursuing any of the rights so waived.

9. The Agreement constitutes the entire agreement between Edgar Ayerbe and Releasees with respect to the subject matter thereof and supersedes all prior negotiations and agreements, whether written or oral, relating to such subject matter other than the confidentiality agreement referred to in Paragraph 3(F), above. Edgar Ayerbe acknowledges that neither Releasees nor their agents or attorneys have made any promise, representation or warranty whatsoever, either express or implied, written or oral, which is not contained in the Agreement for the purpose of inducing him to execute the agreement, and he acknowledges that he has executed the Agreement in reliance only upon such promises, representations and warranties as are contained herein.
10. It is expressly agreed that the Agreement may not be altered, amended, modified, or otherwise changed in any respect except by another written agreement that specifically refers to the Agreement, executed by authorized representatives of each of the parties to the Agreement.

READ, UNDERSTOOD AND AGREED:

Edgar Ayerbe

Date

B. D. Sechler

Date

HR Business Partner

Human Resources

Qimonda North America Corp.