

1 Kenneth H. Prochnow (SBN 112983)
Chiles and Prochnow, LLP
2 2600 El Camino Real
Suite 412
3 Palo Alto, CA 94306
Telephone: 650-812-0400
4 Facsimile: 650-812-0404
email: kprochnow@chilesprolaw.com

5
6 Attorneys For Creditor Charles H. Moore

7
8 UNITED STATES BANKRUPTCY COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN JOSE DIVISION

11 In Re:

12 TECHNOLOGY PROPERTIES LIMITED,
LLC, f/k/a TECHNOLOGY PROPERTIES
13 LIMITED, INC., a California corporation, f/k/a
TECHNOLOGY PROPERTIES LIMITED, a
14 California corporation,

15 Debtor.

Case No.: 13-51589-SLJ-11

Chapter 11

Date: November 12, 2014

Time: 10:00 a.m.

Place: Courtroom 3099

280 South First Street
San Jose, California

Honorable Stephen L. Johnson

16
17
18 **CREDITOR CHARLES H. MOORE'S RESPONSE TO US TRUSTEE'S OBJECTION TO DISCLOSURE
19 STATEMENT RE MOORE MONETIZATION PLAN OF REORGANIZATION**

20 To assist Court and counsel in moving the disclosure statement approval process
21 forward, and with an eye to narrowing the disputed issues on which the Court must rule,
22 Creditor Moore hereby submits his response to the US Trustee's objections to Creditor Moore's
23 10/29/2014 MMP disclosure statement and plan.

24 In response to the US Trustee's objections that begin at **page 10 of 15** of the filed
objections:

25 1. **Joint Plan Filed:** Creditor Moore acknowledges and accepts the US Trustee's
26 objection, and will correct his disclosure statement, at 5:1-2, to read: "While debtor-in-
27 possession and the Committee debated and negotiated the terms of a months' delayed Chapter
28 11 Plan, . . ." (The underscored language will replace "still-nonexistent.")

1 2. CEO Resignation: Creditor Moore acknowledges and accepts the US Trustee’s
2 objection, and will correct his disclosure statement, at 15: 8-13, to read: “Since putting TPL
3 into bankruptcy in March 2013 (with the Brown judgment about to be collected against TPL),
4 Mr. Leckrone has resigned his position as CEO of TPL. On or about July 18, 2014, Mr.
5 Venkidu replaced Mr. Leckrone as TPL’s CEO. It appears the Committee, for reasons that
6 remain unclear, approved Mr. Leckrone’s choice of Mr. Venkidu as TPL’s replacement CEO.
7 Mr. Venkidu has also assumed the role of TPL representative to the PDS Operating
8 Committee.”

9 3. Chapter 11 Trustee under the Moore Plan. Creditor Moore respectfully disagrees
10 with the US Trustee’s objection to the appointment of a Chapter 11 Trustee whose efforts will
11 be guided by a detailed, situation-specific reorganization plan – the 10/29/2014 Moore MMP
12 Plan (or that plan’s successor following modification approved or directed by this Court).

13 First, Creditor Moore agrees that in many if not most Chapter 11 proceedings in which a
14 Chapter 11 trustee is appointed, the trustee will be charged with preparation of a reorganization
15 plan or explaining why no plan is necessary or desirable. See Section 1106(a)(5). This matter,
16 however, is not the ordinary case where a Chapter 11 trustee is necessary; here, the Chapter 11
17 trustee is needed because it is in the best interests of the Estate to terminate all vestiges of the
18 Leckrone regime (including his hand-picked successor Mr. Venkidu) as well as all traces of the
19 patent troll model that led TPL into failure and bankruptcy. To move TPL forward in a new
20 direction, removing the patent troll taint and clearing the way for MMP licensing – in what was
21 a \$400 million market on the filing date and what is still a nine-figure target of opportunity –
22 TPL requires an effort with Creditor Moore, practicing his invention, at its heart. There is no
23 authority cited by the US Trustee or known to Creditor Moore that mandates that every Chapter
24 11 trustee present a plan of his/her own making.

25 Second, on its face Section 1104(a) does not require that the trustee be appointed prior
26 to plan confirmation: Section 1104(a) begins: “At any time after the commencement of a case
27 but before the confirmation of a plan, on the request of a party in interest or the United States
28 trustee, and after notice and a hearing, the court shall order the appointment of a trustee...”

1 (emphasis supplied). The statute on its face does not direct the court to appoint a trustee before
2 plan confirmation; it provides that the order for appointment of the trustee must issue before
3 plan confirmation. And indeed, later on, Section 1104 confirms that the entry of a order
4 directing the appointment of a trustee is not the same thing as the appointment of a trustee:
5 Section 1104(b)(1) makes clear that “after the court orders the appointment of a trustee under
6 [1104]subsection (a),” there is a 30 day period running when any party in interest can request
7 the election of a Chapter 11 trustee.

8 Third, Creditor Moore has no interest in imposing his own management on Debtor TPL.
9 The MMP Plan calls for the election of a trustee nominated by the Official Committee of
10 Creditors – a group that does not include Mr. Moore and from whose deliberations he has been
11 routinely excluded. The CEO of a company has bylaws, an employment contract, perhaps an
12 operating agreement, and certainly instruction from a board of directors to guide and shape his
13 or her management and operation of the company. The MMP Plan here serves as a similar
14 guide to post-plan confirmation TPL.

15 Fourth, there is a compromise solution that should satisfy the US Trustee’s concerns. If
16 this Court orders the appointment of a Chapter 11 Trustee, that individual can serve as an
17 interim trustee, to and through the time of election by the creditors (who might choose to
18 endorse the interim trustee or choose someone new). The Code clearly contemplates just such a
19 procedure: Section 1104(b)(2)(B)(ii) provides that if an eligible, disinterested trustee is elected
20 at a meeting of creditors, “the service of any trustee appointed under subsection (a) shall
21 terminate.” The statutory scheme provides this ready means of accommodating the US Trustee
22 concern – appointment of a Chapter 11 trustee under 1104(a) – while permitting the later
23 election of a successor trustee pursuant to the 1104(b) procedure.

24 Fifth, Creditor Moore has allowed for the possibility that his under-submission motion
25 for appointment of a Chapter 11 Trustee might not be granted. In that case, a “Plan
26 Administrator” will serve to administer the MMP Plan and to direct the operations of Debtor
27 TPL as it pays off its creditors over the coming years. Creditor Moore has provided, in his
28 10/29/2014 MMP Plan, for such a Plan Administrator (see definition at MMP Plan 15:5-22).

1 The US Trustee is correct that Creditor Moore provided the Plan Administrator
2 alternative in the MMP Plan but not in the disclosure statement. Creditor Moore proposes to
3 cure this inadvertent omission by adding the following footnote to the first reference to
4 “Chapter 11 Trustee” that appears in the 10/29/2014 MMP Disclosure statement, at 12:23 -
5 “At this writing, the Bankruptcy Court has under submission Creditor Moore’s motion to
6 remove TPL as debtor-in-possession in this case, to be replaced by a Chapter 11 Trustee, on
7 grounds that the best interests of Debtor TPL will be served by this substitution. In the event
8 the Court denies Mr. Moore’s motion, and TPL remains as debtor-in-possession, the
9 10/29/2014 MMP Plan will go forward with a “Plan Administrator” in place of the
10 contemplated Chapter 11 Trustee. In such event, “Plan Administrator” should be substituted
11 wherever and whenever “Chapter 11 Trustee” appears, in both the 10/29/2014 MMP Plan and
12 in this 10/29/2014 MMP Disclosure Statement.”

13 4. Committee counsel. The US Trustee correctly notes that at pages 21 and 82
14 Creditor Moore has referred to the Committee’s counsel as John Murray. The 10/29/2014
15 Disclosure Statement will be amended at those pages (and at the email reference at p.83) with
16 reference to successor counsel Robert A. Franklin.

17 5. The 9/18/14 Letter To Patriot’s Board Of Directors. Creditor Moore does not
18 view this letter as a solicitation for votes on his Plan; however, even if it is so construed,
19 Section 1125(b) contains no prohibition on the inclusion of such a letter as part of a court-
20 approved disclosure statement that will accompany a reorganization plan sent to creditors.

21 6. Treatment of claims should be provided in the disclosure statement. Creditor
22 Moore will accept the US Trustee objection on this point, and will reinstate full discussion of
23 the MMP Plan’s treatment of claims into the 10/29/2014 Disclosure Statement rather than the
24 reference to the Plan Part that now appears.

25 7. Rejection claims should be included in Class 6, not in a separate class. Creditor
26 Moore cannot agree. Class 6 consists of unsecured creditor claims, each liquidated and known
27 as of July 2013. Rejection claims are unliquidated and still unknown at this writing, and will be
28 unknown until sometime after plan confirmation. Rejection claimants cannot vote on a plan,

1 because they are unknown prior to plan confirmation. Bringing claims of unknown amount, in
2 an unknown number, into the unsecured creditor category will introduce needless uncertainty
3 into plan projections and pro formas. There are definite, logical and significant reasons for
4 treating rejection claims in a separate class, to be paid only after the unsecured creditors of
5 record have been paid, as the MMP Plan does.

6 8. Incorrect Reference. Creditor Moore will edit the disclosure statement at 32:14,
7 to provide that the reference to Interests is to Class 12 (and not Class 10 as stated).

8 9. The Plan itself cannot set aside a preference. The US Trustee is correct in this
9 assertion. The Disclosure Statement reference to preference was inadvertent and is incorrect.
10 Creditor Moore is unaware of any preference at this writing. The paragraph in question at page
11 44 refers to executory contracts that will be rejected under Bankruptcy Code Section 365 upon
12 confirmation of the MMP Plan. Creditor Moore regrets his error and will correct this and any
13 other reference in disclosure statement or plan to any preference.

14 10. Conversion To Chapter 7. Creditor Moore will correct his reference to Chapter 7
15 conversion and its consequences as requested by the US Trustee.

16 11. Undeliverable distributions. Creditor Moore will accept the US Trustee's
17 recommendation and language.

18 12. Interest on Past Due quarterly fees. Creditor Moore will accept the US Trustee's
19 recommendation and language.

20 13. Rejection Claims. Rejection claims receive treatment as Class 11 under the
21 MMP Plan. Creditor Moore will correct the language at page 59.

22 14. Exculpation. Creditor Moore will scale back the exculpation section at page 69
23 as the US Trustee requests.

24 15. Feasibility. Pro formas have now been provided, using substantially more
25 conservative estimates than those underlying the Joint Plan. Creditor Moore has proposed a
26 feasible plan in good faith – a plan that this Court should confirm if appropriate votes are
27 received.

28 **E. Moore Plan**. Creditor Moore will make all corrections suggested by the US Trustee

1 save and except for revising the MMP Plan treatment of rejection claims.

2 Creditor Moore will also modify (and shorten) his Plan and Disclosure Statement
3 discussion of the *FastLogic* litigation, which now has been substantially settled, in
4 developments occurring since October 29, 2014.

5 Respectfully submitted,

6 Dated: November 11, 2014

CHILES and PROCHNOW, LLP

7
8 By: s/Kenneth H. Prochnow
9 Kenneth H. Prochnow
10 Attorneys for Creditor Charles H. Moore
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28