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7 Technology Properties Limited, LLC

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

11 In re

12 TECHNOLOGY PROPERTIES LIMITED,
13 LLC,

14 Debtor.

Case No: 13-51589 SLJ

Chapter 11

Date: August 22, 2016

Time: 2:00 p.m.

Place: Courtroom 3099
280 South First Street
San Jose, California

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16
17
18 **OPPOSITION TO REQUEST OF MICHAEL DAVIS FOR**
19 **PAYMENT OF ADMINISTRATIVE EXPENSE**

20 **I. INTRODUCTION**

21 1. By his Request¹ a single administrative claimant, Mike Davis, seeks to use a 12-day
22 delay in the payment of \$75,000 owed to him to demand immediate payment of 100% of a
23 claim he had compromised in amount and priority and agreed to receive over time. Mr. Davis,
24 an insider employee of Alliacense directly involved in the negotiations of all settlements, wants
25 the Court to order that he be paid \$573,000 immediately (though he has already been paid more
26 than \$127,000 of it), money that TPL simply does not have, in preference to the administrative
27

28 ¹ Request Of Michael Davis For Payment Of Administrative Expense [DKT #](the "Request").

1 claimants who agreed not only to defer payment but, more recently, to reduce the amounts owed
2 to them and rate at which they will be paid. This is an effort by one administrative claimant to
3 elbow aside all other similarly situated claimants and enhance his own treatment. If successful,
4 this ensures only one thing: the prompt conversion of this consensually confirmed Chapter 11
5 case to Chapter 7.

6 2. The Court can deny the Request because Mr. Davis has received every cent he would
7 have been entitled to receive had the short delay not occurred. The Court can find that Mr.
8 Davis has waived the 12-day delay in receiving a \$75,000 commission by later, on July 17,
9 2016, accepting \$42,688.68, his pro rata share of the Administrative Claims Contribution to
10 which his \$300,000 stipulated Administrative entitled him, without any reservation of rights or
11 protest. Alternatively, the Court can defer or stay the effectiveness of any ruling on the Request
12 until the September 22, 2016 hearing on TPL's Motion for Relief from Default.
13

14 **I. STATEMENT OF FACTS**

15 1. TPL commenced this case by filing a voluntary Chapter 11 petition on March 20,
16 2013.

17 2. This case was contested heavily at almost every level. On January 8, 2015, TPL
18 and the Committee filed their Disclosure Statement re: Joint Plan of Reorganization by Official
19 Committee of Unsecured Creditors and Debtor (January 8, 2015)(“Disclosure Statement”) [Dkt.
20 #587] and Joint Plan of Reorganization by Official Committee of Unsecured Creditors and
21 Debtor (January 8, 2015)(“Plan”) [Dkt. #586]. After a contested hearing on February 11, 2015,
22 the Plan was confirmed. The Order Confirming Joint Plan of Reorganization By Official
23 Committee Of Unsecured Creditors and Debtor (Dated January 8, 2015) [Dkt. #670] was
24 entered on March 19, 2015. TPL declared the Plan's Effective Date to be August 28, 2015.
25

26 3. The Plan provides that Non-Professional Administrative Claims are to be “paid in
27 cash, in full upon the later of: (a) the Effective Date ... and (c) if such Claim is incurred after the
28

1 Petition Date in the ordinary course of the Debtor's business, within such time as payment is
2 due pursuant to the terms giving rise to such Claim or as otherwise authorized by the
3 Bankruptcy Court."

4 4. The Plan further provides that "... Professional Fee Claims will be determined by
5 the Bankruptcy Court and, once Allowed pursuant to entry of an order by the Bankruptcy Court,
6 will be promptly paid by the Reorganized Company from the Administrative Claims
7 Contribution²."

8 5. Under the Plan the Administrative Claims Bar Date was 60 days after the
9 Effective Date. 3:12-13. Not having voted in favor of the Plan as did all similarly situated
10 claimants, Mr. Davis found himself in the unique position of being able to assert an
11 administrative claim for the incentive compensation he allegedly became entitled to after the
12 filing of TPL's bankruptcy case. Mr. Davis filed a timely Administrative Claim for \$573,000
13 and moved to compel payment of it, DKT #698.

14 6. The conditions for payments to Mr. Davis were agreed early this year. On
15 January 19, 2016, TPL, at the request of Mr. Davis, TPL made a timely wire transfer to his
16 personal bank account of \$11,750 to pay his priority wage claim. Mr. Davis agreed to provide
17 invoices for all future payments to be made to him as well as updated account information. Mr.
18 Venkidu, in turn, advised him that TPL would require a Form W-9 for all future payments to be
19 made to him.
20

21 7. When Mr. Davis filed a claim for \$573,000 in post-petition incentive
22 compensation, Mr. Venkidu directed the filing of TPL's Objection³ and supported it with a
23
24

25 ² "**Administrative Claims Contribution**" means the 50% of Adjusted Gross Revenue contributed each quarter (up
26 to a maximum amount not to exceed the amount of Allowed Administrative Claims) to pay holders of Allowed
Administrative Claims who agree to accept treatment other than payment in cash in full on the Effective Date.

27 "**Adjusted Gross Revenue**" or "**AGR**" means Gross Revenue less amounts owing under patent litigation counsel
contingency retainer agreements and agreements with inventors of the portfolios TPL commercializes.

28 ³ Objection to Request for Payment of Administrative Expense & Declaration Of Arockiyaswamy Venkidu In
Support Of Objection To Request For Payment Of Administrative Expense [DKT #726] (the "Objection")

1 factual declaration. Mr. Venkidu was present at Court and approved the terms of resolution
2 allowing Mr. Davis a \$375,000 Administrative Claim with \$75,000 paid as set forth below,
3 \$300,000 to be paid over time, and the balance asserted to be treated as an unsecured claim as
4 set forth in the Order⁴.

5 8. The Order, in paragraphs 1(a) and 1(c), requires the payment of \$75,000 to Mr.
6 Davis within 10 days of the receipt of funds from a pending settlement with Hewlett-Packard
7 Corporation (“HP”) or with Epson, with a penalty that the full claim is due and owing if this
8 \$75,000 commission is not timely paid. Paragraph 5 of the Order required payment of the
9 proceeds from a settlement with Micron within 10 days as well, but there was no trigger or
10 penalty for failing to meet the deadline.

11 9. The Order provided in paragraph 1(b) that the \$300,000 balance of Mr. Davis’s
12 allowed Administrative Claim will be paid “through the pooled claim fund (i.e. via the Debtor’s
13 Administrative Claim Contribution set forth in the Plan in *pari passu* with other administrative
14 claims.”

15 10. While he did not disclose it at the time of settlement, Mr. Davis later claimed that
16 he had insisted upon the inclusion of the term in *pari passu* in the Order because it differs from
17 pro rata and entitles him to receive more than his pro rata share of each Administrative Claim
18 Contribution. Thus, under Mr. Davis’s interpretation of in *pari passu*, without regard to the
19 amount of his claim, he is entitled to equal distributions from each dollar going into the
20 Administrative Claims Contribution, to wit: 33.3% of each dollar. This position, when Mr.
21 Venkidu was creating proposed distribution tables, and based upon Mr. Davis’s assurance that
22 he was negotiating a resolution of this claimed right with the other administrative claimants,
23 caused Mr. Venkidu uncertainty and led to a payment delay as he was attempting to reconcile
24 the competing demands for payment of administrative debt as set forth below.
25
26

27 ⁴ Order Re Request of Michael Davis for Payment of Administrative Expenses [DKT #739] (the “Order”) entered on
28 February 1, 2016.

1 11. On March 8, 2016, the Micron deal closed, but TPL received no money from it.
2 Mr. Venkidu spoke with Mr. Davis about what a poor deal he had negotiated because TPL had
3 to pay a commission to him from its own funds with no benefit at all to TPL. Mr. Davis did not
4 at that time send an invoice for the Micron deal.

5 12. On April 13, 2016, HP made a 2-day wire to litigation counsel (TSLF) which was
6 received April 15, 2016. On April 15, 2016, TSLF made a wire payment of HP settlement
7 proceeds, the Adjusted Gross Revenue therefrom, to TPL. On April 18, 2016, the HP
8 settlement proceeds first became available in TPL's bank account.

9 13. Mr. Venkidu was on April 13, 2016, reminded by Committee counsel to make the
10 \$75,000 commission payment to Mr. Davis as set forth in the email of the same date attached as
11 Exhibit "A" to the accompanying Declaration of Swamy Venkidu.
12

13 14. On April 18, 2016, Mr. Davis asked if payment had yet been received. Mr.
14 Venkidu confirmed that it had and reminded Mr. Davis send an invoice for TPL's records for
15 his commission as well as a W-9 form.

16 15. On April 19, 2016, Mr. Davis sent Mr. Venkidu invoices for HP, Micron and a
17 W-9 for a new company "Arria".

18 16. Without adequate funds to pay all claims due while still maintaining the working
19 capital reserve ("WCR") envisioned in the Plan, the TPL Board and CEO believed was
20 necessary to pay operating expenses, so Mr. Venkidu sought to find a way for TPL to balance
21 the competing interests of its claimants and survive to perform the terms of its confirmed Plan.
22 After extensive consultation with the TPL Board, on April 25, 2016, Mr. Venkidu transmitted a
23 proposed form of distribution to the law firm administrative claimants in the hope that he could
24 negotiate a lesser payment to them.
25

26 17. Mr. Venkidu spoke to Mr. Davis on at three occasions after receiving HP
27 settlement funds, on April 22, April 26, and April 27, and Mr. Davis confirmed that he was
28

1 giving additional time to pay the \$75,000 while Mr. Venkidu worked to construct a distribution
2 of the Administrative Claims Contribution acceptable to all.

3 18. As set forth in the email attached to the Venkidu Declaration as Exhibit "B", on
4 April 25, 2016, Mr. Venkidu was warned by Dorsey & Whitney not to make the payments as set
5 forth in his spreadsheet. The email warns that doing so would be a violation of the terms of the
6 Plan and subject TPL to liability. Since Mr. Venkidu's table had included the \$75,000
7 commission to Mr. Davis, he took this email to mean that TPL was prohibited from distributing
8 not only the administrative claimants' share of the pooled administrative claim but the \$75,000
9 commission, overruling the prior reminder to pay the Davis commission.
10

11 19. On May 10, 2016, TPL paid Michael Davis \$113,500 in commissions on the HP
12 and Micron settlements. Mr. Davis's counsel sent a message indicating that they were being
13 accepted and would be negotiated with a full reservation of rights.

14 20. Mr. Davis thereafter received the amount of \$10,400.00 from the Reorganized
15 Debtor on July 8, 2016, which was payment of his commission from the Epson project due
16 under Paragraph 5 of the Order.

17 21. Both Dorsey & Whitney and Binder & Malter have been cooperative with TPL's
18 efforts to fund the Plan despite low cash flows. Both firms agreed to a 25% reduction of the
19 final approved fees and costs to which they are entitled. They have also agreed to accept a
20 reduction of the Administrative Claims Contribution from 50% of Adjusted Revenue to 40%.

21 22. The exhibits hereto show that Dorsey & Whitney calculated the amounts to which
22 each administrative claimant would be entitled from the Adjusted Gross Revenue received from
23 the HP and Epson settlements. Those calculations are as follows:
24

Dorsey & Whitney	Owed \$1,377,946.67 = \$195,984.79
Binder & Malter	Owed \$1,457,070.60 = \$207,238.56
Mike Davis	Owed \$ 300,000.00 = \$ 42,668.88

27 Total: \$3,135,017.27/ \$447,892.5 = 14.22296%
28

1
2 23. TPL paid Mr. Davis \$42,688.68 on July 17, 2016, the full pro rata share of the
3 Administrative Claims Contribution to which his \$300,000 stipulated Administrative entitles
4 him. This payment as deposited without any reservation of rights. By contrast, the reduced
5 payments to Dorsey & Whitney and Binder & Malter amounted to \$146,398 and \$155,280,
6 respectively.

7 24. TPL continues to work with Mr. Davis in his role as a member of Alliacense. He
8 has so far not agreed to accept an open offer to continue to participate under the Plan on the
9 same terms as Binder & Malter and Dorsey & Whitney, notwithstanding having been paid
10 100% of the amounts to which he was entitled under the Order, but that remains the goal.
11

12 I. ARGUMENT

13 A. Mr. Davis Waived the Default by Accepting Payments Without Reservation.

14 25. Mr. Davis has received every cent of what he would have been entitled to receive
15 had the inadvertent 12-day delay described above never occurred. He accepted and satisfied
16 TPL's obligation to issue a \$75,000 commission payment, reservation of rights notwithstanding,
17 on May 10, 2016. He then accepted the Epsom commission and \$42,688.88 *pro rata*
18 distribution on his administrative claim. An argument exists that Mr. Davis has waived any
19 default associated with the 12-day delay in payment. *See Tully v. World Savings & Loan Assn.*,
20 *56 Cal. App. 4th 654, 659, 65 Cal. Rptr. 2d 545, 547, 1997 Cal. App. LEXIS 577, *7-8, 97 Cal.*
21 *Daily Op. Service 5782, 97 Daily Journal DAR 9251 (Cal. App. 2d Dist. 1997)* (. "In extreme
22 cases the beneficiary may be estopped to proceed with foreclosure if he accepts payments from
23 the trustor without objection and the trustor is misled by the beneficiary into believing that the
24 default has been cured and the foreclosure proceedings terminated.").

26 ///

27 ///

1 **B. Delay in Payment of the Micron Commission Did Not Accelerate the Davis**
2 **Obligations.**

3 26. The Request mentions the delay in payment of the Micron Commission. The
4 Order refers in paragraph 3, the acceleration clause, to payments referenced above, for example,
5 in the preceding paragraphs. The Micron payment is referenced only in paragraph 5, following
6 and below paragraph 3. While the Order provides in paragraph 5(a) that the Micron payment is
7 to be made within 10 days of receipt of funds, paragraph 3 does not apply to a default under
8 paragraph 5.

9 **C. Grounds Exist for Relief from Any Default Resulting From The 12-Day Delay in**
10 **Payment.**

11 27. TPL is moving concurrently for relief from default pursuant to Federal Rule of
12 Civil Procedure 60(b) to relieve it from the consequences of the unintentional 12-day payment
13 delay. Substantial authority exists for granting relief to a party where there has been no harm to
14 the opposing party: "With regard to determining whether a party's neglect of a deadline is
15 excusable, we are in substantial agreement with the factors identified by the Court of Appeals.
16 Because Congress has provided no other guideposts for determining what sorts of neglect will
17 be considered "excusable," we conclude that the determination is at bottom an equitable one,
18 taking account of all relevant circumstances surrounding the party's omission. These include, as
19 the Court of Appeals found, the danger of prejudice to the debtor, the length of the delay and its
20 potential impact on judicial proceedings, the reason for the delay, including whether it was
21 within the reasonable control of the movant, and whether the movant acted in good faith.
22 *Pioneer Inv. Servs. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380, 395, 113 S. Ct. 1489, 1498,
23 123 L. Ed. 2d 74, 89-90 (1993).

24 28. The opposing party being the cause of the consequence that would be set aside
25 forms a separate and independent ground for relief. *See e.g. Hazel-Atlas Glass Co. v. Hartford-*
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27
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1 *Empire Co.*, 322 U.S. 238, 64 S.Ct. 997, 88 L.Ed. 1250, 1944 Dec. Comm'r Pat. 675 (1944),
2 *overruled on other grounds by Standard Oil Co. of Cal. v. United States*, 429 U.S. 17, 97 S. Ct.
3 *31, 50 L. Ed.2d 21 (1976).*

4 **D. The Court Should Deny or Delay Ruling on the Request:**

5 29. TPL's Motion for Relief from Default is being set for a hearing on September 22,
6 2016. It would be logical and efficient to delay any ruling on the Request until it has been
7 determined whether the Order that the Request seeks to enforce will still be in effect after said
8 hearing. Thus, holding any ruling on the Request in abeyance, staying it, or simply continuing
9 the hearing are all options that would preserve the status quo pending.
10

11 **II. CONCLUSION**

12 30. This is a case that has been hard fought at every level. And as deep as the
13 conflicts have been, the parties have been able to come together with solutions, first in
14 appointing Mr. Venkidu as CEO, then with a consensual plan and, finally, with the
15 professionals agreeing to take less in fees more slowly than they agreed at confirmation. It is
16 hoped that Mr. Davis will join with the estate and creditors and participate in meaningful
17 discussions to progress toward a solution. If that does not occur, then the Court is asked to
18 consider how quickly Mr. Davis was made whole, the good faith of TPL, the reasons it was late,
19 and what Mr. Davis's goals might be in upsetting if not overturning the delicate equilibrium in
20 which this case exists.
21

22 Dated: August 15, 2016

BINDER & MALTER, LLP

24 /s/ Robert G. Harris

Robert G. Harris

26 Attorneys for Reorganized Debtor
27 Technology Properties Limited LLC
28

1 HEINZ BINDER, ESQ., ID #96533
2 ROBERT G. HARRIS, ESQ., ID #124678
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17 LLC,
18 Debtor.

19 Case No: 13-51589 SLJ
20 Chapter 11
21 Date: August 22, 2016
22 Time: 2:00 p.m.
23 Place: Courtroom 3099
24 280 South First Street
25 San Jose, California

26 **DECLARATION OF SWAMY VENKIDU IN SUPPORT OF OPPOSITION**
27 **TO REQUEST OF MICHAEL DAVIS FOR PAYMENT OF**
28 **ADMINISTRATIVE EXPENSE**

I, Swamy Venkidu, know the following matters to be true of my own, personal knowledge and, if called as a witness, could and would testify competently thereto:

1. I am the Chief Executive Officer of Technology Properties Limited LLC (“TPL”), the Reorganized Debtor in the above-captioned case.
2. At the heart of the current motion by Mr. Davis are consequences resulting from an ongoing refusal by Mr. Davis to provide invoices and necessary tax forms, as agreed and for

1 which he was reminded on several occasions, and an underlying desire by Mr. Davis to unfairly
2 improve his position as an administrative claimant by taking advantage of technical defaults that
3 he has himself helped cause.
4

5 3. The conditions for payments to Mr. Davis were agreed early this year. On
6 January 19, 2016, TPL, at the request of Mr. Davis, TPL made a timely wire transfer to his
7 personal bank account of \$11,750 to pay his priority wage claim. Mr. Davis agreed to provide
8 invoices for all future payments to be made to him as well as updated account information. I, in
9 turn, advised him that TPL would require a Form W-9 for all future payments to be made to him.

10 4. When Mr. Davis filed a claim for \$573,000 in post-petition incentive
11 compensation, I directed the filing of TPL's Objection¹ and supported it with a factual
12 declaration. I was present at Court and approved the terms of resolution allowing Mr. Davis a
13 \$375,000 Administrative Claim with \$75,000 paid as set forth below, \$300,000 to be paid over
14 time, and the balance asserted to be treated as an unsecured claim as set forth in the Order.²

15 5. The Order, in paragraphs 1(a) and 1(c), requires the payment of \$75,000 to Mr.
16 Davis within 10 days of the receipt of funds from a pending settlement with Hewlett-Packard
17 Corporation ("HP") or with Epson, with a penalty that the full claim is due and owing if this
18 \$75,000 commission is not timely paid. Paragraph 5 of the Order required payment of the
19 proceeds from a settlement with Micron within 10 days as well, but there was no trigger or
20 penalty for failing to meet the deadline.

21 6. The Order provided in paragraph 1(b) that the \$300,000 balance of Mr. Davis's
22 allowed Administrative Claim will be paid "through the pooled claim fund (i.e. via the Debtor's
23
24

25 ¹ Objection to Request for Payment of Administrative Expense & Declaration Of Arockiyaswamy Venkidu In
Support Of Objection To Request For Payment Of Administrative Expense [DKT #726] (the "Objection")

26 ² Order Re Request of Michael Davis for Payment of Administrative Expenses [DKT #739] (the "Order") entered on
February 1, 2016.
27

1 Administrative Claim Contribution set forth in the Plan *in pari passu* with other administrative
2 claims.”

3 7. While he did not disclose it at the time of settlement, Mr. Davis later claimed that
4 he had insisted upon the inclusion of the term *in pari passu* in the Order because it differs from
5 *pro rata* and entitles him to receive more than his *pro rata* share of each Administrative Claim
6 Contribution. Thus, under Mr. Davis’s interpretation of *in pari passu*, without regard to the
7 amount of his claim, he is entitled to equal distributions from each dollar going into the
8 Administrative Claims Contribution, to wit: 33.3% of each dollar. This position, when I was
9 creating proposed distribution tables, and based upon Mr. Davis’s assurance that he was
10 negotiating a resolution of this claimed right with the other administrative claimants, caused me
11 uncertainty and led to a payment delay as I was attempting to reconcile the competing demands
12 for payment of administrative debt as set forth below.

13 8. On March 8, 2016, the Micron deal closed, but TPL received no money from it. I
14 spoke with Mr. Davis about what a poor deal he had negotiated because TPL had to pay a
15 commission to him from its own funds with no benefit at all to TPL. Mr. Davis did not at that
16 time send an invoice for the Micron deal.

17 9. On April 13, 2016, HP made a 2-day wire to litigation counsel (TSLF) which was
18 received April 15, 2016. On April 15, 2016, TSLF made a wire payment of HP settlement
19 proceeds, the Adjusted Gross Revenue therefrom, to TPL. On April 18, 2016, the HP settlement
20 proceeds first became available in TPL’s bank account.

21 10. I was on April 13, 2016, reminded by Committee counsel to make the \$75,000
22 commission payment to Mr. Davis as set forth in the email of the same date attached hereto as
23 Exhibit “A”.

1 11. On April 18, 2016, Mr. Davis asked if payment had yet been received. I
2 confirmed that it had and reminded Mr. Davis send an invoice for TPL’s records for his
3 commission as well as a W-9 form.

4 12. On April 19, 2016, Mr. Davis sent me invoices for HP, Micron and a W-9 for a
5 new company “Arria”.

6 13. Without adequate funds to pay all claims due while still maintaining the working
7 capital reserve (“WCR”) envisioned in the Plan, the TPL Board and I believed it was necessary
8 to pay operating expenses, I sought to find a way for TPL to balance the competing interests of
9 its claimants and survive to perform the terms of its confirmed Plan. After extensive
10 consultation with the TPL Board, on April 25, 2016, I transmitted a proposed form of
11 distribution to the law firm administrative claimants in the hope that I could negotiate a lesser
12 payment to them.
13

14 14. I spoke to Mr. Davis on three occasions after receiving funds, on April 22, April
15 26, and April 27, and Mr. Davis confirmed that he was giving additional time to pay the \$75,000
16 while I was working to construct a distribution of the Administrative Claims Contribution
17 acceptable to all.

18 15. As set forth in the email attached hereto as Exhibit “B”, on April 25, 2016, I was
19 warned by Dorsey & Whitney not to make the payments as set forth in my spreadsheet. The
20 email warns that doing so would be a violation of the terms of the Plan and subject TPL to
21 liability. Since my table had included the \$75,000 commission to Mr. Davis, I took this email to
22 mean that TPL was prohibited from distributing not only the administrative claimants’ share of
23 the pooled administrative claim but the \$75,000 commission, overruling the prior reminder to
24 pay the Davis commission.
25
26
27

1 16. On May 10, 2016, TPL paid Michael Davis \$113,500 in commissions on the HP
2 and Micron settlements. Mr. Davis's counsel sent a message indicating that they were being
3 accepted and would be negotiated with a full reservation of rights.

4 17. Mr. Davis thereafter received the amount of \$10,400.00 from the Reorganized
5 Debtor on July 8, 2016, which was payment of his commission from the Epson project due under
6 Paragraph 5 of the Order.

7 18. Both Dorsey & Whitney and Binder & Malter have been cooperative with my
8 efforts to fund the Plan despite low cash flows. Both firms agreed to a 25% reduction of the final
9 approved fees and costs to which they are entitled. They have also agreed to accept a reduction
10 of the Administrative Claims Contribution from 50% of Adjusted Revenue to 40%.

11 19. The exhibits hereto show that Dorsey & Whitney calculated the amounts to which
12 each administrative claimant would be entitled from the Adjusted Gross Revenue received from
13 the HP and Epson settlements. Those calculations are as follows:

14
15
16 Dorsey & Whitney Owed \$1,377,946.67 = **\$195,984.79**
17 Binder & Malter Owed \$1,457,070.60 = **\$207,238.56**
18 Mike Davis Owed \$ 300,000.00 = **\$ 42,668.88**

19 Total: \$3,135,017.27/ \$447,892.5 = 14.22296%

20 20. TPL paid Mr. Davis \$42,688.68 on July 17, 2016, the full *pro rata* share of the
21 Administrative Claims Contribution to which his \$300,000 stipulated Administrative entitles
22 him. This payment as deposited without any reservation of rights of which I am aware. By
23 contrast, the reduced payments to Dorsey & Whitney and Binder & Malter amounted to
24 \$146,398 and \$155,280, respectively.

25 21. TPL continues to work with Mr. Davis in his role as a member of Alliacense. He
26 has so far not agreed to accept an open offer to continue to participate under the Plan on the same
27

1 terms as Binder & Malter and Dorsey & Whitney, notwithstanding having been paid 100% of the
2 amounts to which he was entitled under the Order, but that remains the goal.

3 22. I would ask that the Court should not punish the estate and creditors for such
4 confusion as regards the payment of the \$75,000 commission to Mr. Davis. I simply
5 misinterpreted the communications of the firm that served as Committee counsel. The most
6 equitable thing to do, under the circumstances, is to maintain the *status quo* created in the Order
7 so that the confirmed Plan can proceed. Doing anything less creates a material risk of
8 conversion to Chapter 7 given the limited funds now on hand.
9

10 23. I declare under penalty of perjury of the laws of the United States that the
11 foregoing is true and correct. Executed this 15th day of August, 2016, at San Jose, California.

12
13 /s/ Swamy Venkidu

14 SWAMY VENKIDU
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EXHIBIT A

From: franklin.robert@dorsey.com [<mailto:franklin.robert@dorsey.com>]
Sent: Wednesday, April 13, 2016 10:59 AM swamyv@bicmosfoundry.com
Cc: Rob Harris; oneill.stephen@dorsey.com; advisors@krysum.com; marciska@gmail.com
Subject: Settlement Proceeds

Swamy,

Thank you for sending the two waterfalls from the ----- and ----- settlements. TPL's total gross proceeds will be \$-----
. Under the Plan, one-half of these proceeds (\$-----) are to go to the Administrative Contribution Fund for distribution to the professionals who have accepted such treatment and Mike Davis under the settlement negotiated by TPL with him relative to his administrative claim. Please review and confirm figures. Once received, please set aside this amount and make payments to the following entities in the following amounts:

- a. Dorsey & Whitney – Owed \$1,377,946.67 = **\$196,887.79**
 - b. Binder & Malter -- Owed \$1,457,070.60 = **\$208,193.40**
 - c. Mike Davis -- Owed \$300,000 = **\$ 42,865.47**
- Total: $\$3,135,017.27 / \$447,892.5 = 14.288491\%$

I have attached Dorsey's wire instructions.

(Note that under the settlement with Davis, TPL needs to pay him \$75,000 from its share of the settlement proceeds, plus commissions on the HP and Epson settlements)

Regards,

Bob

Robert A. Franklin
Of Counsel



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EXHIBIT B

From: Franklin, Robert
Sent: Monday, April 25, 2016 2:39 PM
To: 'Gmail-Avenkidu'; 'Rob Harris'
Cc: 'Krysium Advisors Ltd'; 'Marcie Brown'; O'Neill, Stephen (oneill.stephen@dorsey.com); William Bretschneider (wlb@svlg.com)
Subject: RE: Payments from HP proceeds
Importance: High

Please confirm immediately that no distributions will be made pursuant to the spreadsheet you prepared (attached). Otherwise, we will be compelled to file a motion with the court to interpret the plan language.

From: Franklin, Robert
Sent: Monday, April 25, 2016 2:32 PM
To: 'Gmail-Avenkidu'; 'Rob Harris'
Cc: 'Krysium Advisors Ltd'; 'Marcie Brown'; O'Neill, Stephen (oneill.stephen@dorsey.com)
Subject: RE: Payments from HP proceeds
Importance: High

Thanks Swamy, but this calculation is unacceptable. The Plan is very clear that the Administrative Claims Contribution is to be paid from one-half of the Adjusted Gross Revenues. See the below definitions. You should not make any distributions based on the spreadsheet you prepared.

“Administrative Claims Contribution” means the 50% of Adjusted Gross Revenue contributed each quarter (up to a maximum amount not to exceed the amount of Allowed Administrative Claims) to pay holders of Allowed Administrative Claims who agree to accept treatment other than payment in cash in full on the Effective Date.

“Adjusted Gross Revenue” or **“AGR”** means Gross Revenue less amounts owing under patent litigation counsel contingency retainer agreements and agreements with inventors of the portfolios TPL commercializes.

The proceeds payable as an Administrative Claims Contribution total one-half of Adjusted Gross Revenues of \$----- or \$----- . Proceeds from the Administrative Claims Contribution must be paid as follows:

- a. Dorsey & Whitney – Owed \$1,377,946.67 = **\$195,984.79**
- b. Binder & Malter -- Owed \$1,457,070.60 = **\$207,238.56**
- c. Mike Davis -- Owed \$300,000 = **\$ 42,668.88**

Total: \$3,135,017.27/ \$447,892.5 = 14.22296%

The estate’s professionals agreed to defer payment based on the provisions of the confirmed Plan and are now entitled to be paid the above amounts from the Administrative Claims Contribution. **You may not** reserve for WCR or make other Effective Date payments from the Administrative Claims Contribution.

Please confirm that you will not be making any distributions based on the attached spreadsheet. Any allocation of settlement proceeds that does not result in an Administrative Claims Contribution of \$445,892.53 or any disbursements made from the Administrative Claims Contribution to anyone other than Dorsey & Whitney, Binder & Malter or Mike Davis as described above would be in violation of the express terms of the Plan and subject the Debtor to liability and will result in Dorsey & Whitney taking any action it deems appropriate to protect its interests.

-----Original Message-----

From: Gmail-Avenkidu [<mailto:avenkidu@gmail.com>]

Sent: Monday, April 25, 2016 11:24 AM

To: 'Rob Harris'; Franklin, Robert

Cc: 'Krysium Advisors Ltd'; 'Marcie Brown'

Subject: RE: Payments from HP proceeds

Rob , Bob – Attached the payments based on the Plan per my understanding and the Board. Unfortunately Mike Davis's portion comes off of settlement like MCM and Others. we also have to cross the effective date payments before we go with distributions all other classes.

I reviewed this with the Board before sending this over. I and Board are available to discuss if any questions.

Thanks, swamy

1 Heinz Binder (SBN87908)
2 Robert G. Harris (SBN 124678)
3 David B. Rao (SBN103147)
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9 Email: heinz@bindermalter.com
10 Email: rob@bindermalter.com
11 Email: david@bindermalter.com

12 Attorneys for Reorganized Debtor
13 TECHNOLOGY PROPERTIES LIMITED, LLC

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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

In re

TECHNOLOGY PROPERTIES LIMITED,
LLC,

Debtor.

Case No: 13-51589 SLJ

Chapter 11

Date: August 22, 2016

Time: 2:00 p.m.

Place: Courtroom 3099

280 South First Street
San Jose, California

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 15, 2016 I served a true and correct copy of the following document(s):

**OPPOSITION TO REQUEST OF MICHAEL DAVIS FOR
PAYMENT OF ADMINISTRATIVE EXPENSE**

**DECLARATION OF SWAMY VENKIDU IN SUPPORT OF OPPOSITION
TO REQUEST OF MICHAEL DAVIS FOR PAYMENT OF
ADMINISTRATIVE EXPENSE**

1 via electronic transmission and/or the Court's CM/ECF notification system to the parties

2 registered to receive notice as follows:

3 **U.S. Trustee**

4 John Wesoloski
5 United States Trustee
6 Office of the U.S. Trustee
7 280 So. First St., Room 268
8 San Jose, CA 95113
9 Email: john.wesolowski@usdoj.gov

8 **Unsecured Creditors Committee Attorney**

9 c/o John Walshe Murray, Esq.
10 c/o Robert Franklin, Esq.
11 c/o Thomas Hwang, Esq.
12 Dorsey & Whitney LLP
13 305 Lytton Avenue
14 Palo Alto, CA 94301
15 Email: murray.john@dorsey.com
16 Email: franklin.robert@dorsey.com
17 Email: hwang.thomas@dorsey.com

14 **Special Notice**

15 Patriot Scientific Corp.
16 c/o Gregory J. Charles, Esq.
17 Law Offices of Gregory Charles
18 2131 The Alameda Suite C-2
19 San Jose, CA 95126
20 Email: greg@gregcharleslaw.com

18 Arockiyaswamy Venkidu
19 c/o Javed I. Ellahie
20 Ellahie & Farooqui LLP
21 12 S. First St., Suite 600
22 San Jose, CA 95113
23 Email: javed@eflawfirm.com

22 OneBeacon Technology Insurance
23 c/o Gregg S. Kleiner, Esq.
24 McKENNA LONG & ALDRIDGE LLP
25 One Market Plaza
26 Spear Tower, 24th Floor
27 San Francisco, CA 94105
28 Email: gkleiner@mckennalong.com

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c/o Robert L. Eisenbach III
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San Francisco, CA 94111-5800
Email: reisenbach@cooley.com

27 Executed on August 15, 2016, at Santa Clara, California. I certify under penalty of
28 perjury that the foregoing is true and correct.

/s/ Natalie D. Gonzalez
Natalie D. Gonzalez