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10 Attorneys for Reorganized Debtor
11 Technology Properties Limited, LLC

12
13 **UNITED STATES BANKRUPTCY COURT**
14
15 **NORTHERN DISTRICT OF CALIFORNIA, DIVISION 5**
16

17 In re
18
19 TECHNOLOGY PROPERTIES LIMITED,
20
21 LLC, Debtor.

Case No: 13-51589 SLJ
Chapter 11

22
23 **EX PARTE APPLICATION BY REORGANIZED DEBTOR TO**
24 **MODIFY PRIOR STIPULATION FOR CONTINUANCE OF HEARING**
25 **ON MOTION TO CLARIFY AND IMPLEMENT PRIOR ORDERS**
26 **(DKT #743 & #744) TO ALLOW CONSIDERATION OF OPPOSITION**
27 **BRIEF**
28

1 Reorganized debtor Technology Properties Limited, LLC (“TPL”) hereby applies to the
2 Court for an order modifying its Briefing Order¹ to allow consideration of the Response² TPL
3 filed on July 27, 2016. TPL respectfully represents as follows in support of this Ex Parte
4 Application:
5

- 6 1. TPL and MCM³ entered into a Briefing Stipulation⁴ on June 21, 2016. The Briefing
7 Order provides as follows:

8 1. The hearing currently set for June 22, 2016 on MCM
9 Portfolio, LLC’s Motion to Clarify and Implement Prior
10 Orders (the “Motion”) shall be continued to August 10, 2016
at 2:00 P.M.

11 2. Any response by TPL to the on Motion to Clarify and
12 Implement Prior Orders and any TPL counter-motion must be
filed and served by July 13, 2016;

13 3. Any reply and response to the counter-motion by MCM
14 must be filed and served by July 27, 2016; and,

15 4. Any reply by TPL is limited solely to MCM’s opposition to
16 the counter-motion, must be filed and served electronically by
August 3, 2016.

- 17 2. The schedule in the Briefing Stipulation was not created merely to permit TPL’s
18 incumbent counsel, Binder & Malter, to prepare and file an opposition to the Motion.
19
20 TPL also was initially of the opinion that it needed to file a counter-motion while, at
21 the same time, it had to deal with the fact that Binder & Malter was withdrawing as

22 ¹ Order Approving Stipulation For Continuance Of Hearing On Motion To Clarify And
23 Implement Prior Orders (DOCKET #743 & #744) [DKT #747].

24 ² Response By Reorganized Debtor To Motion To Clarify And Implement Prior Orders (DKT
25 #743 & #744) (the “Response”) [DKT #748].

26 ³ MCM Portfolio LLC (“MCM”).

27 ⁴ Stipulation For Continuance Of Hearing On Motion To Clarify And Implement Prior Orders
28 (Dkt #743 & #744) (the “Briefing Stipulation”) [DKT #745].

1 counsel to TPL. TPL's intent in seeking the extension of time embodied in the
2 Briefing Schedule was to enable TPL to find and engage new counsel and to give
3 that successor counsel sufficient time to get up to speed, to prepare an opposition to
4 the Motion, and also to prepare a counter-motion. Binder & Malter withdrew as
5 counsel for TPL on June 22, 2016. MCM was promptly made aware that Binder &
6 Malter had withdrawn as counsel.

- 7
- 8 3. On or about July 10, 2016, SVLG⁵ confirmed that it had been engaged to advise TPL
9 about bankruptcy matters on a limited basis.
- 10
- 11 4. On or about July 11, 2016, MCM granted TPL and confirmed to SVLG, first orally
12 and then in writing, an extension of time to respond to the Motion to Clarify. This
13 occurred after Binder & Malter had withdrawn and during the period it was not
14 counsel for TPL.
- 15
- 16 5. On July 20, 2016, MCM, through its counsel, asked SVLG why a stipulation to the
17 relief requested in the motion to clarify was not forthcoming as no opposition had
18 been filed.
- 19
- 20 6. On July 21, 2016, Binder & Malter advised MCM and its counsel that the firm had,
21 after formally withdrawing, been persuaded to return but only to represent TPL in a
22 limited capacity to assist SVLG in the case. The same email attached a draft form of
23 stipulation on the motion to clarify to MCM's counsel seeking to memorialize what
24 seemed to have been mutually agreeable points.
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⁵ Silicon Valley Law Group ("SVLG")

- 1 7. In the absence of a specific response to the terms of the proposed stipulation, TPL
2 elected to forego any counter-motion and prepared, as quickly as possible, a response
3 to the Motion to Clarify. The Response was filed and served 14 days prior to the
4 scheduled August 10, 2016 hearing.
5
- 6 8. Lack of coordination between SVLG as new counsel coming in, the period during
7 which TPL was not represented, and prior counsel in returning somewhat later, all
8 resulted in a failure by TPL to seek an amendment to the Briefing Order prior to the
9 filing of its Response and before now.
10
- 11 9. There would be no prejudice to MCM in modifying the Briefing Order. The
12 Response was filed 14 days before the hearing, the period required by BLR 9014-
13 1(c)(1). MCM filed a short and timely reply brief. TPL simply elected not to file the
14 counter-motion the Briefing Stipulation contemplated, so no reason exists for MCM
15 to have had extra time to file a simple reply brief. Modifying the Briefing Order to
16 allow the Response to be considered simply returns the parties to the ordinary time
17 frames set in the Bankruptcy Local Rules and allows the Court to rule based on the
18 positions of both parties.
19
- 20 10. MCM's counsel wishes to argue the merits of this Application on the record at the
21 hearing on August 10, 2016. Thus, unless the parties are successful in negotiating a
22 consensual resolution of the matters set forth in the Motion to Clarify, TPL would ask
23 that the Court permit oral argument of this Application on August 10th.
24

25 WHEREFORE, TPL respectfully requests that the Court GRANT the Application, amend
26 the Briefing Order and consider the Response.
27
28

1
2 Dated: August 8, 2016

BINDER & MALTER, LLP

3 By: /s/ Robert G. Harris

4 Robert G. Harris

5 Attorneys for Reorganized Debtor
6 Technology Properties Limited, LLC
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Case No: 13-51589 SLJ
Chapter 11

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23 **DECLARATION OF COUNSEL IN SUPPORT OF EX PARTE**
24 **APPLICATION BY REORGANIZED DEBTOR TO MODIFY PRIOR**
25 **STIPULATION FOR CONTINUANCE OF HEARING ON MOTION TO**
26 **CLARIFY AND IMPLEMENT PRIOR ORDERS (DKT #743 & #744) TO**
27 **ALLOW CONSIDERATION OF OPPOSITION BRIEF (BLR 9006-1(c))**
28

1 I, Robert G. Harris, know the following matters to be true of my own, personal
2 knowledge and, if called as a witness, could and would testify competently thereto:

3 **REASON FOR SHORTENING OF TIME**

- 4
- 5 1. On or about April 12, 2016, MCM Portfolio, LLC (“MCM”) filed a Motion to Clarify
6 and Implement Prior Orders (“Motion,” Dkt #743). In the Motion MCM requested,
7 among other things, that the court require Technology Properties Limited, LLC (the
8 “Debtor” or “TPL”) to conform its conduct to the Court’s Order (Dkt #632) regarding
9 a patent (the “549 Patent”).
- 10
- 11 2. On or about May 16, 2016, MCM filed a Notice of Hearing on Motion to Clarify and
12 Implement Prior Orders (Dkt #744) setting a hearing date of June 22, 2016.
- 13
- 14 3. TPL and MCM¹ entered into a Briefing Stipulation² on June 21, 2016. The briefing
15 schedule was not created merely to permit TPL’s incumbent counsel, Binder &
16 Malter, to prepare and file an opposition to the Motion. TPL also was initially of the
17 opinion that it needed to file a counter-motion while, at the same time, it had to deal
18 with the fact that Binder & Malter was withdrawing as counsel to TPL. TPL’s intent
19 in seeking the extension of time embodied in the Briefing Schedule was to enable
20 TPL to find and engage new counsel, to give successor counsel sufficient time to get
21 up to speed, to prepare an opposition to the Motion, and also to prepare a counter-
22 motion. TPL was required by the Briefing Order to file its response to the Motion to
23 Clarify and Implement Prior Orders and any counter-motion by July 13, 2016.
- 24
- 25

26 ¹ MCM Portfolio LLC (“MCM”).

27 ² Stipulation For Continuance Of Hearing On Motion To Clarify And Implement Prior Orders
28 (Dkt #743 & #744) (the “Briefing Stipulation”) [DKT #745].

- 1 4. Binder & Malter withdrew as counsel for TPL on June 22, 2016. I quickly made
2 MCM aware that Binder & Malter had withdrawn as counsel.
- 3 5. On or about July 10, 2016, SVLG³ confirmed to me that it had been engaged to
4 advise TPL about bankruptcy matters on a limited basis.
- 5 6. I learned on or about July 11, 2016, that MCM had confirmed to SVLG through its
6 counsel that it had granted TPL an extension of time to respond to the Motion to
7 Clarify. This occurred after my firm had withdrawn and during the period it was not
8 counsel for TPL.
- 9 7. On July 20, 2016, MCM, through its counsel, asked SVLG why a stipulation to the
10 relief requested in the motion to clarify was not forthcoming as no opposition had
11 been filed.
- 12 8. On July 21, 2016, I advised MCM, through its counsel, that Binder & Malter had,
13 after formally withdrawing, been persuaded to return but only to represent TPL in a
14 limited capacity to assist SVLG in the case. The same email attached a draft form of
15 stipulation on the motion to clarify to MCM's counsel seeking to memorialize what
16 seemed to have been mutually agreeable points.
- 17 9. In the absence of a specific response to the terms of the proposed stipulation, TPL
18 elected to forego any counter-motion and prepared, as quickly as possible, a response
19 to the Motion to Clarify. The Response was filed and served 14 days prior to the
20 scheduled August 10, 2016 hearing.
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³ Silicon Valley Law Group ("SVLG")

1 10. It was the lack of coordination between prospective new counsel coming in, the
2 period during which TPL was not represented, and my firm in returning in a limited
3 capacity somewhat later, that resulted in a failure by TPL to seek an amendment to
4 the Briefing Order prior to the filing of its Response and before now.
5

6 **PREVIOUS TIME MODIFICATIONS RELATED TO THE REQUEST**

7 11. The only prior time modification with respect to the Motion to Clarify was the
8 Briefing Stipulation continuing the hearing thereon from June 22, 2016, to August 10,
9 2016.
10

11 **EFFECT ON SCHEDULE FOR CASE PROCEEDING**

12 12. Granting the Application and allowing the Response to be considered will not change
13 the schedule for the main Chapter 11 case as there is a confirmed plan.
14

15 **ABSENCE OF STIPULATION**

16 13. I spoke with attorney Michael St. James in the morning on August 8, 2016. I
17 described my intent to request that the Response be considered by the Court. He
18 declined to consent to the relief requested but asked me to convey to the Court his
19 request to address the matter in oral argument at the scheduled hearing on August 10,
20 2016. I can confirm that TPL has no objection to that request.
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1 I declare under penalty of perjury of the laws of the United States that the foregoing is
2 true and correct to the best of my knowledge, information and belief. Executed this 8th day of
3 August, 2016, at Santa Clara, California.
4

5 /s/ Robert G. Harris
6 ROBERT G. HARRIS
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Attorneys for Reorganized Debtor
Technology Properties Limited, LLC

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA, DIVISION 5**

In re

TECHNOLOGY PROPERTIES LIMITED,
LLC, a California limited liability company

Debtor.

Case No: 13-51589 SLJ
Chapter 11

CERTIFICATE OF SERVICE

I, Natalie D. Gonzalez, declare:

I am employed in the County of Santa Clara, California. I am over the age of eighteen (18) years and not a party to the within entitled cause; my business address is 2775 Park Avenue, Santa Clara, California 95050.

On August 8, 2016 I served a true and correct copy of the following document(s):

**EX PARTE APPLICATION BY REORGANIZED DEBTOR TO MODIFY PRIOR
STIPULATION FOR CONTINUANCE OF HEARING ON MOTION TO CLARIFY
AND IMPLEMENT PRIOR ORDERS (DKT #743 & #744)
TO ALLOW CONSIDERATION OF OPPOSITION BRIEF**

**DECLARATION OF COUNSEL IN SUPPORT OF EX PARTE APPLICATION BY
REORGANIZED DEBTOR TO MODIFY PRIOR STIPULATION FOR CONTINUANCE
OF HEARING ON MOTION TO CLARIFY AND IMPLEMENT PRIOR ORDERS (DKT
#743 & #744) TO ALLOW CONSIDERATION OF OPPOSITION BRIEF
(BLR 9006-1(C))**

via electronic transmission and/or the Court's CM/ECF notification system to the parties
registered to receive notice as follows:

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280 So. First St., Room 268
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Email: john.wesolowski@usdoj.gov

Unsecured Creditors Committee Attorney

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Executed on August 8, 2016, at Santa Clara, California. I certify under penalty of
perjury that the foregoing is true and correct.

/s/ Natalie D. Gonzalez
Natalie D. Gonzalez