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UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

In re: **TECHNOLOGY PROPERTIES LIMITED LLC, fake TECHNOLOGY PROPERTIES LIMITED INC., A CALIFORNIA CORPORATION, fake TECHNOLOGY PROPERTIES LIMITED, A CALIFORNIA CORPORATION,** Debtor.	Case No. 13-51589-SLJ-11 Chapter 11 Date: December 5, 2013 Time: 11:00 a.m. Place: United States Bankruptcy Court 280 S. First Street, Room 3099 San Jose, CA 95113 Judge: Honorable Stephen L. Johnson

OBJECTION OF OFFICIAL COMMITTEE OF UNSECURED CREDITORS TO DEBTOR'S DISCLOSURE STATEMENT RE: TPL PLAN OF REORGANIZATION (NOVEMBER 22, 2013)

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On October 31, 2013, Technology Properties Limited LLC (the "Debtor" or "TPL") filed its DISCLOSURE STATEMENT RE: TPL PLAN OF REORGANIZATION (OCTOBER 31, 2013) (the "October Disclosure Statement") and PLAN OF REORGANIZATION (OCTOBER 31, 2013) (the "October Plan"). That same day, the Debtor served its DEBTOR'S NOTICE OF HEARING ON APPROVAL OF DEBTOR'S DISCLOSURE STATEMENT (OCTOBER 31, 2013) (as amended by the SECOND SUPPLEMENT AND AMENDED NOTICE OF HEARING ON APPROVAL OF DEBTOR'S DISCLOSURE STATEMENT filed by the Debtor on November 6, 2013 [Docket No. 261], the "Notice of Hearing"), which, among other things, set a hearing date of December 5, 2013 for approval of the October Disclosure Statement and provided that that November 28, 2013[1], was the last day for filing and serving written objections to the October Disclosure Statement.

On November 22, 2013, the Debtor filed its DISCLOSURE STATEMENT RE: TPL PLAN OF REORGANIZATION (NOVEMBER 22, 2013) (the "November Disclosure Statement") and its PLAN OF REORGANIZATION (NOVEMBER 22, 2013) (the "November Plan"). The Official Committee of Unsecured Creditors (the "Committee") hereby objects to the November Disclosure Statement on the grounds of inadequate notice. The November Disclosure Statement was filed only 13 days prior to the hearing date, and only four business days before objections were due.[2]

To the extent the hearing proceeds, the Committee objects to the November Disclosure Statement on the grounds the November Disclosure Statement and the November Plan were filed in bad faith solely for the purpose of using exclusivity to coerce acceptance of the November Plan. The November Disclosure Statement describes the November Plan which clearly is not confirmable on its face. Among other things, the November Plan is unfeasible, misclassifies claims and falls woefully short of meeting the "fair and equitable" requirements of 11 U.S.C. § 1129[3]. Further, the November Disclosure Statement is confusing and lacks critically important information necessary

[1] Because the Bankruptcy Court was closed on November 28 and 29, 2013 in observance of the Thanksgiving Day holiday, the deadline to file and serve objections is December 2, 2013. See Rule 9006(a) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

[2] As discussed below, the Committee requested to the Debtor to voluntarily take the hearing off calendar. After the Debtor refused, the Committee filed its request to take the hearing off calendar with the Court. The Court denied such request, noting that the Committee and other interested parties may address the issue in the context of objections to the October Disclosure Statement.

[3] All statutory references herein are to the title 11, United States Code (the "Bankruptcy Code") unless otherwise specified.

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1 for creditors to make an informed decision as to whether to accept or reject the November Plan and
2 falls well short of disclosure requirements mandated by 11 U.S.C. §1125. Until the Debtor
3 addresses all of the foregoing glaring deficiencies, approval of the November Disclosure Statement
4 must be denied.

5 ## I. FACTUAL BACKGROUND

6 1. On March 20, 2013 (the "Petition Date"), the Debtor commenced the above-entitled
7 Chapter 11 bankruptcy case by filing a Voluntary Petition in this Court.

8 2. A trustee has not been appointed for the Debtor and it continues to function as the
9 debtor-in-possession pursuant to §§ 1107 and 1108.

10 3. The Committee was appointed by the Office of the United States Trustee pursuant to
11 § 1102.

12 4. The exclusive periods for TPL to file a plan and obtain acceptances set forth in
13 §§1121(c)(2) and 1121(c)(3) were originally set to expire on July 18, 2013, and September 16, 2013,
14 respectively. TPL and the Committee initially stipulated to extend exclusivity to file a plan and to
15 obtain acceptances thereof to August 16, 2013, and November 16, 2013, respectively.

16 5. Subsequently, TPL and the Committee agreed to an order extending exclusivity to file
17 a plan and to solicit acceptances to September 30, 2013 and December 5, 2013 respectively. To
18 facilitate a mediation of the case by Judge Montali, TPL and the Committee agreed to an order
19 extending exclusivity to file a plan and solicit acceptances to November 8, 2013 and January 7,
20 2014, respectively.

21 6. Mediation was held on October 8 and 9, 2013. The mediation did not result in a
22 resolution. At the status conference held in the matter on October 3, 2013, the Court indicated that
23 any future extensions of exclusivity should be made on noticed motion. Pursuant to that direction,
24 the Debtor filed its second motion to extend exclusivity without knowing the Committee's position
25 on further extension of exclusivity. Given the lack of progress on negotiating a plan and the
26 Debtor's financial performance in this Chapter 11 case, the Committee informed the Debtor that it
27 would oppose the motion and instead request termination of exclusivity so that the Committee could
28 file its own plan. The Debtor then withdrew its motion and filed the October Plan and the October

1 Disclosure Statement. The Debtor's Notice of Hearing filed concurrently therewith, indicates that
2 November 28, 2013[4], is the last day for filing and serving written objections to the October
3 Disclosure Statement and that the hearing to approve the October Disclosure Statement is set for
4 December 5, 2013.

5 7. On November 20, 2013, the Committee filed its MOTION TO TERMINATE EXCLUSIVE
6 PERIOD TO OBTAIN ACCEPTANCES TO THE PLAN (the "Exclusivity Termination Motion") and
7 requested an order shortening time so that it could also be heard on December 5, 2013. On
8 November 21, 2013, the Court granted the request to shorten time in part, denying the request to the
9 extent it requested a continuance of the hearing to allow competing plans to proceed on parallel
10 tracks should the Exclusivity Termination Motion be granted.

11 8. Thereafter, the Debtor filed the November Plan and the November Disclosure
12 Statement on November 22, 2013.

13 9. Following the filing of the November Plan and November Disclosure Statement, the
14 Committee requested the Debtor to take the December 5 hearing off calendar. The Debtor refused to
15 do so unless the Committee stipulated to a further extension of exclusivity.

16 ## II. DISCUSSION

17 ### A. The Hearing On The November Disclosure Statement Should Be Continued Because
18 the Debtor Has Not Complied With the Notice Requirements of Bankruptcy Rules 2002(b) and 3017(a) and B.L.R. 3017-1.

19 10. Bankruptcy Rules 2002(b) and 3017(a) require a 28-day notice period before a court
20 may consider whether to approve a disclosure statement. Bankruptcy Rule 3017(a) states in part that
21 "a court shall hold a hearing on at least 28 days' notice to the debtor, creditors, equity security
22 holders and other parties in interest as provided in Rule 2002 to consider the disclosure statement
23 and any objections or modifications thereto." The Bankruptcy Local Rules for the United States
24 District Court for the Northern District of California ("B.L.R.") require even greater notice:

25 / / /

26 [4] Because the Bankruptcy Court was closed on November 28 and 29, 2013 in observance of the Thanksgiving
27 Day holiday, the deadline to file and serve objections is December 2, 2013. See Rule 9006(a) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"); *see also Yepremyan v. Holder*, 614 F.3d 1042, 1044 (9th Cir. 2010)
28 (*citing Dwyer v. Duffy (In re Dwyer)*, 426 F.3d 1041 (9th Cir. 2005)) ("[W]e [previously] held that the day after Thanksgiving is a 'legal holiday' in California for purposes of applying Federal Rule of Bankruptcy Procedure 9006.")

> Notice of the hearing shall be served … not less than 35 days prior to the hearing. The notice … shall state that the deadline for the filing of objections is 7 days prior to the hearing. The proposed plan and proposed disclosure statement shall be served, with the notice, only on the United States Trustee and the persons mentioned in the second sentence of Bankruptcy Rule 3017(a).

B.L.R. 3017-1.

11. These rules, in conjunction with the applicable provisions of the Bankruptcy Code, ensure that parties in a bankruptcy proceeding are afforded due process which is of the utmost importance during the plan confirmation process:

> A principal purpose of 11 U.S.C. § 1129(a)(2) is to ensure that the plan proponent complies with the disclosure and balloting requirements of 11 U.S.C. § 1125 … Full and fair disclosure is required throughout the reorganization process so that creditors may make informed judgments about the plan … Creditors deprived of adequate notice or of a meaningful opportunity to vote are denied due process.

In re Proveaux, 2008 Bankr. LEXIS 1325, *7 (Bankr. D.S.C. Apr. 4, 2008) (internal citations omitted).

12. Here, the Debtor filed the November Disclosure Statement and the November Plan more than three (3) weeks after filing the Original Disclosure Statement and the Original Plan, and a mere thirteen (13) days prior to the hearing. The Debtor therefore has failed to comply with Bankruptcy Rules 2002(b) and 3017(a) and B.L.R. 3017-1. As stated by the Supreme Court, the "fundamental requisite of due process of law is the opportunity to be heard [and that] * * * [a]n elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonable calculated, under all circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950)); *see also Humphreys v. EMC Mortg. Corp. (In re Mack)*, 2007 Bankr. LEXIS 4833 (B.A.P. 9th Cir. Mar. 28, 2007) (citing *Memphis Light, Gas & Water Div. v. Craft*, 436 U.S. 1 (1978)) ("[t]he purpose of notice under the Due Process Clause is to apprise the affected individual of, and permit adequate preparation for, an impending 'hearing'").

13. Not only has the Debtor provided an insufficient time to fully evaluate the November

1 Disclosure Statement, it has done so with an eye to using exclusivity to coerce acceptance of the
2 November Plan at the expense of due process to all creditors and parties in interest, at this integral
3 stage of the bankruptcy process. The Court should not countenance such an abuse of the procedural
4 requirements of bankruptcy law. *See, e.g.*, *In re First Humanics Corp.*, 124 B.R. 87, 89 n.3 (Bankr.
5 W.D.Mo. 1991) (noting that hearing on disclosure statement had to be reset where debtor filed an
6 amended disclosure statement 10 days before the hearing date on the original disclosure statement
7 and parties objected on the basis of insufficient notice and continuing hearing to allow a competing
8 plan to proceed on a parallel track).

9 14. This is not an instance whereby the debtor has already filed a plan and disclosure
10 statement to which interested parties filed objections and which has been heard by the court. Nor is
11 this an instance where objections have been filed and the debtor filed an amended plan and
12 disclosure statement specifically to address the points raised in the objections. *See, e.g.*, *In re El*
13 *Comandante Mgmt. Co., LLC*, 359 B.R. 410 (Bankr. D.P.R. 2006). Here, no previous disclosure
14 statement hearing has been held, nor has the Court identified deficiencies in the October Plan and
15 October Disclosure Statement, nor have any parties or creditors filed objections. The November
16 Disclosure Statement was filed on November 22, 2013, after 6:00 p.m. PDT. The Committee has
17 had only four business days within which to review the November Plan and November Disclosure
18 Statement. The Committee has not been able to fully evaluate the main economic change of the
19 November Plan regarding receipt of the MMP revenue and replacing the TPL representative on the
20 PDS Board with someone chosen by the Committee. Alliacense still appears to be involved as the
21 licensing agent with its accompanying contingency licensing agreement and excessive payments.
22 The Committee must be able to evaluate and fully discuss the impacts of the ability to replace TPL
23 on the PDS Board, especially in light of TPL's intent to cease funding requirements for PDS and the
24 intricate and myriad agreements relative to the operations of the MMP Portfolio described on pages
25 46-49 and 62-69. In addition, the percentage of revenue from non-MMP sources has been reduced
26 and distributions will not include net operating proceeds ("NOP") in violation of the absolute
27 priority rule. The Committee has been unable to meet and discuss these issues since the filing of the
28 November Plan.

15. The Debtor is using exclusivity to coerce acceptance of a plan as is evidenced by its willingness to continue the hearing on the November Plan only if the Committee consents to a further extension of exclusivity. To allow a hearing on a disclosure statement which was filed only four business days before objections to the disclosure statement were due would only defeat the purpose of the notice requirements and allow the Debtor to improperly use exclusivity.

16. Here, while creditors will be deprived of due process and suffer extreme prejudice if the hearing on the November Disclosure Statement proceeds as presently scheduled, the Debtor's estate will not suffer any harm if the hearing is continued or taken off calendar. Indeed, the November Plan provides that its "Effective Date" shall be the date on which TPL has sufficient cash to make all payments required under the November Plan on the Effective Date, but no later than July 1, 2014. It is therefore evident that the Debtor has no compelling reason why delaying hearing on the November Disclosure Statement by three (3) weeks will cause any harm to the estate and that the only reason the Debtor seeks to have the hearing is to preserve its exclusivity while continuing to negotiate a consensual plan. Accordingly, the Committee respectfully requests the Court to take the hearing off calendar and require proper notice for the approval of the November Disclosure Statement. However, out of an abundance of caution in the instance the hearing on the November Disclosure Statement is permitted to proceed on December 5, 2013, the Committee has set forth substantive objections to the November Disclosure Statement below. Nonetheless, in light of the limited notice provided to it, the Committee expressly reserves its right to supplement its objections to the November Disclosure Statement.

B. Because The November Plan Is Patently Not Confirmable, The November Disclosure Statement May Not Be Approved.

17. A bankruptcy court should deny approval of a disclosure statement in the instance where the underlying proposed plan is unconfirmable on its face under section 1129 of the Bankruptcy Code. *In re Main Street AC, Inc*., 234 B.R. 771, 775 (Bankr. N.D.Cal. 1999) ("[i]t is now well accepted that a court may disapprove of a disclosure statement, even if it provides adequate information about a proposed plan, if the plan could not possibly be confirmed"); *In re 266 Washington Assocs.*, 141 B.R, 275, 288 (Bankr. E.D.N.Y. 1992) ("[a] disclosure statement will not

be approved where … it describes a plan which is fatally flawed and thus incapable on confirmation."). This is because where a plan is nonconfirmable, the court has an obligation not to subject the bankruptcy estate to a wasteful expense of soliciting votes and seeking confirmation. *In re Dakota Rail, Inc.*, 104 B.R. 138, 143 (Bankr. D. Minn. 1989).

18. Consequently, numerous courts have disapproved disclosure statements based on fundamental legal objections to the underlying plans. *See, e.g.*, *In re Filex, Inc.*, 116 B.R. 37, 41 (Bankr. S.D.N.Y. 1990) ("court approval of a disclosure statement for a plan which will not, nor cannot, be confirmed by the Bankruptcy Court is a misleading and artificial charade which should not bear the imprimatur of the court"); *In re Valrico Square Ltd. Partnership*, 113 B.R. 794, 795-796 (Bankr. S.D. Fla. 1990) (plan misclassified claims); *In re R&G Properties, Inc.*, 2009 Bankr. LEXIS 2101, at *13-14 (Bankr. D. Vt. July 6, 2009) (gerrymandering of classes).

1. <u>The Plan Is Not Proposed In Good Faith</u>.

19. As noted above, the November Plan was filed as a negotiating ploy, seeking to coerce acceptance through exclusivity. Generally, a plan is proposed in good faith if "there is a likelihood that the plan will achieve a result consistent with the standards prescribed under the Code." *In re Texaco, Inc.*, 84 B.R. 893, 907 (Bankr. S.D.N.Y. 1988) (*quotations omitted*). In order to satisfy the statutory requirement of good faith, a plan must be intended to achieve a result consistent with the objectives of the Bankruptcy Code." *Ryan v. Loui (In re Corey)*, 892 F.2d 829, 835 (9th Cir. 1989).

20. The Committee has made numerous attempts to negotiate a consensual plan; first through the parties' lawyers, then in informal sessions over a period of several months between a subcommittee of the Committee and representatives of the Debtor without lawyers, then through mediation with Judge Montali, then again informally between a Committee member and an "unofficial" representative of the Debtor, all to no success. Each time, the Debtor has made no substantial progress in addressing the Committee's concerns and instead has attempted to use exclusivity as a means of leverage. Now, it seeks to force its plan on inadequate notice, attempting to continue to use exclusivity as its leverage.

21. In this instance, the Debtor has proposed the November Plan which patently is in conflict with the objectives of the Bankruptcy Code as it is geared only towards funneling

1 disbursements to the Debtor's insiders and preserving exclusivity. It purports to grant to the
2 Committee the right to receive 100% of revenues from the MMP Portfolio and to temporarily allow
3 the Committee to fill TPL's seat on the PDS board so that "all control over the commercialization
4 and licensing of the MMP Portfolio (and what is paid to entities related to TPL and Mr. Leckrone
5 from MMP proceeds) will then be in the hands of OCC representatives)." [CORRECTED SUMMARY
6 AND EXPLANATION OF AMENDMENTS CONTAINED IN TPL PLAN OF REORGANIZATION (NOVEMBER
7 22, 2013) AND TPL DISCLOSURE STATEMENT (NOVEMBER 22, 2013) filed on November 25, 2013,
8 Docket No. 282 (the "Summary")]. Yet, the November Plan provides (a) for Alliacense to continue
9 to drain proceeds that would otherwise be distributable to TPL with no ability by the Committee to
10 terminate Alliacense [November Plan, § 4.09], and (b) that revenue from the MMP Portfolio does
11 not include fees and expenses paid to TPL by PDS. [November Plan, § 1.29]. The November
12 Disclosure Statement does not describe these fees and expenses, nor their amounts. Instead, the
13 November Plan explicitly grants TPL the right, in its business judgment, to continue to pay
14 Alliacense and, moreover, to enter into new agreements to pay additional amounts towards patent
15 litigation and prosecution efforts. [November Plan, § 4.09]. In other words, the November Plan
16 empowers one entity wholly-owned by Daniel Leckrone, in its sole discretion, to pay another entity
17 wholly-owned by Daniel Leckrone, without the ability for any party in interest to challenge or
18 terminate such payments.

19 22. To exacerbate matters, the November Plan calls for the Committee to be dissolved as
20 of its "Effective Date," ostensibly minimizing the monitoring of TPL's compliance with the
21 November Plan post-confirmation. [November Plan, §10.15]. Finally, the November Plan provides
22 that TPL need not comply with funding requirements provided for in the agreements between Patriot
23 and PDS and, moreover, that Daniel Leckrone be restored to the PDS Management Committee if
24 PDS requires TPL to provide necessary funding [November Plan, § 4.08]. This proposed provision
25 is patently improper and is more appropriately governed by applicable agreements between PDS and
26 TPL[5], but, regardless, reeks of the Debtor's coercive attempts to circumvent its obligations. The

27 [5] Indeed, the Committee believes that the applicable Joint Venture Agreement precludes the arrangement
28 proposed in the November Plan. For example, if PDS requires funding from a TPL ownership interest that is unpaid and instead must be funded by Patriot, TPL's ownership interest necessarily will be reduced.

November Disclosure Statement does not discuss the effect of the various agreements described on its pages 46-49 and 62-69 would have on the ability of the Committee representative of the PDS board to exert control over the commercialization of the MMP Portfolio. In short, the November Plan, despite the claims of the Summary, does not provide for control of all commercialization and licensing of the MMP Portfolio.

23. The November Plan classifies incentive compensation claims filed by various senior management and employees as general unsecured claims even though the claims are based on agreements entered into with Alliacense, not the Debtor.

24. During the bankruptcy case, TPL has compensated officers, including Daniel Leckrone and other insiders, with exorbitant salaries based on the self-serving, unsubstantiated statement that they are "within market ranges." [November Disclosure Statement, p. 75, lines 12-13]. Despite being replaced by a Committee-chosen representative on the PDS Board, Daniel Leckrone would continue to draw the same excessive salary under the November Plan. In fact, post-confirmation, TPL intends to continue paying the same compensation to its executives. [November Disclosure Statement, Ex. C and p. 86, §IX]. This compensation arrangement is contrary to misleading statements which indicate that the salaries will be "reduced" concomitant with a cutback to the operating budget. In fact, the November Disclosure Statement explains that the November Plan provides (a) that the cutback will only endure until 50% of allowed unsecured claims in Class 6 are paid at which time TPL may increase its budget at its unfettered discretion and (b) for a mere 10% deferral of salaries for three executives, which deferred amounts still will be paid *pari passu* with unsecured creditors in Class 6. [November Disclosure Statement, p. 40, lines 16-23]. This compensation arrangement also is at odds with disingenuous statements that TPL has reduced its expenditures to a minimum and has reduced its operating expenses and will maintain a working capital reserve to return "maximum amounts to creditors." [November Disclosure Statement, p. 79, lines 7-15].

25. Another example of the Debtor's bad faith is reflected in its proposed compensation of professionals. The November Plan provides that post-confirmation payment to the Committee's professionals will come from the Quarterly Payment. [November Plan § 10.13(4)]. This is

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problematic for two reasons. First, it is at odds in that the November Plan calls for dissolution of the Committee as of its Effective Date. Second, it effectively diminishes the source of funding to creditors to pay professional fees and constitutes an attempt to dis-incentivize creditors from monitoring the Debtor's performance and taking any action through its professionals to enforce its compliance with its Plan obligations.

26. As still another example of the Debtor's bad faith, the November Plan provides for a tolling of the statute of limitations for the Creditor Trust Trustee to bring avoidance actions against Daniel Leckrone. [November Plan, § 7.01.2]. As discussed below, however, there is no mechanism which ensures that any such actions will be brought. In addition, the November Plan does not provide for tolling against any of a number of affiliated entities or insiders, including, for example, Alliacense. In light of the facts that the November Plan's "Effective Date" may be substantially delayed by the Debtor, as discussed below[6], and that the Creditor Trust Trustee would not be appointed until the Effective Date, tolling of all statutes of limitations against all affiliates and insiders are necessary.

2. The November Plan Is Not Fair And Equitable.

a) The November Plan Violates Does Not Provide For Present Value Payments To Unsecured Creditors and Violates The Absolute Priority Rule.

27. In the instance where an impaired class does not vote to accept a plan, which the Committee believes will be the case with respect to the November Plan when claims are properly classified, the plan must provide fair and equitable treatment to such class. In order for a plan to be fair and equitable, creditors must be provided the present value of their claims; otherwise, a plan must satisfy the "absolute priority" rule which provides that a plan may not be confirmed wherein a junior class of security holders, over the objections of a senior class of impaired creditors, retains its interests in the reorganized debtor unless the senior class is first paid in full. 11 U.S.C. § 1129(b)(2)(B)(ii); *see also Bank of America Nat'l Trust & Sav. Ass'n* v. *203 N. LaSalle St. P'Ship*, 526 U.S. 434 (1999).

28. The November Plan violates the absolute priority rule by eliminating the provision

[6] The November Plan's defective definition of "Effective Date" is discussed below at Para. 41.

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1 previously included in the October Plan requiring the Debtor to fund the Quarterly Payment with
2 100% of Net Operating Proceeds ("NOP") and instead apparently allows the Debtor to retain NOP
3 which can only be for the benefit of equity.

4 29. In addition, while the November Plan purports to pay claims in full, the Committee
5 believes that this is highly unlikely in light of the Debtor's dubious and unsupported Financial
6 Forecast. In addition, the November Plan proposes payment of 3% interest to unsecured creditors in
7 Class 6 yet provides no explanation how such rate of interest will adequately compensate creditors in
8 full. In fact, due to the indefinite term of the November Plan, a meaningful analysis of what interest
9 rate can adequately provide for payment of "present value" to unsecured creditors is impossible. *See*
10 *In re Perez*, 30 F.3d 1209, 1214-1215 (9th Cir. 1995). As a result, the November Plan must comply
11 with the "absolute priority rule" which it does not do. The November Plan permits Daniel Leckrone
12 as the holder of interests in Class 8 to retain his interests in TPL. [November Plan, § 2.04.10].

13 **b) Additional Violations of Fairness and Equity.**

14 30. Significantly, the foregoing analysis provides only a baseline of what is required for
15 the November Plan. Technical compliance with section 1129(b)(2) "does not assure that the plan is
16 fair and equitable … this section merely sets minimal standards that a plan must meet, and does not
17 require that every plan no prohibited be approved." *Matter of Sandy Ridge Development Corp.*, 881
18 F.2d 1346, 1352 (5th Cir. 1989). Here, the November Plan is not fair and equitable in numerous
19 other respects.

20 31. For instance, the November Plan provides for its "Effective Date" to be 30 days after
21 the entry of the Confirmation Order, *or any date* on which TPL has cash to make Effective Date
22 payments. If TPL does not designate a date before July 1, 2014, that date will be the Effective Date.
23 [November Plan, § 1.21]. However, the November Plan then provides that even if Effective Date
24 payments are not made, TPL is not in default for a period of one year thereafter. [November Plan §
25 4.10]. Thus, it is possible that no payment could be made to Class 1 and Class 5 (which must be
26 paid prior to Class 6) until July 1, 2015. The November Plan further provides that if funds are
27 insufficient to enable TPL to make payments due on the Effective Date, such payments shall be
28 made on a pro rata basis until paid in full. [November Plan, § 4.01]. Therefore, even if funds are

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1 insufficient on the unidentified Effective Date, this still would not be considered a breach of the
2 November Plan's terms. Incredibly, the November Plan provides that creditors shall be paid for a
3 period of five years after the Effective Date, "or such longer time, *without limitation*, as may be
4 required." [November Plan, § 4.13]. Considered together, these November Plan terms enable the
5 Debtor to substantially delay the Effective Date, further delay any default under the Plan even if it
6 fails to meet its funding and Effective Date payment obligations, and ostensibly delay payments to
7 unsecured creditors in Class 6 indefinitely, all while the Debtor's related and affiliated insiders
8 collect payments. Meanwhile, the Debtor is effectively empowered to delay all events scheduled to
9 take place on the Effective Date which purport to benefit creditors including, for example, the
10 granting of a junior lien in the Debtor's assets, the appointment of Claims Trust Trustee, the deferral
11 of executive salaries, and the establishment of a cap on expenses.

12 **3. The Plan Misclassifies Claims to Impermissibly Gerrymander Votes.**

13 32. Section 1122 of the Bankruptcy Code requires classification be based on the nature of
14 the claim or interests so classified, and claims or interests should be included in a specific class only
15 if substantially similar to the other claims and interests in that class. *See, e.g., In re Loop 76, LLC*,
16 442 B.R. 713, 714 (Bankr. D. Ariz. 2010) ("The language of § 1122, the case law and the parties
17 here unanimously agree that if claims are not substantially similar, the Code requires them to be
18 placed in separate classes."). While § 1122 provides plan proponents considerable latitude to create
19 classification schemes that will facilitate reorganization, a debtor may not "gerrymander" or
20 artificially impair classes of claims in order to obtain an impaired accepting class. *See, e.g., In re*
21 *Chateaugay Corp.*, 89 F.3d 942, 949-50 (2d Cir. 1996); *In re Bryson Properties, XVIII*, 961 F.2d
22 469, 502 (4th Cir. 1992). Not only is artificial impairment a violation of § 1122, it also constitutes
23 indicia of bad faith. *See Connecticut Gen. Life Ins. Co. v. Hotel Assocs. (In re Hotel Assocs.)*, 165
24 B.R. 470 (B.A.P. 9th Cir. 1994). Here, the November Plan purposefully organizes classes so that
25 dissenting creditors will be swamped by inflated insider claims.

26 33. In the November Plan, the Debtor lumps general unsecured trade creditors with the
27 Incentive Compensation claims of senior management and "employees". Other than the artificial
28 separation of Alliacense and TPL into two separate LLC's, the two companies are the same. They

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share the same owner, the same premises and the same administrative staff. TPL claims that its business is commercialization of a portfolio of patents and its products in exchange for a share of the revenue or, in some cases, payment for the service and expenses. Alliacense is paid yet another fee based on a percentage of the revenue used to perform these services, only as a vehicle to extract more profits from the revenue stream and to shield those profits from the claims of creditors. This artificial separation of the two companies is consistent with the Debtor's general attitude toward creditors; the Debtor has engaged in a pattern of conduct which has had the effect of placing assets outside the Debtor while it is the Debtor that is incurring the obligations.

34. The Incentive Compensation claims are based on agreements, either written or "oral" with Alliacense, not TPL. If these two companies are separate as the Debtor claims, these claims should not exist against the Debtor, yet the November Plan classifies them in the same class as trade creditors. There are numerous anomalies associated with these claims. Several claims are from holders who are not employees of TPL, but instead are employees of Alliacense. Some are so-called "oral" agreements entered as long ago as 2006. Why is the Debtor responsible to pay claims that arise from an Alliacense Incentive Plan and which are based on a percentage of the revenues of Alliacense? These claims are part of an overall scheme by the Debtor to strip assets from TPL to Alliacense and related entities while keeping all the liabilities of those companies in TPL.[7] To what extent did these insiders knowingly participate in this scheme? Did this scheme damage unsecured creditors in the case? In fact, it is only recently that Alliacense was formed as a separate entity apart from TPL, presumably as a part of this scheme.

35. In Class 7, the Debtor lumps the claims of non-insiders with insider claimants. The insiders holding Class 7 claims are family members of the owner of Alliacense and TPL. The Committee believes that the Debtor's proposed classification of these claims is both inequitable and improper, and that the Class 7 insider claims should be separately classified from the non-insider claims so that the non-insider claimants are afforded a meaningful vote on whether or not the non-

[7] Part of this scheme is evidence by TPL entering into separate license agreements with entities owned by Daniel Leckrone. These entities actually own the patents, while TPL has only the right to commercialize this IP. Indeed, most of the agreements call for TPL to turnover 65% of the proceeds TPL realizes from these agreements to these entities.

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insider claims can be subordinated by fiat, as proposed in the November Plan [November Plan, §2.04.9], as opposed to being afforded an opportunity to contest subordination under § 510(b) on its merits through an adversary proceeding. As presently stated, the November Plan improperly categorically subordinates the non-insider 13%ers without due process and in violation of Bankruptcy Code Section 1122 and Supreme Court precedent, e.*g.*, *United States v. Noland*, 517 U.S. 535 (1996) and *United States v. Reorganized CF & I Fabricators of Utah, Inc.*, 518 U.S. 213 (1996), which would result in them receiving them a very small percentage of their claims.

36. Moreover, the insider and non-insider claims in Class 7 should be separately classified due to the parties' disparate legal rights. Specifically, the insider claims are based on undocumented and invalid assignment agreements. [See OPPOSITION OF CREDITORS CHESTER A. BROWN, JR. AND MARCIE BROWN TO THE MOTION OF TECHNOLOGY PROPERTIES LIMITED LLC FOR APPROVAL OF DISCLOSURE STATEMENT (NOVEMBER 22, 2013), [Docket No. 292], § I-A-5]. As such, the insider claims are not substantially similar and should not be included in the same class.

4. The Debtor Has Not Demonstrated That It Can Satisfy The Requirements Of Section 1129(b).

37. The November Plan and November Disclosure Statement fail to address the Debtor's ability to meet the cramdown requirements under § 1129(b) over any dissenting, impaired class, including the need to show that the November Plan does not discriminate unfairly and that it is fair and equitable with respect to each impaired, dissenting class. Section 1126(c) provides that acceptance by an impaired class of claims requires at least two-thirds in dollar amount and greater than one-half in number of claims voted. 11. U.S.C. 1126(c). Here, if the claims are properly classified, *i.e.*, if the Incentive Compensation claims and the insider 13%er claims are separately classified, the unsecured claims in Class 6 would not be swamped by insider claims, and the Debtor likely would need to satisfy the cramdown requirements with respect to Class 6. Even if the claims are improperly classified as proposed in the November Plan, the Debtor likely would need to satisfy the cramdown requirements with respect to Class 7. At any rate, neither the November Disclosure Statement nor the November Plan demonstrates the Debtor's ability to do so nor do they even address this issue.

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5. The November Disclosure Statement Does Not Specify Compliance With Section 1129(a)(4).

38. Section 1129(a)(4) requires that a plan require that payment of professional fees and other administrative expenses shall be subject court approval as reasonable. 11 U.S.C. §1129(a)(4); *In re Texaco, Inc.*, 84 B.R. 893, 907-908 (Bankr. S.D.N.Y. 1988). The November Disclosure Statement must specify such requirement but does not.

6. The November Plan Violates Section 1129(a)(9).

39. The November Plan provides that if the Debtor does not have sufficient funds to make all payments due on the Effective Date, it may make such payments *pro rata* until paid in full. [November Plan, § 4.01]. This provision is directly in violation of § 1129(a) (9)(A) which requires the Debtor to pay administrative claims under § 507(a)(2) on the Effective Date. 11 U.S.C. §1129(a)(9)(A). As such, the November Plan is not confirmable. This provision also brings into question the feasibility of the November Plan, as discussed below.

7. The November Plan Is Not Feasible.

40. In order to be confirmed, a plan must pass a "feasibility" test which requires that "[c]onfirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor to the debtor under the plan, unless such liquidation or reorganization is proposed in the plan." 11 U.S.C. § 1129(a)(11). This requirement is not designed to prevent confirmation of a plan so long as it offers a reasonable likelihood of success. "The purpose of section 1129(a)(11) is to prevent confirmation of visionary schemes which promise creditors and equity security holders more under a proposed plan than the debtor can possibly attain after confirmation." *Pizza of Hawaii, Inc. v. Shakey's Inc. (In re Pizza of Hawaii, Inc.,)*, 761 F.2d 1374, 1382 (9th Cir. 1985) (*citations omitted*); *see also, e.g., In re Copy Crafters Quickprint, Inc.*, 92 B.R. 973, 981 (Bankr. N.D.N.Y. 1988) (in liquidating chapter 11, court found liquidation analysis and valuation inadequate and would not approve disclosure statement "premised on an unsupported and self-serving valuation and a speculative sale.").

41. Exhibit "B" to the November Disclosure Statement sets forth the Debtor's financial forecast for the period from 2014 through 2018 (the "Financial Forecast"). The Debtor's projection

of revenues therein bears no relation to its recent historical performance. The Debtor's gross revenues for each of 2011 and 2012 approximated $10 million. During the pendency of this Chapter 11 case, total receipts have averaged less than $1 million monthly. To establish the feasibility of its November Plan, the Debtor now projects income of almost $27 million in 2014, $30 million in 2015 and $27 million in 2016. The Debtor offers no plausible explanation regarding the dramatic increase in revenues. During this Chapter 11 case, the Debtor has lost at least $2.1 million, including at least $324,000 in October 2013) with $1.8 million in post-petition payables.

42. Secured claims total in excess of $9 million and general unsecured claims total in excess of $50 million and of which $37 million are held by insiders. Administrative Claims will total over $1 million for the Debtor's and Committee's professionals. Other administrative expense claims, including amounts necessary to cure defaults for the contracts to be assumed, are not quantified in the November Disclosure Statement, but may exceed $1 million. These administrative expenses, payable on the Effective Date, are not identified or accounted for in the Financial Forecast. Without significant reduction in costs of operation and subordination of insider, senior management and family claims, the Debtor will be unable to make all payments to creditors under the November Plan, or at best would stretch payments to unsecured creditors over decades. Yet only Daniel Leckrone has agreed to subordinate his secured claim (approximately $4 million) and then only to Classes 1-6. [November Disclosure Statement, p. 37, lines 5-15].

43. Here, the November Plan provides for the reorganization of the Debtor without indicating any substantial changes which would support the Debtor's exceedingly optimistic, unfounded Financial Forecast. As discussed above, in order to "cut" costs, the November Disclosure Statement indicates that the reorganized company will reduce its operating budget to $3 million annually and that certain officers will defer 10% of their salaries, until 50% of allowed unsecured claims in Class 6 are paid. Such reductions are, of course, nominal concessions. First, the budget reductions are exclusive of ongoing litigation support, license fees and patent prosecution costs and, notwithstanding any such reductions, distributions to unsecured creditors in Class 6 will be funded subject to the company's replenished $1.0 million working capital reserve.

44. Second, the proposed salary deferrals by Daniel Leckrone, Susan Anhalt and Janet

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Neal are minor in light of their exorbitant salaries of $480,000, $250,000 and $247,000 respectively. [November Disclosure Statement, Ex. C]. Such salaries are especially dumbfounding when considered in light of the fact that TPL is essentially a holding company[8] and that the officers' duties and roles remain unclear.

45. Third, while the Debtor has provided qualifications of management, it does not describe their duties and allocation of their time between items related to the Debtor and items related to Alliacense. Nor does the Debtor provide job descriptions for its other employees. The employee roster for this 11 person company includes an HR person at $92,000 per year, an IT person at $114,000 per year; a "Director of Tax" at $150,000 per year; an executive assistant at $82,000 per year; an unidentified person as a "Misc. Consultant" at $48,000 per year; and a "Chief IP Counsel" at $97,000 per year. The Debtor does not explain why it needs an "HR" person or an IT person for its limited operations. These employees are not required for what is essentially a holding company and, moreover, they appear to be performing duties for Alliacense, without any reimbursement to the Debtor's estate.

46. Although the Committee has not yet completed its review and analysis, it appears from the Financial Forecast attached to the November Disclosure Statement that TPL's budget requires nearly $14 million per year to operate. If TPL were to reduce its payroll, patent prosecution and SG&A by 50%, it could save $11.5 million over six years, nearly $2 million per year which could go directly to the creditors of TPL.

47. When compared to the Debtor's historical performance, both pre-bankruptcy and during the bankruptcy case, it is evident that the cosmetic changes proposed in the November Plan will come nowhere near to effecting the wholesale changes required for the Debtor to successfully reorganize.

48. Further, given its present cash balance, the Debtor cannot demonstrate that it can make those payments due on the effective date of the November Plan if the "Effective Date" is appropriately defined. The Debtor has not demonstrated its ability to cure defaults for contracts it

[8] The November Disclosure Statement describes the Debtor as "a managerial and litigation support entity." [November Disclosure Statement, p, 22, line 8]. Given the numerous third party counsel and litigation support professionals it employs, this begs the question of to what extent does TPL play a role in generating revenue.

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wishes to assume (which would give rise to administrative expense claims that must be paid upon the Effective Date unless otherwise agreed) or calculated and provided for rejection damages for contracts it wishes to reject (which would give rise to additional unsecured claims in Class 6).

49. Finally, it is uncertain whether the 100% of MMP revenue will amount to anything for unsecured creditors. The Debtor and/or Alliacense could purposefully choose to focus on other revenue streams. Further, if Alliacense remains the licensing agent for MMP, revenues to TPL from the MMP Portfolio may be significantly reduced. But if indeed the Committee representative is able to terminate Alliacense, the November Disclosure Statement does not identify what fees or damages could be asserted or what litigation might be commenced by Alliacense as a result of such termination, which would delay or dissipate distributions from PDS. The Financial Forecast does not identify proceeds projected to be received from the MMP Portfolio but instead lumps all revenues from all portfolios together. The Disclosure Statement also fails to discuss the ramifications of replacing TPL's representative on the PDS Board on the numerous agreements and amendments discussed in the November Disclosure Statement. [See November Disclosure Statement, pp. 46-49 and 62-69.] The Committee has not been able to fully vet these issues due to the inadequate notice provided by the Debtor.

C. The November Disclosure Statement Fails To Provide Adequate Information.

50. It is a fundamental to the chapter 11 reorganization process that a debtor provide complete disclosure. *Momentum Mfg. Corp.* v. *Employee Creditors Comm. (In re Momentum Mfg. Corp.)*, 25 F.3d 1132, 1136 (2d Cir. 1994); *In re Westmoreland Oil Dev. Corp.*, 157 B.R. 100, 102 (S.D.Tex. 1993). Congress intended the disclosure statement to be the primary source of information upon which creditors and shareholders rely in making an informed judgment about a plan of reorganization. *Id.*

51. Section 1125(b) of the Bankruptcy Code requires a proposed disclosure statement to provide "adequate information" to holders of claims or interests. 11 U.S.C. § 1125(b). In turn, § 1125(a)(1) defines "adequate information" as:

> information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the

> condition of the debtor's books and records … that would enable … a hypothetical investor of the relevant class to make an informed judgment about the plan …

11 U.S.C. § 1125(a)(1).

52. The purpose of § 1125 is to assist creditors in evaluating a plan on its face. *In re Aspen Limousine Service, Inc*., 193 B.R. 325, 334 (D.Colo. 1996). Thus, the requirement that a disclosure statement contain adequate information is at the very "heart" of the chapter 11 reorganization process. *In re Crowthers McCall Pattern, Inc.*, 120 B.R. 279, 300 (Bankr. S.D.N.Y. 1990). The importance of full disclosure is "underlaid by the reliance placed upon the disclosure statement by the creditors and the court." *In re Oneida Motor Freight, Inc.*, 848 F.2d 414, 417 (3d Cir. 1988) ("[g]iven such reliance, we cannot overemphasize the debtor's obligation to provide sufficient data to satisfy the Code standard of 'adequate information'"). Accordingly, § 1125 requires more, rather than less, clear disclosure. *Crowthers*, 120 B.R. at 300; *In re Copy Crafters Quickprint, Inc*., 92 B.R. 973, 981 (Bankr. N.D.N.Y. 1995).

53. Specifically, § 1125 requires a disclosure statement to contain sufficient information that would enable a "hypothetical reasonable investor typical of holders of claims or interests of the relevant class to make an informed judgment about the plan." 11 U.S.C. § 1125(a)(1); *Momentum Mfg. Corp*., 25 F.3d at 1136; *Crowthers*, 120 B.R. at 301. This test "parallels the materiality standard adopted by the Supreme Court with respect to proxy solicitations under section 14(a) of the Securities Exchange Act of 1934, 15 U.S.C. § 78 (1975), and Rule 14a-9, 17 C.F.R. § 240.14a-9 (1975), promulgated thereunder." *Crowthers McCall Pattern*, 120 B.R. at 300 (citing *TSC Indus., Inc.* v. *Northway, Inc.*, 426 U.S. 438, 449, 96 S.Ct. 2126, 2132, 48 L.Ed.2d 757 (1976)) ("an omitted fact is material if there is a substantial likelihood that a reasonable investor would consider it important in deciding how to vote"). Given the necessity for adequate information in the disclosure statement and the paramount position § 1125 occupies in the chapter 11 process, "there is little, if any, room for harmless error." *Crowthers McCall Pattern*, 120 B.R. at 300.

1. <u>The November Disclosure Statement Does Not Provide Details To Substantiate Its Projections.</u>

54. The November Disclosure Statement provides only a general description for the basis

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of the amounts projected in the Financial Forecast. It does not provide details to support its calculations nor does it identify the source of the financial information provided. Instead, with respect to projected revenues, the November Disclosure Statement explains that "licensing revenue is inherently 'lumpy,' or inconsistent." [November Disclosure Statement, p. 79, line 10]. Further, while the Debtor claims that it will reduce its operating expenses to $3 million annually, such expenses do not include litigation and licensing expenses, and litigation support and patent prosecution fees, all of which are not specified. [November Disclosure Statement, p. 78, lines 13-23]. This is especially important because such fees and expenses in excess of the Debtors operating expenses have been and will continue to be paid to Alliacense, an entity wholly-owned by Daniel Leckrone.[9]

55. The November Disclosure Statement boasts that TPL earned over $340 million in revenues since 2005, yet fails to explain why it rang up over $60 million in creditor claims. [November Disclosure Statement, p. 65, lines 10-12]. Now the Debtor claims, without adequate explanation, that it will generate approximately $125 million in revenues over the next six years, pay all of its expenses on an ongoing basis and repay all creditors with interest. As discussed in detail above, during the pendency of this case, total receipts have averaged less than $1 million monthly, and the Debtor has lost at least $2.1 million, with $1.8 million in post-petition payables, yet the Financial Forecast projects revenues which bear no relation to its historical performance. The November Disclosure Statement offers neither any factual support nor any plausible explanation regarding its projected revenues which, on their face, are exceedingly inconsistent with the Debtor's historical performance. There are no details which reconcile this glaring discrepancy.

56. Without additional and detailed information, no creditor can ascertain whether the Debtor's financial projections are even remotely achievable or instead are simply "pie in the sky" estimates based on conjecture. Accordingly, it is woefully inadequate.

57. The October Plan provided for the Quarterly Payment be funded from 20% of adjusted gross revenues as that term was defined in the October Plan plus 100% of NOP. The

[9] The Committee's OBJECTION TO USE OF CASH COLLATERAL filed on November 27, 2013 [Docket No. 289] demonstrates the magnitude of the amounts projected to be paid to Alliacense, in the context of the Debtor's proposed use of cash collateral.

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November Plan eliminates the definition of NOP and reduces distribution from non-MMP proceeds to 12%. There is no explanation of the practical effect of this change in terms of projected revenues. Given the uncertainties outlined above regarding the commercialization and licensing of the MMP Portfolio[10], such an explanation should be required so that creditors can evaluate both options. Further, the November Disclosure Statement does not explain why creditors should not receive 100% of NOP as opposed to the Debtor retaining NOP for the benefit of equity in violation of the absolute priority rule as the November Plan proposes.

2. The Duration Of The Financial Forecast Is Inadequate.

58. As described in the November Disclosure Statement and discussed above, the duration of the November Plan is indefinite; however, the Financial Forecast extends only through 2018. The Financial Forecast must project far beyond 2018 so that creditors may make an informed decision on whether or not to vote in favor of the November Plan which has no definitive end date.

3. The November Disclosure Statement Does Not Disclose Other Alternatives to the November Plan.

59. In its Section VII discussing the "best interests of creditors" test, the November Disclosure Statement states that liquidation of the estate under Chapter 7 of the Bankruptcy Code is the only alternative if the November Plan is not confirmed. In fact, other, and potentially more beneficial, alternatives exist. For example, a competing chapter 11 plan could provide for new management familiar with business in the Debtor's industry and, as a neutral, would have different incentives than the Debtor's insiders who are more intent in assuring continued payments than with satisfying claims. Or, a plan could provide for a greatly reduced cost structure whereby executives are not collecting exorbitant salaries and Alliacense is not collecting excessive and unsubstantiated patent prosecution and litigation support fees. The Debtor can decide to act responsibly and reasonably, and negotiate a sensible and consensual plan under which non-insider claims are paid first before excessive and, in some cases, undocumented insider claims are paid, with appropriate safeguards and monitoring to alleviate creditors' concerns regarding the priorities of management. However, because the November Disclosure Statement provides no detailed information as to

[10] See Para. 36, *supra*.

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alternative management structures nor as to what fees Alliacense is and will be collecting, parties in interest cannot make any informed decisions about other, more beneficial, alternatives. Furthermore, even in a chapter 7 liquidation scenario, detailed information omitted from the November Disclosure Statement - such as information pertaining to Alliacense's projected fees and an actual identifiable plan term - is necessary to enable creditors to evaluate whether or not the Plan in fact represents a superior option to immediate liquidation.

4. The November Disclosure Statement Fails to Adequately Disclose Potential Causes of Action.

60. The November Disclosure Statement's description of the Debtor's assets reflects the Debtor's Schedule B filed with the commencement of the case but fails to detail potential claims against insiders and affiliates, which the Debtor claims are "of unknown value." [November Disclosure Statement, § III-E]. The Committee believes that, especially in light of the tenuous prospects of the Debtor achieving its projections and consummating the November Plan, affirmative claims against insiders provide some of the most valuable estate assets and, therefore, that parties in interest should be fully apprised of the nature of such claims. Accordingly, the November Disclosure Statement should specify information pertaining to the potential parties, potential claims and potential range of recoveries for such affirmative claims and causes of action.

61. Among others, one glaring omission is any detailed discussion to avoidance actions against Alliacense. The Committee believes that the estate possesses a claim against Alliacense for a $15 million debt owed by Alliacense which was written off by the Debtor. This is in addition to other potential grounds for avoidance actions against Alliacense, as referenced herein. In the context of its liquidation analysis, the November Disclosure Statement merely touches upon the $15 million debt but does not provide any detail regarding it nor any other potential actions against Alliacense. [November Disclosure Statement, p. 74, lines 18-26].

62. It is notable that the October Disclosure Statement referenced an Exhibit "B" which purportedly listed the persons and entities potentially subject to such actions but which is omitted in the November Disclosure Statement. [Summary, Exhibit "A"; November Disclosure Statement, p. 40, lines 22-23]. Moreover, the November Disclosure Statement provides that rights to challenge

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1 the lien of the Class 4 secured claim holder, Mr. Venkidu, are preserved for TPL and the Committee.
2 [November Disclosure Statement, p. 24, lines 15-20]. Yet, in contradiction, the Plan provides that
3 the Committee shall be dissolved on the Effective Date. [November Plan, § 10.15]. At any rate, the
4 November Disclosure Statement should include all information regarding any affirmative claims and
5 causes of action which may be a source of recovery for creditors.

6 **5. <u>Information Regarding the Creditor Trust Trustee Is Inadequate.</u>**

7 63. The November Plan provides for the appointment of the Creditor Trust Trustee by the
8 Court at the confirmation hearing, to be selected from a list of three (3) candidates proposed by the
9 Debtor. Such individual will, among other things, be empowered to investigate, prosecute and
10 defend claims and causes of action, and to act as the November Plan trustee and disbursing agent.
11 [November Plan, § 1.17][11]. Notwithstanding the integral role of the Creditor Trust Trustee, the
12 November Disclosure Statement is silent as to how the candidates were selected, the amounts and
13 procedures to compensate the selected trustee, the criteria for selecting the trustee, to whom the
14 trustee will report, and how the trustee's role will be governed. The November Disclosure Statement
15 should, at a minimum, provide details to clarify these questions. In addition, given that the
16 affirmative claims against third parties, including the Debtor's affiliates and insiders, may constitute
17 the most valuable sources of recovery for creditors, the Creditor Trust Trustee should be required to
18 pursue such affirmative claims, and, in the instance she/he decides not to pursue any particular
19 affirmative claim, should be required to notify parties in interest of her/his decision prior to
20 abandoning any such affirmative claim. Neither the November Plan nor the November Disclosure
21 Statement describes any procedure for such a process.

22 **6. <u>Disclosure Regarding Officers and Insiders Is Deficient.</u>**

23 64. Section 1129(a)(5) of the Bankruptcy Code requires a chapter 11 plan to identify any
24 insider that will be employed by the reorganized company, to identify all individuals who will serve
25 as officers of the reorganized company and to demonstrate that the appointment of such officers is
26 consistent with the interests of creditors and public policy. Here, the November Plan designates

27 [11] The November Plan and November Disclosure Statement both reference a "Claims Trust Trustee" but do not
28 define such term. [See, e.g., November Disclosure Statement p. 39, lines 2-15]. Presumably, the reference is intended to be to the Creditor Trust Trustee, but in any event, both documents should either clarify or correct the references.

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1 Daniel Leckrone as its corporate responsible person. However, the November Disclosure Statement
2 does not outline his authority and responsibilities, and does not provide a mechanism for parties in
3 interest to replace him. The November Disclosure Statement also fails to provide any support that
4 Daniel Leckrone's continued service as a corporate officer is in the best interests of creditors, a
5 finding that the Court must affirmatively make. *See In re Texaco, Inc*. 84 B.R. 893, 908 (Bankr.
6 S.D.N.Y. 1984). The Committee believes, on the contrary, that Daniel Leckrone's continued service
7 is counter to the best interests of creditors.

8 65. The November Plan is deficient in identifying plan insiders who will be employed by
9 the reorganized company. For example, with respect to Alliacense, the November Disclosure
10 Statement provides that TPL and Alliacense both are owned by Daniel Leckrone, and that
11 Alliacense's president is Daniel Leckrone's son, but only in a footnote in the narrative of the history
12 of the company. [November Disclosure Statement, p. 11, n. 3]. Similarly, Exhibit "C" to the
13 November Disclosure Statement provides biographies for TPL's officers but omits disclosure of the
14 relationships between Daniel Leckrone on the one hand, and both Janet Neal and Susan Anhalt, on
15 the other hand.

16 66. Many creditors, including the members of the Committee, have had long and unhappy
17 experiences in dealing with Daniel Leckrone in which agreements are made and broken, followed by
18 long negotiations attempting to resolve issues, followed by further breaches of amended agreements,
19 diversion of assets to related entities, followed by commencement of litigation to enforce
20 agreements. The November Disclosure Statement does not provide explanation of these histories.
21 Creditors should know of Daniel Leckrone's history of dealings with non-insider creditors so they
22 can decide whether they want Mr. Leckrone to continue to manage the company or whether
23 extensive monitoring of the Debtor, including provisions proposed by the Committee in negotiations,
24 should be put in place. This information is integral for parties in interest to make informed decisions
25 about the November Plan which proposes to perpetuate the company's self-dealings among insiders.
26 The November Disclosure Statement's failure to inconspicuously, transparently disclose such
27 information is glaring and should not be permitted.

28 67. The recent litigation results casts doubts about the effectiveness of the Debtor's

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1 business strategy and competency of Alliacense, which provides the litigation support. There is no
2 description of what changes, if any, management will make to adjust and react to these results. The
3 Committee is comprised of several members who are extremely competent in the industry and
4 recognizable experts in this area and who are knowledgeable of potential candidates that would be
5 capable of running operations without the inherent conflicts existing in present management. The
6 November Disclosure Statement does not adequately disclose these possibilities.

7 **7. Patent Litigation**

8 68. The November Disclosure Statement does not fully describe the results of recent
9 litigation and its impact of future litigation and licensing efforts. For example, the description of the
10 MMP ITC litigation does not include a discussion of the impact the unfavorable ruling has on future
11 licensing efforts. Nor does the Debtor disclose that the Northern District litigation, although it did
12 include a finding of infringement, resulted in only one-tenth of the damages requested being
13 awarded by the jury. Creditors deserve to know whether such results are an anomaly or whether
14 they will have impact on future operations.

15 **III. CONCLUSION**

16 Based on the foregoing, the Committee respectfully requests that the Court
17 1. Deny approval of the November Disclosure Statement; and
18 2. For such other and further relief as the Court deems proper and just.

19 Dated: December 2, 2013 DORSEY & WHITNEY, LLP
20
21 By: */s/ Robert A. Franklin*
22 Robert A. Franklin
Attorneys for the
Official Unsecured Creditors Committee
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UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

In re: **TECHNOLOGY PROPERTIES LIMITED LLC, fka TECHNOLOGY PROPERTIES LIMITED INC., A CALIFORNIA CORPORATION, fka TECHNOLOGY PROPERTIES LIMITED, A CALIFORNIA CORPORATION,** Debtor.	Case No. 13-51589-SLJ-11 Chapter 11 Date: December 5, 2013 Time: 11:00 a.m. Place: United States Bankruptcy Court 280 S. First Street, Room 3099 San Jose, CA 95113 Judge: Honorable Stephen L. Johnson

CERTIFICATE OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF SANTA CLARA)

I am a citizen of the United States and employed in Santa Clara County. I am over the age of eighteen years and not a party to the above-entitled action; my business address is 305 Lytton Avenue, Palo Alto, California 94301.

On December 2, 2013, at my place of business, I served a true and correct copy of the following document(s):

/ / /

/ / /

in the manner indicated below:

☒ **By Electronic Filing** said document(s) and transmission of the Notification of Electronic Filing by the Clerk to a Registered Participant(s), addressed as follows:

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Office of the U.S. Trustee
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This Certificate was executed on December 2, 2013 at Palo Alto, Santa Clara County, California. I declare under penalty of perjury that the foregoing is true and correct.

/s/ Sandra Bloomer
SANDRA BLOOMER

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