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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-11

Chapter 11

Date: October 2, 2014

Time: 3:00 p.m.

Place: Courtroom 3099

280 South First Street
San Jose, California

MOTION TO STRIKE PORTIONS OF DECLARATION OF CHARLES H. MOORE IN SUPPORT OF MOTION TO APPOINT CHAPTER 7 TRUSTEE

Technology Properties Limited, LLC (“TPL”), Debtor and Debtor-in-Possession, moves this court to strike certain statements in the Declaration of Charles H. Moore in Support of Motion to Appoint Chapter 7 Trustee (“Moore’s Declaration”) to the extent that they lack foundation or constitute only conclusions, or argument.

Bankruptcy Local Rule §9013-1(d)(2) provides that an affidavit or declaration filed in support of a motion in this court:

“shall contain only facts, shall conform as far as possible to the requirements of Fed.R.Civ.Pro. §56(e), and shall avoid conclusion and argument. Any statement made upon information or believe shall specify the basis therefore.

1 Affidavits and declaration not in compliance with this rule may be stricken in
whole or in part.”

2 Much of Moore’s declaration consists of argument, opinions of value, and speculation
3 regarding others’ motives or the possible result of alternative action. These statements fall
4 squarely within the prohibitions of the local rule and should be disregarded by the Court.

5 For the Court’s convenience, TPL has attached as Exhibit A a copy of Moore’s
6 Declaration with those sections not including statements of fact, or providing only unsupported
7 statements based on information and belief without foundation, shown as stricken.
8

9 Much of the statements in Moore’s declaration are irrelevant to the current proceeding.
10 TPL reserves the right to object to all factual statements made in Mr. Moore’s declaration.

11 Respectfully, submitted.

12 Dated: September 18, 2014

BINDER & MALTER, LLP

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15 By: /s/ Robert G. Harris
16 Robert G. Harris
17 Attorney for Debtor and Debtor-in-Possession,
18 Technology Properties Limited, LLC
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6 Attorneys For Creditor Charles H. Moore

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

11 IN RE:
12 TECHNOLOGY PROPERTIES LIMITED,
LLC, a California corporation,
13 Debtor.

Case No.: 13-51589-SLJ-11
Chapter 11
Date: October 1, 2014
Time: 2:00 p.m.
Place: Courtroom 3099
280 South First Street
San Jose, California
Honorable Stephen L. Johnson

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19 **DECLARATION OF CHARLES H. MOORE IN SUPPORT OF MOTION TO APPOINT CHAPTER 11
TRUSTEE; AND TO REMOVE DEBTOR-IN-POSSESSION**

20 I, Charles H. Moore, declare:

21 1. I am over the age of 18 and am competent to and would testify to all matters set
22 forth in this Declaration if called upon to do so as a witness.

23 2. I am a creditor and interested party in this case. On August 28, 2014, I submitted
24 the Moore Monetization Plan of Reorganization (“MMP Plan”) and the Disclosure Statement re
25 Moore Monetization Plan of Reorganization (“Disclosure Statement”). Hearing on my
26 Disclosure Statement is set for October 2, 2014, at 1:30 p.m., before Judge Johnson in the
27 above courtroom. At this writing, no other Chapter 11 reorganization plan and disclosure
28 statement has been calendared for approval. I make this declaration in support of my motion to

1 appoint a Chapter 11 Trustee in this case, and to remove the debtor-in-possession Daniel
2 Leckrone, who has severed all ties with Debtor TPL.

3 3. I am a 1960 graduate of Massachusetts Institute of Technology where I received
4 a Bachelor's of Science degree in Physics. Thereafter I engaged in post-graduate studies in
5 mathematics at Stanford University. My work experience has included many diverse areas
6 including programming to predict Moonwatch satellite observations at the Smithsonian
7 Astrophysical Observatory, programming to calculate satellite orbits, electron beam steering at
8 the Stanford Linear Accelerator Center, and programming a real-time gas chromatograph on a
9 minicomputer. I am known internationally for inventing the Forth computer language in 1968.

10 4. In the 1980s I concentrated on developing microprocessor chips. During that
11 time I developed the Sh-Boom microprocessor chip in collaboration with Russell Fish, out of
12 which work the patents eventually called the "Moore Microprocessor Patent" ("MMP")
13 portfolio were derived. Russell Fish and I are indicated to be the inventors of the series of
14 patents of the portfolio. Since 2005, MMP patent licenses have been issued to third parties,
15 generating revenues in excess of \$300,000,000. ~~I am informed and believe that additional~~
16 ~~licensing revenues of at least that amount could have been expected had appropriate licensing~~
17 ~~and litigation efforts been undertaken respect to the MMP portfolio.~~

18 5. ~~I am informed and believe that by 2005, Russell Fish's rights to the MMP~~
19 ~~Portfolio of patents had been transferred to Patriot Scientific Corporation ("Patriot").~~
20 Meanwhile, on or about October 21, 2002, through a so-called "Commercialization
21 Agreement" or "ComAg," I had hired a licensing company, Technology Properties Limited (the
22 debtor in these proceedings; hereafter, "TPL") to evaluate the market for licensing the MMP
23 portfolio to third parties and to generate royalties. Under my 2002 ComAg agreement, TPL
24 was to pay me 55% of the net recovery TPL realized from its licensing of the MMP Portfolio. ~~I~~
25 ~~am informed and believe that attorney Daniel Leckrone is the owner of TPL, and that he~~
26 ~~resigned as TPL's chief executive officer after putting TPL in bankruptcy. As of 2005, TPL's~~
27 ~~business was directed exclusively toward commercialization of my MMP Portfolio, with MMP~~
28 ~~revenues supporting the development of new MMP based technologies at IntellaSys, a TPL~~

No Foundation.

No Foundation.

No Foundation,
Argument.

1 ~~subsidiary.~~

2 6. In or about 2003, I became the Chief Technology Officer for TPL. I remained in
3 that position until 2007. In that capacity, ~~I was the most knowledgeable TPL employee~~
4 ~~concerning the MMP portfolio attributes (logically, as the inventor), and learned of its~~
5 ~~marketability and value from my day to day activities at TPL.~~ I reviewed many of TPL's
6 product analyses, teardown studies, claim charts, DeCaps, relevant (infringing) revenue
7 analyses by infringers, and similar information from which the strategies were derived to
8 approach and notify over 400 infringing companies and to plan the appropriate terms of MMP
9 licenses to require from those infringing parties. That, and the many reports I received from
10 TPL representatives over the years, gave me substantial familiarity with the licensing and
11 commercialization process for the MMP technology, and provided me the ability to value the
12 MMP technology for licensing purposes relative to TPL's other technologies.

13 7. TPL also acquired patent rights to other technologies during my employment,
14 including portfolios known as "Fast Logic" and "Core Flash" (I will refer to these other patent
15 portfolios as "TPL's Non-MMP Patents"). As the TPL Chief Technology Officer, I had
16 occasion to become informed about the TPL's Non-MMP Patents and their underlying
17 technologies. ~~I then understood the relative value of TPL's Non-MMP Patents compared to the~~
18 ~~MMP portfolio, and I know how TPL valued them relative to the MMP portfolio.~~

19 8. In or about April 2010, I learned – from Patriot, not from TPL or from Mr.
20 Leckrone – that TPL had entered into a license transaction with a major Silicon Valley
21 electronics firm. ~~I am informed and believe that with this license, TPL granted licensee rights~~
22 ~~not only under the MMP Portfolio of patents but also under TPL's Non-MMP Patents.~~ I was
23 never given any notice by TPL of this multi-patent license; upon information and belief, Patriot
24 only learned of it after the fact. ~~I am informed and believe that the gross licensing fee received~~
25 ~~by TPL for this license was substantially less than what this major Silicon Valley firm should~~
26 ~~have paid for use of the MMP Portfolio technology alone.~~

27 9. However, the true loss to the MMP Portfolio – and to me, to Patriot and to TPL
28 – was substantially greater. ~~I understand that under this license negotiated by TPL and Mr.~~

Opinion.

Opinion.

No Foundation.

No Foundation.

No Foundation.

1 ~~Leckrone, only some 20% of the proceeds were to be attributed to the MMP portion of the~~
2 ~~license, with the remainder (some 80%) given over to TPL's Non-MMP Patents (meaning that~~
3 ~~Mr. Leckrone would receive 80% of the total license fee, given his control over all revenues~~
4 ~~accruing to TPL's Non-MMP Patents).~~

Opinion.

5 10. ~~Then and now, the MMP portfolio was far and away TPL's most valuable~~
6 ~~licensing asset. Under any reasonable royalty analysis, the contributions of TPL's Non-MMP~~
7 ~~Patents to the total value of the April 2010 multi-patent license would have been minimal~~
8 ~~relative to the value of the MMP portfolio. Allocating less than 20% of the consideration~~
9 ~~received from the April 2010 multi-patent license to the MMP portfolio, and permitting TPL to~~
10 ~~retain 80% of that consideration for its other technologies, was absurd.~~

11 11. I regarded the allocation of less than 20% of this major license to the MMP
12 portfolio to be a breach of TPL's fiduciary duties to me under our licensing agreement.

No Foundation.

13 12. ~~I am informed and believe that Patriot felt the same way:~~ Patriot filed a Santa
14 Clara County Superior Court action against TPL. Patriot settled that action with an adjustment
15 of the MMP portfolio license fees that TPL had received from the major Silicon Valley
16 electronics firm. ~~Upon information and belief, those fees now totaled some \$960,000 (still a~~
17 ~~fraction of what an MMP portfolio license should have yielded, but better than the infinitesimal~~
18 ~~portion of the license fee that had initially been assigned as the MMP portfolio share).~~

No Foundation.

19 13. ~~Of greater long term significance to the health of the MMP portfolio, in its 2010~~
20 settlement with TPL, Patriot secured for itself advance notice and review of all future MMP
21 portfolio licenses that TPL would issue through its Alliacense subsidiary; the Patriot/TPL co-
22 owned entity "Phoenix Digital Systems" secured the ability to monitor Mr. Leckrone and
23 Alliacense through the contractual requirement that all MMP licenses be signed by the PDS
24 chairman (a member of the Patriot board of directors, Carl Johnson).

Opinion Argument.

25 14. ~~At some point unknown to me (and some time before this bankruptcy case), TPL~~
26 ~~spun off its Alliacense subsidiary. Alliacense, the sole entity with authority to commercialize~~
27 ~~my MMP Portfolio, was now a separate corporation, wholly owned by Mr. Leckrone (as was~~
28 ~~TPL).~~

No Foundation. Argument.

1 15. I resigned as TPL's Chief Technology Officer in 2007, because I was not getting
2 paid my 55% royalty. I re-negotiated my 2002 ComAg in late 2007, augmenting in part my
3 entitlement to 55% of TPL's net MMP Portfolio receipts with an "off-the-top" advance of a
4 much smaller percentage of TPL gross MMP Portfolio receipts. I then believed that a
5 percentage of the gross was the only way for me to realize any return from my invention,
6 because of repeated representations by Mr. Leckrone that TPL's expenses exceeded its
7 licensing revenues.

No Foundation.

8 16. ~~TPL has received at least \$120 million in revenues from licensing my MMP~~
9 ~~Portfolio of patents. Despite my entitlement to 55% of TPL's net MMP Portfolio revenues,~~
10 I was paid only \$11 million of that revenue to and through January 2013. The last payment
11 of any kind that I received from TPL was \$15,000, received on November 13, 2009.

Argument.

12 17. I know from TPL's press releases that it wrote many MMP licenses between
13 July 2008 and July 2012. I received no royalties related to those licenses after 2009, and no
14 accounting with respect to any of the proceeds received by TPL with respect to those
15 licenses. I was never paid any "off the top" portion of MMP licensing revenues received by
16 TPL.

Argument.

17 18. ~~Following the episode concerning the mis-allocation of MMP portfolio~~
18 ~~licensing proceeds received by TPL and Mr. Leckrone from the major Silicon Valley~~
19 ~~electronics firm,~~ I filed an action in Santa Clara County Superior Court against TPL,
20 Alliacense, Mr. Leckrone and other individuals associated with him. My lawsuit was
21 known as *Charles H. Moore v. Technology Properties Limited, LLC, et al*, and was
22 assigned file no. 1-10-CV-183613 by the clerk of court, Santa Clara County Superior Court
23 (the "*Moore v. TPL State Court Litigation*"). Mr. Leckrone and TPL filed a cross-complaint
24 against me in the *Moore v. TPL State Court Litigation*.

25 19. In early 2012, I learned that Chet and Marcie Brown had obtained a ruling in
26 their own lawsuit against TPL that would entitle them to some \$10 million from TPL when
27 that ruling was reduced to judgment.

28 20. On January 31, 2013, I agreed to a negotiated settlement of my claims

1 against TPL, Alliacense, Mr. Leckrone and the other defendants. Although the terms of the
2 settlement are confidential, the rights and obligations of TPL under the January 31, 2013
3 Settlement Agreement are being assumed under my MMP Plan, and under all plans of
4 reorganization previously presented to this Court.

5 21. I have filed a creditor claim in this matter. My claim is contingent upon
6 assumption of the January 31, 2013 Settlement Agreement by TPL. If the January 31, 2013
7 Settlement Agreement is not assumed by TPL, my creditor claim is for the \$30 million due
8 to me by TPL under my 2002 and 2007 ComAg agreements and their promise of 55% of
9 net MMP Portfolio revenues to me. I am and will be a creditor in this case unless and until
10 a plan of reorganization is approved by this Court under which the January 31, 2013
11 Settlement is assumed by Debtor TPL.

12 22. The January 31, 2013 Settlement Agreement replaces TPL's obligation to
13 pay over 55% of its net MMP revenues to me, with my acceptance of a smaller share
14 (23.975% [instead of 27.5%¹] of MMP revenues paid by PDS, not by TPL). TPL, for its
15 part, saw its share of MMP revenues increased from 22.5% of the net to 26.025% of MMP
16 revenues paid out by PDS.

17 23. ~~It was anticipated by all parties to the January 31, 2013 Settlement~~
18 ~~Agreement that the public announcement of settlement of all disputes between and among~~
19 ~~those with ownership or licensing interests in the MMP portfolio would be a boon to further~~
20 ~~licensing and litigation efforts.~~

21 24. Indeed, the moment TPL obtained my agreement to the January 31, 2013
22 Settlement Agreement, its representatives put a licensing agreement before me. ~~This~~
23 ~~agreement, with a major automobile manufacture, had been negotiated in anticipation of the~~
24 ~~settlement, because the manufacturer had refused to sign off on the license without written~~
25 ~~assurance from me that the license was issued with my consent and approval.~~

26 _____
27
28 ¹ 27.5% (one-half of 55%) would be the amount otherwise due to me under my now-superseded
Commercialization Agreement with TPL.

Argument.

1 25. ~~I should of course have been paid my just agreed percentage share of this~~
2 ~~multi-million dollar license, given that my settlement-based approval was critical to its~~
3 ~~issuance.~~ TPL insisted, however, that this license was a pre-settlement negotiation, to which
4 my percentage did not apply. Because I did not want to litigate an agreement that had yet to
5 be reduced to writing, and break the peace just made, I allowed this license to be treated as
6 pre-settlement, and I received none of its multi-million dollar proceeds.

Argument.

7 26. ~~Notwithstanding this concession, and the freeing-up of amounts otherwise~~
8 ~~due to me for TPL and Patriot to divide between them, I later learned that this license~~
9 ~~became the subject of continuing dispute between Alliacense and PDS (which would here~~
10 ~~distribute licensing proceeds, 50/50, between Patriot and TPL). I am informed and believe~~
11 ~~that Alliacense insisted on retaining expense and other supposed entitlements (benefitting~~
12 ~~Mr. Leckrone and reducing payments to Debtor TPL and to Patriot). I have no knowledge~~
13 ~~or information on how (or whether) this dispute was resolved.~~

No Foundation.

14 27. Shortly after the January 31, 2013 Settlement Agreement was signed, my
15 representatives and I met with Mr. Leckrone, Alliacense and patent litigation counsel. At that
16 time, we urged that Alliacense take advantage of the favorable publicity of the settlement and
17 the united front it showed to infringers, to settle one or two of the eleven or twelve pending
18 claims of infringement before the International Trade Commission. ~~Such settlements, on a~~
19 ~~confidential basis, would have exerted substantial pressure on the remaining defendants to~~
20 ~~“catch the [settlement] train before it left the station.” I am informed and believe that~~
21 ~~Alliacense made no substantial efforts to resolve claims against the ITC defendants until~~
22 ~~shortly before trial, with the result that only one ITC defendant settled, for a nominal amount.~~
23 ~~The other defendants took their cases to trial before the ITC.~~

No Foundation.

24 28. Under the January 31, 2013 Settlement Agreement, I receive consulting fees
25 from PDS, for services I can provide in litigation (technical testimony and testimony from a
26 patent owner who “practices” his invention – in my case, who manufactures microprocessor
27 chips). ~~As my MMP Plan, the MMP Disclosure Statement and my papers in support of this~~
28 ~~motion make clear,~~ an inventor who practices his patents (and thereby creates a “domestic

Argument.

Argument.

1 ~~industry” critical to standing and important to argument in patent and ITC litigation) is an~~
2 ~~essential feature and an invaluable asset in an era of hostility to “patent trolls” who~~
3 ~~aggregate patents and sue for infringement without themselves creating any product or~~
4 ~~article of commerce from the invention.~~

5 29. Following the January 31, 2013 Settlement Agreement, through my counsel I
6 offered my services to testify in ongoing litigation concerning the MMP portfolio.

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

11 31. TPL and Alliacense (and Patriot, also a party) appealed this devastating turn
12 of events for my MMP Portfolio. The full International Trade Commission affirmed the
13 ALJ’s decision against TPL and Alliacense, with the decision ominously leaving undecided
14 (but clearly suggesting) that TPL and Alliacense would not have been able to establish
15 domestic industry standing even if their proof of infringement had been credited by the
16 ITC.

17 32. A second trial was held later in 2013, this time before a jury in the Northern
18 District of California. In this second trial, my testimony was requested; indeed, in this
19 second trial I sat with trial counsel as the face of the patents alleged to be infringed and as
20 the business representative of the client. This time, a jury verdict found infringement by the
21 defendant (the major electronics firm HTC), and TPL, Patriot and PDS were awarded
22 judgment.

23 33. At trial before the Northern District, TPL trial counsel presented a
24 compelling case for infringement by the defendant HTC. I was appalled, however, to hear
25 testimony that TPL had issued some MMP licenses not because they were market rate but
26 because TPL was short of funds; ~~TPL trial counsel had to argue during his closing that the~~
27 ~~jury should ignore such “fire sale” licenses by Mr. Leckrone as not reflecting true MMP~~
28 ~~value in establishing damages.~~

Argument.

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

7 35. The jury awarded not \$9 million in damages but \$960,000 against HTC –
8 virtually the same “fire sale” number indicated by Mr. Leckrone’s settlement with Patriot.

9 36. ~~I am informed and believe that these facts cost the MMP Portfolio at least \$8~~
10 ~~million of a possible award against HTC; that loss will be compounded as HTC uses the~~
11 ~~limited \$960,000 to cap its license fees for later and future products not covered by the~~
12 ~~verdict. Unless Alliacense is removed as MMP licensing agent, and Mr. Leckrone ceases to~~
13 ~~be the face of MMP licensing and litigation, other infringers will take the HTC award to the~~
14 ~~bank to undercut future licensing of the MMP portfolio.~~

15 37. Further and finally, at the HTC trial I heard deposition testimony from my
16 co-inventor Mr. Fish presented to the jury; in that sworn testimony, Mr. Fish claimed that
17 Mr. Leckrone’s son Mac Leckrone had threatened him in an effort to alter Mr. Fish’s
18 interpretation of MMP patent claims to support the TPL/Alliacense position. ~~I have no idea~~
19 ~~whether Mr. Fish’s claim of a threat has any truth to it; what was disturbing and regrettable~~
20 ~~was to see TPL trial counsel call Mac Leckrone to the stand in the very last minutes of trial~~
21 ~~to deny Mr. Fish’s allegations. It is in the best interests of TPL, its creditors and all~~
22 ~~interested parties that the company not be tarnished by the need to refute allegations of~~
23 ~~threats and coercion in future MMP litigation.~~

24 38. ~~Alliacense conducted very little licensing activity on the MMP portfolio~~
25 ~~since the January 31, 2013 Settlement Agreement was signed. No MMP portfolio license~~
26 **has been negotiated by Alliacense since August 2013.**

27 39. Instead of licensing the MMP Portfolio – ~~again, TPL’s most substantial and~~
28 ~~most valuable asset, and the necessary source of revenues to pay Debtor TPL’s creditors~~

1 it appears that Alliacense has instead devoted its efforts since March 2013 to TPL's Non-
2 MMP Patents. ~~Upon information and belief, Non-MMP Patent licenses are written by~~
3 ~~Alliacense and/or Mr. Leckrone without creditors' committee oversight or approval, with~~
4 ~~unlimited opportunity for Mr. Leckrone to claim and to take claimed "expenses" and~~
5 ~~holdbacks and without any funds accruing TPL for pass through and payment to TPL~~
6 ~~creditors.~~

No Foundation.

7 40. ~~By any measure, it is time for a fresh start to MMP portfolio marketing, by a~~
8 ~~licensor not tainted by past mistakes and low yielding licensing, and not easily~~
9 ~~characterized and dismissed as a "patent troll" a label that has been applied to Alliacense~~
10 ~~and to TPL in the past, and that would surely be applied to Alliacense and TPL in the future~~
11 ~~in view of the disastrous results before the International Trade Commission. I do not~~
12 ~~condone or support patent trolls and the litigation and threats they employ to coerce~~
13 ~~licenses; I am practicing the patents I hold and would link licensing to my efforts to~~
14 ~~enhance the technology that my patents support and make possible.~~

Argument.

15 41. ~~My MMP Plan provides a means to license the MMP Portfolio through the~~
16 ~~medium of a practicing entity, carrying forward progress in the field in which my associates~~
17 ~~and I work and innovate on a daily basis. I believe there is cause to appoint a Chapter 11~~
18 ~~Trustee to replace Mr. Leckrone as debtor in possession. But by any measure, it is in the~~
19 ~~best interests of TPL, its creditors, its owner and all interested parties in this case that a~~
20 ~~Chapter 11 Trustee be appointed, to salvage the MMP portfolio and TPL's other assets, and~~
21 ~~to permit the TPL bankruptcy to proceed in an orderly and profitable manner under new,~~
22 ~~independent management.~~

Argument.

23 42. Mr. Leckrone, nominally the debtor-in-possession of TPL, has already
24 severed all affiliation with TPL. ~~A Chapter 11 Trustee should and must be appointed, to~~
25 ~~facilitate my MMP Plan or any reorganization plan now necessary to move MMP licensing~~
26 ~~forward in a world now hostile to patent trolls.~~

Argument.

27 I hereby authorize submission of a copy of this declaration bearing my facsimile or
28 electronic signature with the same purpose and effect as if the original were available.

1 I declare under penalty of perjury under the laws of the United States of America
2 that the foregoing is true and correct and that this Declaration is executed on September 3,
3 2014.
4

5 /s/ Charles H. Moore
6 Charles H. Moore
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