
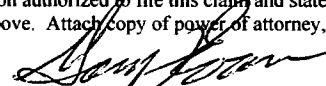


<b>UNITED STATES BANKRUPTCY COURT      District of Delaware</b>		<b>PROOF OF CLAIM</b>
Name of Debtor: <u>QIMONDA NORTH AMERICA CORP</u>		Case Number: <u>09-10590</u>
NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A request 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>GARY J EVAN</u>		<input type="checkbox"/> Check this box to indicate that this claim amends a previously filed claim.  Court Claim Number: _____ (If known)  Filed on: _____
Name and address where notices should be sent: <u>GARY J EVAN</u> <u>294 BRIDGE LANDING</u> <u>ONALASKA, TX 77360</u>		
Telephone number: <u>(804) 240-4332</u>		
Name and address where payment should be sent (if different from above):		<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.  <input type="checkbox"/> Check this box if you are the debtor or trustee in this case.
Telephone number:		
1. Amount of Claim as of Date Case Filed: <u>\$ 14088.00</u>  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.		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.  <input type="checkbox"/> Domestic support obligations under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).  <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).  <input type="checkbox"/> Contributions to an employee benefit plan – 11 U.S.C. § 507 (a)(5).  <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).  <input type="checkbox"/> Taxes or penalties owed to governmental units – 11 U.S.C. § 507 (a)(8).  <input type="checkbox"/> Other – Specify applicable paragraph of 11 U.S.C. § 507 (a)( ).  Amount entitled to priority: \$ _____  *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.
2. Basis for Claim: <u>WRITTEN AGREEMENT</u> (See instruction #2 on reverse side.)		
3. Last four digits of any number by which creditor identifies debtor: <u>UN KUEY</u>		
3a. Debtor may have scheduled account as: _____ (See instruction #3a on reverse side.)		
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: \$ _____		
6. Credits: The amount of all payments on this claim has been credited for the purpose of making this proof of claim.		
7. Documents: Attach redacted orders, invoices, itemized statement You may also attach a summary a security interest. You may also  DO NOT SEND ORIGINAL DOCUMENTS FOR SCANNING.		Filed: USBC - District of Delaware Qimonda Richmond, LLC, Et Al. 09-10589 (MFV)      0000000001  missory notes, purchase and security agreements. If perfection of "acted" on reverse side.)  TROYED AFTER
If the documents are not available, please explain:		
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>GARY J EVAN</u> 		DEPT. OF COURT DISTRICT OF DELAWARE FEB 24 2009 PM 5:00

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.

Reset

Save As...

Print



Agreement and General Release  
Gary Evan  
February 27, 2009  
Page 1

## AGREEMENT AND GENERAL RELEASE

**THIS AGREEMENT AND GENERAL RELEASE**, dated February 27, 2009 (the "Agreement") is made and entered into by and between Gary Evan and Qimonda North America Corp. (the "Company").

### RECITALS:

- A. WHEREAS, Gary Evan has been employed by the Company for a period of time; and,
- B. WHEREAS, Gary Evan's employment with the Company terminated effective February 27, 2009 ("the Termination Date"), and he will receive his normal pay through the last date of employment; and,
- C. WHEREAS, Gary Evan 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. The Company has or will pay Gary Evan all accrued wages and PTO due to Gary Evan on or around March 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 Gary Evan 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 Gary Evan's agreement to the waiver of claims set forth in Paragraph 3(D), below, the Company agrees to provide Gary Evan the payments and benefits described in Paragraphs 2(A)-(B), below. Gary Evan 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 Gary Evan the gross amount of \$14,088.00, 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 Gary Evan 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. Gary Evan will be direct-billed for the employee portion of the health insurance premiums during this time.
  - C. Note: Gary Evan 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



Agreement and General Release

Gary Evan

February 27, 2009

Page 2

Company will discontinue the coverage. If COBRA is elected, Gary Evan will be responsible for the full premium cost following the first three months.

3. Gary Evan for himself, his heirs, executors, administrators, assigns and successors, agrees as follows:
  - A. Except as may otherwise be required by a lawful court order, Gary Evan 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. Gary Evan 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. Gary Evan 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. Gary Evan 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. Gary Evan 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. Gary Evan 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. Gary Evan 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"). Gary Evan 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. Gary Evan further confirms that he has delivered to the Company all documents and data of any nature containing or pertaining to such Proprietary Information and that he has not taken with him any such documents or data or any reproduction thereof.



Agreement and General Release

Gary Evan

February 27, 2009

Page 3

- G. The agreement is not and shall not be construed or contended by Gary Evan 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. Gary Evan 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. Gary Evan 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 Gary Evan and the weeks of severance paid exceeds the weeks of break in service between termination and rehire, then Gary Evan 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 Gary Evan 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 Gary Evan's place of employment and shall be construed and interpreted in accordance with the laws of the state in which Gary Evan'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. Gary Evan 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. Gary Evan is free to execute and return the Agreement at any time before the expiration of the forty-five day period, however. Gary Evan also understands that he may revoke the Agreement within seven (7) days after signing the document or after February 27, 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. Gary Evan 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 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.



Agreement and General Release

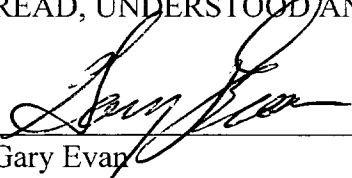
Gary Evan

February 27, 2009

Page 4

9. The Agreement constitutes the entire agreement between Gary Evan 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. Gary Evan 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:

  
\_\_\_\_\_  
Gary Evan

Feb 4, 09  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Don Owen

February 27, 2009  
\_\_\_\_\_  
Date

Director of Human Resources  
Qimonda North America Corp.

Ryan (QNA FE 2FO PEQE LE EQ); Spain Robin (QNA FE TO M WTD1); Steele Dorothy (QNA FE TO M WTD1); Stone Richard (QNA FE 2FO PEQE DEQ N1); Styles Alicia (QNA FE 2FO PEQE EEQ D1); Swann Phillip (QNA FE TO M WTD2); Taylor Earl (QNA FE TO M WTN2); Thompson Christopher (QNA FE 2FO PEQE EEQ EDN1); Tiller Michael (QNA FE 2FO PEQE DEQ D1); Vagner Laszlo (QNA FE 2FO PEQE WPE D1D2); Weeks Chris (QNA FE 2FO PEQE WPE D1D2); Winston Reed (QNA FE TO M WTD2); Zajac Christopher (QNA FE 2FO PEQE DPE TECH); Zugaro Paul (QNA FE 2FO PEQE FIEQ N2); Austin Steven (QNA FE FACS PO SUP2); Boyd Lonnie (QNA FE FACS PO SUP2); Brown Jr. Shawn (QNA FE FACS PO SUP1); Crone Norman (QNA FE FACS PO SUP2); Davis Jason (QNA FE FACS PO SUP3); Downs Oriental (QNA FE FACS PO SUP2); Ferris Thomas (QNA FE FACS PO SUP2); Fields Isaac (QNA FE FACS PO SUP2); Howze Charles (QNA FE FACS PO SUP3); Kennedy Joseph (QNA FE FACS PO SUP2); Krammes Jerome (QNA FE FACS PO SUP1); Lawson Kenneth (QNA FE FACS PO SUP3); Martin Stuart (QNA FE FACS PO SUP1); Osby William (QNA FE FACS PO SUP3); Rinthelukay Tommy (QNA FE FACS PO SUP1); Saunders Benny (QNA FE FACS PO SUP3); Scales Michael (QNA FE FACS PO SUP3); Simmons Landis (QNA FE FACS PO SUP2); Turner Leland (QNA FE FACS PO SUP3)  
Cc: Robey David (QNA FE 2FO); McCormick Tom (QNA FE 2FO MFG); Snead Kevin (QNA FE 2FO PEQE); Fojtik James (QNA FE 2FO MFG ETCH); Meyer Lawrence (QNA FE 2FO MFG DIFF); Sepko Frank (QNA FE 2FO MFG LITH); Tostenson Clifford (QNA FE 2FO MFG WETS); Wolfe Brian (QNA FE 2FO MFG FI); Ysais Dennis (QNA FE 2FO MFG CPLY); Biles Peter (QNA FE 2FO PEQE EPE); Hrynciw Douglas (QNA FE 2FO PEQE FIPE); Roth Dick (QNA FE 2FO PEQE DEQ); Anderson Steven (QNA FE 2FO T PILY); Hughes Thomas (QNA FE 2FO T DPC); Owen Don (QNA FE HR); Page Amy (QNA HR COMP); Allen Pam O (QNA FE HR); Goldstein Deanna (QNA FE HR); Henry Stephanie (QNA HR BIH); O'Grady Don (QNA HR); Eastwood Scott (QNA FE 2FO PEQE EEQ); Borton Rick (QNA FE 2FO PEQE FIEQ); George Regina (QNA HR RS); 'Holmes Bryan (QNA FE 2FO PEQE LEQ)  
Subject: Voluntary Request for an Early Departure Date - Wave 4

All QR2 Employees,

There have been requests by employees to accelerate individual QR2 employee separation dates. As we continue the process of ramping down the facility, we may have the opportunity to, in limited cases, allow employees to end their employment earlier than their original scheduled release date. With this in mind we would like to provide the opportunity for those scheduled to depart in wave 4 the ability to request to pull their departure date in by up to two weeks.

Some details that we would like to emphasize:

- \* This is completely voluntary. If interested, employees must volunteer to request an early departure date. No one will be required or asked to do this.
- \* Requests will be considered based on business needs. It is likely that some requests cannot be accommodated.
- \* Employees would still be eligible for their severance, bonuses, TAA, and unemployment benefits. The only difference is that their employment and respective pay and benefits would end earlier.
- \* Employees whose requests are granted must sign a waiver of rights under the federal Worker Adjustment and Relocation Notice Act (WARN). A copy of this waiver is attached.

If interested in requesting an earlier release date by up to 2 weeks, please complete the attached waiver and return to Sarah Hile. Thank you.

Sarah Hile  
Human Resources



February 27, 2009

Gary Evan  
470506123  
Richmond, Virginia 23231

Dear Gary:

When your Qimonda employment status changes or when your employment terminates, your coverage under the Qimonda benefit plans will be affected as follows:

- Group health plan coverage (Medical, Dental, Vision and Employee Assistance Program) will terminate on your last day of employment, which is scheduled for **February 27, 2009**.
- You will be notified of your rights and your dependents' rights, if applicable, to continue the following benefits coverage through "COBRA Continuation Coverage" (Consolidated Omnibus Budget Reconciliation Act of 1985) by SHPS, Qimonda's Benefits Administrator via mail in three to four weeks.
  - Medical, Dental, Prescriptions, Vision
  - Flexible Spending Account
  - Life Insurance and AD&D (personal and dependent)
- Alternatively, you may contact SHPS directly at 1-866-498-5520 to enroll in COBRA coverage. Enrollment may begin two weeks after termination. SHPS will provide rates, enrollment information and instructions. Please note that you must enroll in COBRA in order to receive the continued coverage.
- Information on the Qimonda 401(k) Savings Plan can be obtained online at the ING Qimonda 401(k) website at <https://qimonda.csplans.com> or by phone at 1-888-QNA-401k (1-888-762-4015). It will take about 3 weeks for them to receive notice of and process your separation information.
- Any unused PTO and UTO will be paid in your last pay which will be direct deposited into your bank account. Your last pay will be deposited on the normal pay cycle.
- You will have access to the Payroll WorkCenter for 30 days after you separate from Qimonda. The web address is: <http://workcenter.probusiness.com>.

If you have other questions regarding your health plan benefits or if you have not received your COBRA enrollment notice within the timeframe mentioned above, please contact SHPS Customer Service Center at 1-866-498-5520. To learn more about COBRA, visit the Department of Labor's site at: [http://www.dol.gov/ebsa/faqs/faq\\_consumer\\_cobra.html](http://www.dol.gov/ebsa/faqs/faq_consumer_cobra.html).

Sincerely,

A handwritten signature in dark ink, appearing to read "Don Owen".

Don Owen  
Director Human Resources

Qimonda  
6000 Technology Boulevard, Sandston, Virginia 23150  
(804) 952-6000  
[www.qimonda.com](http://www.qimonda.com)