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

Attorneys For Creditor Charles H. Moore

UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

IN RE: TECHNOLOGY PROPERTIES LIMITED, LLC, a California limited liability company, Debtor.	Case No.: 13-51589-SLJ-11 Chapter 11 Date: October 2, 2014 Time: 3:00 p.m. Place: Courtroom 3099 280 South First Street San Jose, California Honorable Stephen L. Johnson

CREDITOR CHARLES H. MOORE'S REPLY POINTS AND AUTHORITIES IN FURTHER SUPPORT OF MOTION TO APPOINT CHAPTER 11 TRUSTEE AND TO REMOVE DEBTOR-IN-POSSESSION

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Three parties have filed opposition to Creditor Moore's motion to appoint a Chapter 11 Trustee in this case, removing Daniel Leckrone as debtor-in-possession. Arockiyaswamy Venkidu ("Venkidu"), the Official Committee of Creditors ("OCC") and of course Debtor-In-Possession Leckrone all submit briefs in opposition; Debtor-In-Possession adds a lengthy evidentiary opposition to Creditor Moore's declaration.

All agree that, as Creditor Moore concedes, there is a presumption in favor of retaining a debtor-in-possession." Further, Creditor Moore willingly assumes the burden of proving by "clear and convincing evidence" that the best interests of the estate will be served by removal of the debtor-in-possession and appointment of a Chapter 11 trustee.

However: the parties' focus on the quantity and quality of the evidence that Creditor Moore here presents must not secure the second singular element of this astonishingly unique Chapter 11 case. First, as Creditor Moore observed repeatedly, and no opponent can deny, this debtor-in-possession has voluntarily relinquished possession of the debtor. Thus the normal calculus of disruption of business, familiarity with processes, rolodexes filled with suppliers, customers and other necessary and familiar faces, finds no application here.

Mr. Leckrone has abandoned his company. Debtor TPL is on its own. With day-to-day operations of TPL ceded by Mr. Leckrone, the need for independent management and independent responsibility for TPL operations and results calls out for a Chapter 11 trustee, who will make strategic decisions about company policy while ensuring appropriate treatment of revenues and day-to-day operations for what is clearly, at this point, nothing more than a holding company for the few assets Mr. Leckrone has left behind for his creditors' use.

But this is more than the case of the dispossessed debtor. With three sets of opposition of record: there is **no evidence** submitted in opposition to Creditor Moore's showing in support of appointment and renewal. Not one declaration in opposition. No request for judicial notice.

No stipulated evidence or documents. And no request for an evidentiary hearing that might serve to cure this defect.

Creditor Moore's evidence may have to meet the clear and convincing standard. But he addresses that standard in a vacuum, devoid of any opposing evidence.

To make this point clear: Creditor Moore moves to strike every statement and argument submitted in opposition that is not supported by admissible evidence. For example, Mr. Venkidu argues that he "has personally expended a lot of time and resources in satisfying the concerns of the Creditor's committee and this effort has led to the filing of a joint plan…" Venkidu Opposition at 2:5-7. This supposed assertion of fact, of dubious relevance, is unsupported by declaration or admissible documentary evidence or testimony. The statement, and the rest of Mr. Venkidu's argument, appears only in a brief signed by his lawyer.

Debtor-In-Possession, for his part, offers the following utterly unsubstantiated statement of "facts:"

"PDS and Alliacense have been attempting to finalize MMP licenses, and while numerous license have been discussed, prospective licensees have taken a "wait and see" approach because (1) the bankruptcy process and threat of appointment of a trustee, followed by a creditor plan with a provision that would have allowed rejection of fully paid non-exclusive licenses issued, as well as litigation against insiders and IP owners, (2) there are ongoing appeals in the U.S. District Court of rulings both for and against TPL; and (3) the plans proposed have undermined Alliacense's ability to generate licenses through PDS given the threat of litigation against it." TPL Opposition at Page 9 (of 14): 11-18. None of the above argument is supported by any fact of record; its entirety must be stricken.

Later, "…the OCC selected Mr. Venkidu to run TPL precisely because they do trust him." TPL Opposition at Page 12 (of 14):13. There is no evidence – none – that the OCC

selected Mr. Venkidu. There is no statement of record as to how he assumed whatever position he holds (the Court will recall his counsel's contribution on August 28th that Mr. Venkidu holds no present position but will assume a position with TPL upon confirmation of a plan). To all outward appearances, Mr. Venkidu is Mr. Leckrone's hand-picked placeholder, foisted upon the OCC with no alternative offered or considered.

As set out in Mr. Moore's reply declaration, Mr. Venkidu was the CEO and principal of his company OnSpec in the mid-2000's. As disclosed by debtor-in-possession in the Joint Disclosure Statement, Mr. Venkidu received his due portion of $6,439,614 between 2006 and 2012. See Reply Request for Judicial Notice Ex. 3, at 2:20-23. TPL paid Mr. Venkidu another $1,050,000 in adequate protection payments through June 30, 2014. *Ibid*. at 2:23-25. Mr. Venkidu's company OnSpec was paid consulting agreement payments between June 2006 and April 2008 that totaled $2,400,00. Ibid. at 2:26-28.

And, back in the days when the OCC attempted to hold Mr. Leckrone accountable, Mr. Venkidu came through with a declaration stating his opposition to any investigation of Mr. Leckrone. See February 12, 2014 Venkidu Declaration, Reply Request Judicial Notice No. 4, at 3:4-13.

While Debtor-in-Possession may have abandoned the Debtor, he has clearly left a loyal, well-compensated stand-in. To secure independent management of TPL, a Chapter 11 Trustee is here a requirement under any scenario moving forward.

The question for this Court: has Creditor Moore demonstrated by clear and convincing evidence that the best interests of Debtor TPL (11 U.S.C. Sec. 1104(a)(2)) will be served by appointment of a Chapter 11 Trustee in the best interests of the estate?

1. Creditor Moore's Evidence In Support of a Chapter 11 Trustee[1]

1. Charles Moore is the proponent of the August 28, 2014 Moore Monetization Plan of Reorganization ("MMP Plan") and the Disclosure Statement re Moore Monetization Plan of Reorganization ("Disclosure Statement") of that date. Moore Dec. In Support of Motion, Par. 2, at 1:23-15.

2. Mr. Moore has an extensive research and development background, culminating in his becoming the co-inventor of the MMP Portfolio of Patents. Moore Dec, Par. 3-4, at 2:3-14.

3. The MMP Portfolio, since 2005, has generated licensing revenues in excess of $300,000,000. Moore Dec. Par. 4, at 2:14-15.

4. Debtor TPL and Mr. Moore entered into a Commercialization Agreement in 2002. Moore Dec. Par. 5, at 2:20-24.

5. In or about 2003, Mr. Moore became the Chief Technology Officer for TPL. I remained in that position until 2007. In that capacity, he reviewed many of TPL's product analyses, teardown studies, claim charts, DeCaps, relevant (infringing) revenue analyses by infringers, and similar information from which the strategies were derived to approach and notify over 400 infringing companies and to plan the appropriate terms of MMP licenses to require from those infringing parties. That, and the many reports I received from TPL representatives over the years, gave me substantial familiarity with the licensing and commercialization process for the MMP technology, and provided me the ability to value the MMP technology for licensing purposes relative to TPL's other technologies. Moore Dec. Par. 6, at 3:2-12.

6. TPL also acquired patent rights to other technologies during my employment, including portfolios known as "Fast Logic" and "Core Flash" (I will refer to these other patent portfolios as "TPL's Non-MMP Patents"). As the TPL Chief Technology Officer, I had

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[1] To assist this Court's consideration, references to Mr. Moore's Declaration In Support of Motion to Appoint Chapter 11 Trustee are restricted to those matters not objected to by TPL, except where indicated in *italics* where the objection is [disputed].

occasion to become informed about the TPL's Non-MMP Patents and their underlying technologies. *I then understood the relative value of TPL's Non-MMP Patents compared to the MMP portfolio, and I know how TPL valued them relative to the MMP portfolio*. Moore Dec. Par. 7, at 3:13-17. [Mr. Moore is qualified to state his understanding of those patent matters with which he was entrusted and became familiar, and when he states what he "knows" he is testifying from personal knowledge.]

7. In or about April 2010, Mr. Moore learned – from Patriot, not from TPL or from Mr. Leckrone – that TPL had entered into a license transaction with a major Silicon Valley electronics firm. (a) *He later learned that with this license, TPL granted licensee rights not only under the MMP Portfolio of patents but also under TPL's Non-MMP Patents.* He was never given any notice by TPL of this multi-patent license; upon information and belief, Patriot only learned of it after the fact. *(b) Mr. Moore is of the opinion that the gross licensing fee received by TPL for this license was substantially less than what this major Silicon Valley firm should have paid for use of the MMP Portfolio technology alone*. Moore Dec. Par. 8, at 3:19-26. [(a) Patriot filed suit over this multiple patent license; the mixed licensing is public knowledge] [(b) As TPL's former Chief Technology Officer, Mr. Moore could and does have an opinion as to the relative value of licensing rights to the various TPL portfolios]

8. However, the true loss to the MMP Portfolio – and to me, to Patriot and to TPL – was substantially greater. *I understand that under this license negotiated by TPL and Mr. Leckrone, only some 20% of the proceeds were to be attributed to the MMP portion of the license, with the remainder (some 80%) given over to TPL's Non-MMP Patents (meaning that Mr. Leckrone would receive 80% of the total license fee, given his control over all revenues accruing to TPL's Non-MMP Patents). Then and now, the MMP portfolio was far and away TPL's most valuable licensing asset. Under any reasonable royalty analysis, the contributions of TPL's Non-MMP Patents to the total value of the April 2010 multi-patent license would have been minimal relative to the value of the MMP portfolio. Allocating less than 20% of the consideration received from the April 2010 multi-patent license to the MMP portfolio, and permitting TPL to retain 80% of that consideration for its other technologies, was absurd.*

Moore Dec. Par. 9, 10, at 3:27 – 4:10. [Again, Mr. Moore had served as TPL's Chief Technology Officer and was uniquely well-situated to value the relative worth of TPL's various patent portfolios, including of course MMP]

9. Mr. Moore regarded the allocation of less than 20% of this major license to the MMP portfolio to be a breach of TPL's fiduciary duties to him under their licensing agreement. Moore Dec. Par. 11, at 4:11-12.

10. Patriot filed a Santa Clara County Superior Court action against TPL. Patriot settled that action with an adjustment of the MMP portfolio license fees that TPL had received from the major Silicon Valley electronics firm. *Upon information and belief, those fees now totaled some $960,000 (still a fraction of what an MMP portfolio license should have yielded, but better than the infinitesimal portion of the license fee that had initially been assigned as the MMP portfolio share).* Moore Dec. Par. 12, at 4: 13-18 [The $960,000 figure came out in the later-described HTC trial and featured prominently in arguments against TPL's claim of $9 million worth of infringement. Again, Mr. Moore knew the value of the patent portfolios he presided over as Chief Technology Officer]

11. In its 2010 settlement with TPL, Patriot secured for itself advance notice and review of all future MMP portfolio licenses that TPL would issue through its Alliacense subsidiary; the Patriot/TPL co-owned entity "Phoenix Digital Systems" secured the ability to monitor Mr. Leckrone and Alliacense through the contractual requirement that all MMP licenses be signed by the PDS chairman (a member of the Patriot board of directors, Carl Johnson). Moore Dec. Par. 13, at 4:19-24.

12. *At some point unknown to me (and some time before this bankruptcy case), TPL spun off its Alliacense subsidiary. Alliacense, the sole entity with authority to commercialize my MMP Portfolio, was now a separate corporation, wholly owned by Mr. Leckrone (as was TPL).* Moore Dec. Par. 14, at 4:25-28. [Mr. Leckrone's formation of Alliacense and its subsequent removal from TPL are matters of public record and are disclosed in plans before this Court]

13. Mr. Moore resigned as TPL's Chief Technology Officer in 2007, because he was not getting paid my 55% royalty. He re-negotiated his 2002 ComAg in late 2007,

augmenting in part my entitlement to 55% of TPL's net MMP Portfolio receipts with an "off-the-top" advance of a much smaller percentage of TPL gross MMP Portfolio receipts. He then believed that a percentage of the gross was the only way for me to realize any return from my invention, because of repeated representations by Mr. Leckrone that TPL's expenses exceeded its licensing revenues. Moore Dec. Par. 15, at 5:1-7.

14. Mr. Moore was paid only $11 million of TPL's MMP revenue to and through January 2013. The last payment of any kind that he received from TPL was $15,000, received on November 13, 2009. Moore Dec. Par. 16, at 5:10-11.

15. Mr. Moore knows from TPL's press releases that it wrote many MMP licenses between July 2008 and July 2012. He received no royalties related to those licenses after 2009, and no accounting with respect to any of the proceeds received by TPL with respect to those licenses. He was never paid any "off the top" portion of MMP licensing revenues received by TPL. Moore Dec. Par. 17, at 5:12-16.

16. Mr. Moore filed an action in Santa Clara County Superior Court against TPL, Alliacense, Mr. Leckrone and other individuals associated with him. The lawsuit was known as *Charles H. Moore v. Technology Properties Limited, LLC, et al*, and was assigned file no. 1-10-CV-183613 by the clerk of court, Santa Clara County Superior Court (the "*Moore v. TPL* State Court Litigation"). Mr. Leckrone and TPL filed a cross-complaint against me in the *Moore v. TPL* State Court Litigation. Moore Dec. Par. 18, at 5:19-24.

17. In early 2012, Mr. Moore learned that Chet and Marcie Brown had obtained a ruling in their own lawsuit against TPL that would entitle them to some $10 million from TPL when that ruling was reduced to judgment. Moore Dec. Par. 19, at 5:25-27.

18. On January 31, 2013, Mr. Moore agreed to a negotiated settlement of his claims against TPL, Alliacense, Mr. Leckrone and the other defendants. Although the terms of the settlement are confidential, the rights and obligations of TPL under the January 31, 2013 Settlement Agreement are being assumed under my MMP Plan, and under all plans of reorganization previously presented to this Court. Moore Dec. Par. 20, at 5:28 – 6:4.

19. Mr. Moore has filed a creditor claim in this case. His claim is contingent

upon assumption of the January 31, 2013 Settlement Agreement by TPL. If the January 31, 2013 Settlement Agreement is not assumed by TPL, his creditor claim is for the $30 million due to him by TPL under my 2002 and 2007 ComAg agreements and their promise of 55% of net MMP Portfolio revenues to him. Mr. Moore is and will be a creditor in this case unless and until a plan of reorganization is approved by this Court under which the January 31, 2013 Settlement is assumed by Debtor TPL. Moore Dec. Par. 21, at 6: 5-11.

20. The January 31, 2013 Settlement Agreement replaces TPL's obligation to pay over 55% of its net MMP revenues to MR. Moore, with his acceptance of a smaller share (23.975% [instead of 27.5%[2]] of MMP revenues paid by PDS, not by TPL). TPL, for its part, saw its share of MMP revenues increased from 22.5% of the net to 26.025% of MMP revenues paid out by PDS. Moore Dec. Par. 22, at 6:12-16.

21. Mr. Moore anticipated that the public announcement of settlement of all disputes between and among those with ownership or licensing interests in the MMP portfolio would be a boon to further licensing and litigation efforts. Moore Dec. Par. 23, at 6:17-20.

22. Shortly after the January 31, 2013 Settlement Agreement was signed, Mr. Moore and his representatives met with Mr. Leckrone, Alliacense and patent litigation counsel. At that time, Mr. Moore's group urged that Alliacense take advantage of the favorable publicity of the settlement and the united front it showed to infringers, to settle one or two of the eleven or twelve pending claims of infringement before the International Trade Commission. *Such settlements, on a confidential basis, would have exerted substantial pressure on the remaining defendants to "catch the [settlement] train before it left the station." Mr. Moore believes that Alliacense made no substantial efforts to resolve claims against the ITC defendants until shortly before trial, with the result that only one ITC defendant settled, for a nominal amount. The other defendants took their cases to trial before the ITC.* Moore Dec. Par. 27, at 7:14-23.

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[2] 27.5% (one-half of 55%) would be the amount otherwise due to me under my now-superseded Commercialization Agreement with TPL.

[Mr. Moore is entitled to state the reasons he took the positions he advanced. Alliacense's failure to settle the ITC cases is documented by the number of cases it took to trial and lost, without involvement by Mr. Moore]

23. Under the January 31, 2013 Settlement Agreement, Mr. Moore receives consulting fees from PDS, for services he can provide in litigation (technical testimony and testimony from a patent owner who "practices" his invention – in my case, who manufactures microprocessor chips). An inventor who practices his patents (and thereby creates a "domestic *industry" critical to standing and important to argument in patent and ITC litigation) is an essential feature and an invaluable asset in an era of hostility to "patent trolls" who aggregate patents and sue for infringement without themselves creating any product or article of commerce from the invention*. Moore Dec. Par. 28, at 7:24 – 8:4. [Mr. Moore, as an inventor practicing his patent, is entitled to express his opinion as to the value of his efforts in a world increasingly hostile to patent-aggregating patent trolls]

24. Following the January 31, 2013 Settlement Agreement, through my counsel Mr. Moore offered his services to testify in ongoing litigation concerning the MMP portfolio. Moore Dec. Par. 29, at 8:5-6.

25. Mr. Moore's offer was not taken up in the TPL/Alliacense litigation before the International Trade Commission. That case – against at least 10 infringers, including some of the world's largest electronics companies – was tried during 2013, with no involvement from Mr. Moore, The case was lost before an ITC Administrative Law Judge. Moore Dec. Par. 30, at 8:7-10.

26. TPL and Alliacense (and Patriot, also a party) appealed this devastating turn of events for Mr. Moore's MMP Portfolio. The full International Trade Commission affirmed the ALJ's decision against TPL and Alliacense, with the decision ominously leaving undecided (but clearly suggesting) that TPL and Alliacense would not have been able to establish domestic industry standing even if their proof of infringement had been credited by the ITC. Moore Dec. Par. 31, at 8:11-16.

27. A second trial was held later in 2013, this time before a jury in the Northern

District of California. In this second trial, Mr. Moore's testimony was requested; indeed, in this second trial Mr. Moore sat with trial counsel as the face of the patents alleged to be infringed and as the business representative of the client. This time, a jury verdict found infringement by the defendant (the major electronics firm HTC), and TPL, Patriot and PDS were awarded judgment. Moore Dec. Par. 32, at 8:17-22.

28. At trial before the Northern District, TPL trial counsel presented a compelling case for infringement by the defendant HTC. Mr. Moore was appalled, however, to hear testimony that TPL had issued some MMP licenses not because they were market rate but because TPL was short of funds; *TPL trial counsel had to argue during his closing that the jury should ignore such "fire sale" licenses by Mr. Leckrone as not reflecting true MMP value in establishing damages*. Moore Dec. Par. 33, at 8:23-28. [The italicized language is not "argument" from Mr. Moore; it is argument that Mr. Moore heard and perceived as a witness and participant at the trial]

29. Further, counsel for defendant/infringer HTC argued to the jury that TPL through Alliacense had quoted an initial license fee to the major Silicon Valley electronics firm discussed earlier – of $1.5 billion. From this initial $1.5 billion demand, the evidence of the 2010 settlement gave an MMP license value of $960,000. TPL trial counsel argued for a reasonable value of $9 to $10 milllion for an HTC license, an amount Mr. Moore believed to be appropriate given the array of HTC products at issue. Moore Dec. Par. 34, at 9: 1-6.

30. The jury awarded not $9 million in damages but $960,000 against HTC – virtually the same "fire sale" number indicated by Mr. Leckrone's settlement with Patriot. Moore Dec. Par. 35, at 9:7-8.

31. *Mr. Moore believes that these facts cost the MMP Portfolio at least $8 million of a possible award against HTC; that loss will be compounded as HTC uses the limited $960,000 to cap its license fees for later and future products not covered by the verdict. Unless Alliacense is removed as MMP licensing agent, and Mr. Leckrone ceases to be the face of MMP licensing and litigation, other infringers will take the HTC award to the*

bank to undercut future licensing of the MMP portfolio. Moore Dec. Par. 36, at 9:9-14 [This paragraph states Mr. Moore's conclusion as a witness and participant at the trial; its statement of opinion from him is relevant, and should go to its weight and not its admissibility]

32. *Alliacense conducted very little licensing activity on the MMP portfolio since the January 31, 2013 Settlement Agreement was signed*. **No MMP portfolio license has been negotiated by Alliacense between August 2013 and the date of the Moore Declaration.** Moore Dec. Par. 38. [Mr. Moore knows the level of MMP licensing through receipt of his "off the top" percentage on the gross of every license received. He is in a position to perceive the level of licensing]

33. Alliacense sold a single license, of indeterminate amount, on or about September 11, 2014. Efforts to learn the amount of this single MMP license continue. See Prochnow Reply Declaration In Support, *passim*.

34. Instead of licensing the MMP Portfolio it appears that Alliacense has instead devoted its efforts since March 2013 to TPL's Non-MMP Patents. Moore Dec. Par. 39, at 9:27 – 10:2.

35. Mr. Moore is practicing the patents that he holds and would link licensing to his efforts to enhance the technology that his patents support and make possible. Moore Dec. Par. 40, at 10:13-14.

36. *Mr. Moore's MMP Plan provides a means to license the MMP Portfolio through the medium of a practicing entity, carrying forward progress in the field in which Mr. Moore and his associates work and innovate on a daily basis. Mr. Moore believes there is cause to appoint a Chapter 11 Trustee to replace Mr. Leckrone as debtor-in-possession. But by any measure, it is in the best interests of TPL, its creditors, its owner and all interested parties in this case that a Chapter 11 Trustee be appointed, to salvage the MMP portfolio and TPL's other assets, and to permit the TPL bankruptcy to proceed in an orderly and profitable manner under new, independent management.* Moore Dec. Par. 41, at 10:15-22. [This concluding paragraph goes to weight and not admissibility. At any trial,

Mr. Moore would certainly be permitted to so testify in conclusion]

37. Mr. Moore's "A" series of requests for judicial notice chronicle the growing war on patent trolls. Exhibit A1 reflects the President's statement against patent aggregators. Exhibit A2 is a New York Times Op-Ed piece from June 5, 2013, stating the authors' belief that patent trolls should pay prevailing party attorney's fees when they lose. (See below for that argument coming to life by way of objection to the plans before this Court). The authors of this anti-patent-troll screed include the Chief Judge of the United States Court of Appeals for the Federal Circuit.

38. Exhibit A3 reflects the attitude of the International Trade Commission to patent trolls.

39. Exhibit A4 recites a TPL loss in a non-MMP case before the ITC in which the Commission altered its standard of "domestic industry" to deny TPL standing.

40. Exhibit A5 is a public media report of the ITC victory of a company called Newegg over a "patent troll" – Debtor TPL.

41. Exhibits A6 and A7 are presentations and scholarly papers highlighting the practices of patent trolls – each using Alliacense as a model.

42. Exhibit 1 to Creditor Moore's Reply Request for Judicial Notice is an article from businessweek.com, entitled "Silicon Valley's Most Hated Patent Troll Stops Suing and Starts Making." The article, about a large patent aggregator, features its announced shift from litigating to manufacturing, a shift that Mr. Moore's MMP Plan anticipates and endorses and one that TPL under debtor-in-possession and his licensing company Alliacense have not considered and will not endorse.

43. Finally, this afternoon, Creditor Moore received the "Objection of STMicroelectonics, Inc., to Disclosure Statement Re: Moore Monetization Plan of Reorganization Dated August 28, 2014. This September 25, 2014 Objection requests and requires that the Moore Disclosure statement disclosure the potential exposure of TPL to a possible $6 million prevailing party attorney's fee award, to six defendants who claim the benefit of a favorable *Markman* decision in Delaware federal court litigation. The

defendants face off against Debtor TPL and the company to which TPL apparently transferred its FastLogic patent portfolio. Mr. Moore will deal with this objection as a disclosure item; the present point is that the best interests of debtor TPL require that a disinterested, objective Chapter 11 trustee consider, on a cost/benefit basis, the value and risks of litigation the debtor-in-possession is conducting – especially where the exposure to an adverse attorney's fee award is TPL's to bear, while Alliacense continues to receive the presumed benefit of providing fully paid litigation support services with payment not dependent upon the outcome of the case.

The evidence in favor of a change to a Chapter 11 trustee is clear and convincing.

2. Opposing Parties Evidence In Opposition To a Chapter 11 Trustee

[THIS SECTION INTENTIONALLY LEFT BLANK][3]

3. One final factor

This Court may hear argument or suggestion that decision on a Chapter 11 trustee should be deferred until the Moore MMP Plan is voted on and approved by the creditors, or is confirmed by the Court. Deferring that decision, the Court may be told, will permit the Moore MMP Plan to proceed toward vote and confirmation while not derailing the belated Joint Plan now scheduled for consideration by the Court on October 14, 2014.

With respect, Creditor Moore here previews an objection that he will raise against the Joint Plan and Joint Disclosure Statement. Creditor Moore is mindful of prior arguments on disclosure statements and plans before this Court, and will certainly in the main restrict his comments and objections to the Joint Disclosure Statement.

The Joint Plan, however, has a large, gaping hole – an unbridgeable gap that renders the current Joint Plan unconfirmable. Because the Joint Plan and its disclosure statement must head

[3] Again, no evidence in opposition to this motion is before this Court.

back to the drawing board to cure this major defect, the much more cosmetic changes that will be required to convert references to

"[M]ost Courts will not approve a disclosure statement if the underlying plan is clearly unconfirmable on its face." 7 Collier on Bankruptcy, Par. 1125.03[4], at 1125-23 (citing, inter alia, *In re Commandante Management Co.*, LLC, 359 B.R. 410, 415-16 (Bankr. D.P.R. 2006) (if a chapter 11 plan is unconfirmable on its face as a matter of law, then the court cannot approve the disclosure statement).

The Joint Plan now says the following concerning "Business Operations and Expenses of the Reorganized Company:"

> "Under new management, the Reorganized Company will continue TPL's existing commercialization activities and specifically, continue to exercise and enforce TPL's rights to manage litigation relating to the various patent portfolios."

EXHIBIT 5 to Reply Ponts and Authorities, Page 28 (of 63) of the "Joint Plan of Reorganization" (dated September 17, 2014) filed in this case.

This assurance of continuity is belied by the Joint Disclosure Statement. The TPL Disclosure Statement sets out a **presently incomplete** resolution of a major conflict between PDS, Patriot and Alliacense concerning the licensing of the MMP Portfolio:

> "PDS contracted directly with Alliacense to manage and license the MMP Portfolio. Disputes arose between the parties and on July 23, 2014, the parties entered into a settlement agreement (the "PDS-Alliacense Agreement") which, among other things, divided up potential licenses between Alliacense and a second licensing agent. A condition precedent to confirmation of the Plan requires a written agreement(s) resolving all controversies existing among Alliacense, PDS and Agility IP Law (counsel prosecuting litigation of the MMP Portfolio). The parties executed the PDS-Alliacense Agreement to resolve all such controversies. Patriot contends that any controversies arising out of the PDS-Alliacense Agreement must be resolved prior to and as a condition of confirmation, and that certain controversies still exist arising under the PDS-Alliacense Agreement, including the following: (1) obtaining TPL's approval of a second MMP licensing company as appointed by PDS, and (2) appointment of a third PDS Manager. Patriot also contends that upon accomplishment of the former obligation, the PDS-Alliacense Agreement provides Alliacense is obligated to deliver the lists of prospective licensees to be considered (and associated work product) to PDS." *Ibid.* First Full Paragraph.

EXHIBIT 6: Page 56 (of 88), First Full Paragraph, "TPL Disclosure Statement" (September 4, 2014) filed in this case.

Contrary to the Joint Plan representation of continuity (above), the Joint Disclosure Statement announces that MMP licensing will take a new, unclear course -

- with a second unknown licensing company involved,

- with the division of responsibilities between Alliacense and that company not stated, and not clear, and

- with substantial and material controversies still existing and still yet-to-be-resolved between Patriot and Alliacense.

Another seven-month negotiation between Mr. Leckrone and his adversaries may be in the works. But until that negotiation is complete, any Joint Plan must be deemed "void for vagueness" and unconfirmable.

The survival of TPL, and the success of any TPL plan, depends upon successful licensing of the MMP Portfolio. The present Joint Plan and its associated Disclosure Statement present radically different licensing approaches and different parties to the licensing process, with the Disclosure Statement revealing that substantial disputes have yet to be resolved between Patriot and Alliacense concerning these issues.

Further, "a condition precedent to confirmation of the Plan [not revealed in the Plan] requires a written agreement resolving all controversies…" That written agreement does not exist, given continued controversies, meaning that under the Disclosure Statement the Plan cannot now be confirmed. The Joint Plan and Joint Disclosure Statement must be substantially and substantively re-written as to the most important term of each: how the MMP licensing program is to be conducted for the benefit of Debtor TPL and its creditors.

Conclusion

For the reasons and on the authorities stated, a Chapter 11 trustee should be appointed, and debtor-in-possession should be removed in this case.

Respectfully submitted,

Dated: September 25, 2014

Chiles and Prochnow, LLP

By: */s/ Kenneth H. Prochnow*
Kenneth H. Prochnow
Attorneys for Creditor
Charles H. Moore