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10 **UNITED STATES BANKRUPTCY COURT**
11 **NORTHERN DISTRICT OF CALIFORNIA**

12 In re:

13 XTAL Inc.,

14 Debtor

Bankruptcy Case No.: 18-52770-MEH

Chapter 11

**DEBTOR'S SECOND STATUS
CONFERENCE STATEMENT**

Status Conference

Date: May 2, 2019

Time: 10:30 a.m.

Place: Courtroom 3020

280 S 1st Street

San Jose, CA 95113

1 Debtor and debtor in possession XTAL Inc. (the “Debtor”) hereby provides its second Status
2 Conference Statement for the various matters in this case currently set for May 2, 2019, at 10:30 a.m.

3 **1. The factors (business, financial, operational and any other problems) leading**
4 **to this bankruptcy filing, the debtor(s)' objectives in this Chapter 11 case, and the means**
5 **proposed to achieve those objectives**

6 The factors and objectives are fully described in the Disclosure Statement for Chapter 11
7 Plan of XTAL, Inc. Dated March 28, 2019 (“Disclosure Statement”) [Doc. 139]. The means
8 proposed to achieve those objectives are in the Chapter 11 Plan of XTAL, Inc. Dated March 28,
9 2019 (“Plan”) [Doc. 138]. The Plan incorporates a settlement agreement (“ASML Settlement
10 Agreement”) with the Debtor’s largest creditor, ASML US, LLC, and the Motion to Approve
11 Settlement Agreement with ASML US, LLC Pursuant to Fed. R. Bankr. Proc. 9019 (“ASML
12 Settlement Motion”) [Doc. 136] is set for hearing on May 2, 2019. Debtor also filed a Motion for
13 Confirmation of Chapter 11 Plan of XTAL Inc. Dated March 28, 2019 [Doc. 147] (“Confirmation
14 Motion”). The Debtor also resolved significant issues with the DFJY Parties (“DFJY Settlement”),
15 and an order approving the Debtor’s Motion to Approve Settlement Agreement with DFJY Parties
16 Pursuant to Fed. R. Bankr. Proc. 9019 (“DFJY Settlement Motion”) [Doc. 148] was entered on April
17 25, 2019.

18 **2. A proposed schedule for filing a plan and disclosure statement, and for**
19 **confirmation of the proposed plan**

20 The Disclosure Statement and Plan were filed March 28, 2019 and originally set for hearing
21 on May 2, 2019.

22 The Debtor also filed its Motion to Extend Exclusivity Period for Obtaining Acceptance of
23 Plan (11 U.S.C. § 1121(d)(1) (“Extension Motion”) [Doc. 153] and set that motion for hearing on
24 May 2, 2019, as well.

25 Both the U.S. Trustee and creditor Putterman Landry + Yu LLP (“Putterman”) filed
26 objections to the ASML Settlement Motion, the Disclosure Statement and the Plan. The Debtor is
27 informed that Putterman also intends to oppose the Designation Motion. If the Designation Motion
28 is granted, then all classes entitled to vote will have consented to the Plan. If the Designation

1 Motion is denied, then the Debtor will request the Court to confirm the Plan as a cramdown.

2 Despite diligent efforts, the Debtor has not been able to resolve the Disclosure Statement and
3 Plan objections to date.

4 The Debtor requests that the ASML Settlement Motion move forward and be heard on May
5 2, 2019.

6 The Debtor requests that the Extension Motion move forward and be heard on May 2, 2019,
7 as well. No objections were filed to the Extension Motion.

8 The Debtor requests that the hearings on adequacy of the Disclosure Statement and Plan
9 confirmation be continued and set for a convenient time on the Court's calendar on either May 29 or
10 May 30. In conjunction therewith, the Debtor also requests that the hearing on the Designation
11 Motion be set for the same time.

12 The Debtor also proposes that Putterman be permitted to file any opposition to the
13 Designation Motion on or before May 16, 2019, and the Debtor be permitted to file any reply on or
14 before May 23, 2019.

15 The Debtor has met and conferred with counsel for the US Trustee, Putterman and ASML
16 with regard to the above.

17 The U.S. Trustee informed the Debtor that it takes no position on Debtor's scheduling
18 proposals.

19 ASML informed the Debtor that it has no objection to the above scheduling proposals.

20 Putterman informed the Debtor that it has no objection to the above scheduling proposals.

21 Additionally, the Debtor met and conferred with both counsel for the US Trustee and
22 Putterman regarding the conduct of the hearings on the Disclosure Statement and Plan, given their
23 objections. The US Trustee indicated that it did not intend to call any witnesses. The Debtor and
24 Putterman believe that the declarations in support of or in opposition to the Designation Motion
25 should be sufficient for the Court to decide that motion. The Debtor intends to have its Responsible
26 Individual, Jiangwei Li, its office manager, Jane Wu, and its general manager, Huayu Liu be present
27 at the confirmation hearing, in the event that the Court requires or desires to hear live testimony.
28

1 **3. An outline of the proposed plan**

2 Debtor’s Plan is a reorganization plan that proposes to pay creditors of the Debtor from its
3 cash on hand and salable assets as described therein. The Plan provides for 4 classes of claims and 1
4 class of equity security holders. Unsecured creditors holding Allowed Claims will receive
5 distributions on a pro rata basis, except that unsecured creditor ASML shall receive as a component
6 of its pro rata distribution on its allowed claim a partial distribution in kind in addition to cash. The
7 Plan also provides for the payment of priority claims in full on the Effective Date of the Plan with
8 respect to any such claim, and payment in full of all Allowed Administrative Expense Claims,
9 except that Professionals appointed in the case shall be required to file a fee application and have
10 their fees approved by the Court before their Administrative Claims are paid.

11 **4. The type, status and adequacy of insurance coverage of the debtor(s)’ assets**

12 The Debtor maintains and is current on its health insurance, vision and dental insurance, and
13 workers compensation insurance for its employees, all of which it had prior to filing.

14 **5. Whether the debtor has met the requirements for retaining professionals in the
15 case, and the estate’s need for retaining any additional professionals (e.g., attorneys,
16 accountants, brokers, etc.)**

17 Alston & Bird LLP was approved by the Court for retention as bankruptcy counsel for the
18 Debtor by order entered January 16, 2019. Apobridge International was approved for retention as
19 accountants for the Debtor by order entered March 5, 2019. Young Basile was approved for
20 retention as Debtor’s patent counsel by order entered April 11, 2019.

21 **6. The debtor(s)’ post-petition operations, revenue and financial results**

22 The Debtor’s primary pre-petition customer, Samsung, has not renewed its contract. Pre-
23 petition, most of the Debtor’s employees were engaged on work for Samsung, which concluded.
24 The Debtor has shrunk to 7 employees (including its CEO Jiangwei Li) and has disposed of
25 substantially all of its unutilized furniture, fixtures and equipment and rejected its office lease. The
26 Debtor is an engineering service and consulting company. From inception, it has provided software
27 product development services, including user experience design, system engineering,
28 implementation and testing. If the Plan is confirmed, the Debtor will specialize in machine learning,

1 embedded vision and game engine based simulators for mobility and robotics applications. The
2 Debtor's remaining engineers possess multiple PhD, Masters and Bachelor of Science degrees in the
3 technical areas required for the business, have decades of individual and combined experience in
4 these fields, and are well-versed in numerous programming languages.

5 **7. The status of any litigation pending in or outside of this Court**

6 The Debtor has settled with ASML and, if the ASML Settlement Motion is approved, will
7 have no pending litigation once the terms of the agreement are carried out.

8 **8. The debtor(s)' attendance at a meeting of creditors pursuant to 11 U.S.C. §**
9 **341(a), and compliance with requests for information from the U.S. Trustee (including but not**
10 **limited to requests made in the Initial Debtor Interviews)**

11 The Debtor complied with all requests for information from the U.S. Trustee and supplied all
12 requested information and backup documents prior to the Initial Debtor Interview, which the Debtor
13 attended on January 9, 2019. The Debtor also attended the meeting of creditors on January 15, 2019.
14 The meeting was concluded, and there are no outstanding requests for information by the U.S.
15 Trustee.

16 **9. The status of monthly operating reports, debtor-in-possession (DIP) accounts**
17 **and required post-petition payments to taxing authorities**

18 The Debtor has timely filed all monthly operating reports and paid all quarterly fees and
19 post-petition taxes.

20 **10. Whether the debtor has met the requirements for using cash collateral and**
21 **obtaining credit**

22 The Debtor has no secured creditors, and does not intend to borrow funds during the
23 pendency of this case. It has obtained a credit card through its new DIP accounts, which it is using
24 for ordinary course expenses that require credit card payment rather than check or wire.

25 **11. Orders entered in the case granting relief from the automatic stay, extending**
26 **or refusing to extend the automatic stay or determining there is no automatic stay in effect as**
27 **to any or all creditors**

28 The Court granted ASML stay relief regarding the state court litigation between ASML and

1 the Debtor. That litigation will be moot if the ASML Settlement Motion is approved.

2 **12. Motions to assume or reject any executory contracts or unexpired leases that**
3 **have been or are expected to be filed**

4 On April 12, 2019, the Court entered an order approving the Stipulation to Reject Real
5 Property Lease with Landlord Hanhai Investment, Inc. [Doc. 152].

6 **13. Unique issues concerning secured debt, employees, cash collateral, executory**
7 **contracts, existing management and/ or equity owners**

8 The AML Settlement Agreement will also resolve arbitration brought by ASML against two
9 key Debtor employees.

10 **14. Unusual developments or events that have occurred or are expected to occur in**
11 **the case, and any other matters that might materially affect the administration of this case.**

12 The Debtor believes that confirmation of the Plan is fair, equitable and in the best interests of
13 all parties. If the Plan cannot be confirmed, then the case may be converted to a chapter 7.

14
15 DATED: April 30, 2019

ALSTON & BIRD LLP

16
17 /s/ Leib M. Lerner

18 Leib M. Lerner
19 Attorneys for Debtor XTAL Inc.