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Committee of Unsecured Creditors

UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

In re:	
TECHNOLOGY PROPERTIES LIMITED LLC, fka TECHNOLOGY PROPERTIES LIMITED INC., A CALIFORNIA CORPORATION, fka TECHNOLOGY PROPERTIES LIMITED, A CALIFORNIA CORPORATION,	Case No. 13-51589-SLJ-11
	Chapter 11
	Date: November 12, 2014
	Time: 10:00 a.m.
Debtor.	Place: United States Bankruptcy Court 280 S. First Street, Room 3099 San Jose, CA 95113
	Judge: Honorable Stephen L. Johnson

OBJECTION OF OFFICIAL COMMITTEE OF UNSECURED CREDITORS TO DISCLOSURE STATEMENT RE: MOORE MONETIZATION PLAN OF REORGANIZATION DATED OCTOBER 29, 2014

The Official Committee Of Unsecured Creditors (the "Committee") in the bankruptcy case of Technology Properties Limited LLC (the "Debtor" or "TPL") hereby submits its objection to the DISCLOSURE STATEMENT RE: MOORE MONETIZATION PLAN OF REORGANIZATION DATED OCTOBER 29, 2014 (the "Moore Disclosure Statement") filed by Charles Moore ("Mr. Moore"). Specifically, the Committee objects to the Moore Disclosure Statement on the grounds that it does not adequately describe how Mr. Moore proposes to remove Alliacense and install his licensing company as the sole

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licensing agent for the MMP Portfolio.[1]

A. The Moore Disclosure Statement Does Not Adequately Describe How His Licensing Company Obtains Control Over The MMP Portfolio and Eliminates Alliacense

1. The centerpiece of the MOORE MONETIZATION PLAN OF REORGANIZATION DATED OCTOBER 29, 2014 (the "Moore Plan") is the removal of Alliacense and installation of his new company MIG as the sole licensing company for the MMP portfolio and is described in Article X, Section D at pages 38 - 46. Of that section, pages 38 - 43 are devoted to an argumentative view of what Mr. Moore calls the "status quo" and an advertisement for his licensing company. This argumentative narrative is repeated in the Moore Plan. This is impermissible and improper to appear in a disclosure statement and certainly in a plan of reorganization. *See, e.g., In re Egan*, 33 B.R. 672, 676 (Bankr. N.D. Ill. 1983) (disclosure statement is "intended to be a source of factual information…It is not intended to be an advertisement or a sales brochure); *see also, e.g., In re Civitella*, 14 B.R. 151, 153 (Bankr. E.D. Pa. 1981). Thus, such narrative must be eliminated from both the Moore Disclosure Statement and the Moore Plan.

2. Mr. Moore then states the "[u]pon the Effective Date, MIG will assume the role of commercializing the MMP Portfolio, for the benefit of Debtor TPL, Patriot and Mr. Moore himself." How is this supposed to occur? As the Court will recall, PDS owns the exclusive rights to commercialize the MMP Portfolio.

3. Mr. Moore states that:

> Under the 10/29/2014 MMP Plan, the PDS / TPL amended agreement from August 2012 is being set aside as a preference. The 10/29/2014 MMP Plan also sets aside as a preference the August 2012 TPL agreement with Alliacense, Patriot and PDS, which established Alliacense as the commercialization entity for the MMP Portfolio. With the 2012 Agreements set aside, and Alliacense no longer authorized to carry out MMP commercialization, all MMP licensing and commercialization rights revert to TPL under the 2005 foundational agreement between and among TPL, Patriot and Mr. Moore, still in effect and remaining in effect as an assumed contract of Debtor TPL, that gave TPL commercialization rights to the MMP Portfolio and established PDS to monitor and supervise TPL's

[1] Capitalized terms otherwise undefined have the same meaning ascribed to them as in the Moore Disclosure Statement.

> performance and to collect MMP revenues. Moore Disclosure Statement, page 44:1-10.

4. At the October 2, 2014, hearing on the DISCLOSURE STATEMENT RE: MOORE MONETIZATION PLAN OF REORGANIZATION DATED AUGUST 28, 2014, the Court specifically requested counsel for Mr. Moore to explain or address the meaning of setting aside these two "2012 Agreements" as "preferences." The Moore Disclosure Statement does not explain or address this issue and it remains problematic for various reasons. For example, first, an adversary proceeding is required to set aside a transfer as a preference; it cannot be accomplished through a plan. *In re Commercial Western Finance Corp.*, 761 F.2d 1329, 1336-38 (9th Cir. 1985); Federal Rules of Bankruptcy Procedure 7001. Such an adversary proceeding takes time and resources, things that the Debtor doesn't have. Second, and more importantly, Mr. Moore does not explain how he can prove the elements required to establish the existence of a preferential transfer. Among other things, Mr. Moore would have to prove that there was no transfer of the Debtor's property on account of antecedent debt, and that the transfer enabled the transferee to obtain more than it would had the transfer not been made, the case was a case under Chapter 7 and such transferee received payment to the extent provided under Title 11. Mr. Moore should be required to address these issues. Mr. Moore has not pointed to any facts to support the existence of preferential transfers, and the Moore Disclosure Statement provides no indication as to how this could possibly be accomplished.

5. Mr. Moore then contends that:

> With the 2012 Agreements set aside, and Alliacense no longer authorized to carry out MMP commercialization, all MMP licensing and commercialization rights revert to TPL under the 2005 foundational agreement between and among TPL, Patriot and Mr. Moore, still in effect and remaining in effect as an assumed contract of Debtor TPL, that gave TPL commercialization rights to the MMP Portfolio and established PDS to monitor and supervise TPL's performance and to collect MMP revenues. Moore Disclosure Statement page 44:4-10

6. Mr. Moore's blithe statement that he can simply set aside the 2012 Agreements as a preference is misleading to creditors.[2] It is the underpinning of his plan, but he has not adequately

[2] It is especially misleading when coupled with the voluminous advocacy and argumentative discourse contained in the Moore Disclosure Statement.

explained how this would be accomplished, how much time it would take and at what cost. It's a pie in the sky promise with no basis in law or fact. Further, after the purported set aside of the 2012 Agreements, the Moore Plan contemplates replacing Alliacense with Mr. Moore's own licensing entity, vested with all of Alliacense's rights, as the exclusive entity permitted to license the MMP portfolio. [Moore Disclosure Statement p, 44:15 – p. 45:6]. The Moore Disclosure Statement must explain how the reorganized company, an independent chapter 11 trustee and a third-party such as PDS must be compelled to accept Mr. Moore's company as the single, exclusive licensing entity for MMP on the terms set forth in the Moore Plan.

7. Complete disclosure is fundamental to the chapter 11 reorganization process. *Momentum Mfg. Corp*. v. *Employee Creditors Comm. (In re Momentum Mfg. Corp.)*, 25 F.3d 1132, 1136 (2d Cir. 1994); *In re Westmoreland Oil Dev. Corp*., 157 B.R. 100, 102 (S.D.Tex. 1993). Congress intended the disclosure statement to be the primary source of information upon which creditors and shareholders rely in making an informed judgment about a plan of reorganization. *Id.*

8. Section 1125(b) of the Bankruptcy Code requires a proposed disclosure statement to provide "adequate information" to holders of claims or interests. 11 U.S.C. § 1125(b). In turn, § 1125(a)(1) defines "adequate information" as:

> information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor's books and records … that would enable … a hypothetical investor of the relevant class to make an informed judgment about the plan …

11 U.S.C. § 1125(a)(1).

9. The purpose of section 1125 is to assist creditors in evaluating a plan on its face. *In re Aspen Limousine Service, Inc*., 193 B.R. 325, 334 (D.Colo. 1996). Thus, the requirement that a disclosure statement contain adequate information is at the very "heart" of the chapter 11 reorganization process. *In re Crowthers McCall Pattern, Inc.*, 120 B.R. 279, 300 (Bankr. S.D.N.Y. 1990). The importance of full disclosure is "underlaid by the reliance placed upon the disclosure statement by the creditors and the court." *In re Oneida Motor Freight, Inc.*, 848 F.2d 414, 417 (3d Cir. 1988) ("[g]iven such reliance, we cannot overemphasize the debtor's obligation to provide sufficient data to satisfy the Code standard of 'adequate information'"). Accordingly, section 1125

requires more, rather than less, clear disclosure. *Crowthers*, 120 B.R. at 300; *In re Copy Crafters Quickprint, Inc.*, 92 B.R. 973, 981 (Bankr. N.D.N.Y. 1995).

10. Specifically, section 1125 requires a disclosure statement to contain sufficient information that would enable a "hypothetical reasonable investor typical of holders of claims or interests of the relevant class to make an informed judgment about the plan." 11 U.S.C. § 1125(a)(1); *Momentum Mfg. Corp.*, 25 F.3d at 1136; *Crowthers*, 120 B.R. at 301. This test "parallels the materiality standard adopted by the Supreme Court with respect to proxy solicitations under section 14(a) of the Securities Exchange Act of 1934, 15 U.S.C. § 78 (1975), and Rule 14a-9, 17 C.F.R. § 240.14a-9 (1975), promulgated thereunder." *Crowthers McCall Pattern*, 120 B.R. at 300 (citing *TSC Indus., Inc.* v. *Northway, Inc.*, 426 U.S. 438, 449, 96 S.Ct. 2126, 2132, 48 L.Ed.2d 757 (1976)) ("an omitted fact is material if there is a substantial likelihood that a reasonable investor would consider it important in deciding how to vote"). Given the necessity for adequate information in the disclosure statement and the paramount position section 1125 occupies in the chapter 11 process, "there is little, if any, room for harmless error." *Crowthers McCall Pattern*, 120 B.R. at 300.

B. The Moore Disclosure Statement Is Overly Argumentative.

11. The Court has said on many occasions that the disclosure statements in this case should be a forward-looking document, not a rehash of the past. It is one thing for Mr. Moore to reference the procedural history of this case, it is quite another to make unfair and misleading editorial comments in an effort to sway creditors and sign on to a plan that promises 100% distribution to creditors with no explanation as to how the plan is to be accomplished. The Committee has referenced specific sections of the Moore Disclosure Statement that should be addressed and eliminated in **Exhibit "A"** attached hereto.

12. As the Court is aware, the Committee had, and continues to have, many of the same concerns as Mr. Moore. Indeed, the Committee filed a motion to grant standing to pursue some of the actions referenced by Mr. Moore as well as its own motion to appoint a Chapter 11 trustee. The Joint Disclosure Statement references these concerns. The passages referenced in **Exhibit "A"** are calculated not to provide information but are designed to deflect attention from the Moore Plan's fatal flaws in implementation.

C. Conclusion

13. Mr. Moore's failure to explain the basis for his statement that the 2012 Agreements will be set aside as a preference misleads the creditors in a fundamental way. He should be required to explain or address this and related issues. He should also tone down his rhetoric so that creditors receive objective information rather than argumentative, misleading comments.

Dated: November 5, 2014

DORSEY & WHITNEY, LLP

By: */s/ Robert A. Franklin*
Robert A. Franklin
Attorneys for Official
Committee of Unsecured Creditors

In re:	)	
	)	
TECHNOLOGY PROPERTIES LIMITED LLC, fka TECHNOLOGY PROPERTIES LIMITED INC., A CALIFORNIA CORPORATION, fka TECHNOLOGY PROPERTIES LIMITED, A CALIFORNIA CORPORATION,	)	Case No. 13-51589-SLJ-11
	)	Chapter 11
	)	Date: November 12, 2014
	)	Time: 10:00 a.m.
Debtor.	)	Place: United States Bankruptcy Court 280 S. First Street, Room 3099 San Jose, CA 95113
	)	Judge: Honorable Stephen L. Johnson

OBJECTION OF OFFICIAL COMMITTEE OF UNSECURED CREDITORS TO DISCLOSURE STATEMENT RE: MOORE MONETIZATION PLAN OF REORGANIZATION DATED OCTOBER 29, 2014

EXHIBIT "A"

Exhibit "A"

Page 1: 17-23	Should include reference to Joint Plan
Page 4:11-5:22	Argumentative. Negotiations were not "fruitless"; the Committee and the Debtor did not "ignore" a deadline; the Committee had (and continues to have) many of the concerns pointed out by Mr. Moore, but believes that a consensual plan is necessary to have any hope of a significant distribution to creditors; Joint plan was submitted; opinion does not belong in a section entitled Overview of Chapter 11 and Plan
Page 6:8-14	Misleading and false to the extent it refers to a plan the Debtor and the Committee may submit. Joint plan has been filed and is on the same track as the Moore Plan.
Page 17:26-19:23	Repeats STM Electronics objection to which Court noted should be reduced to a short paragraph. Doesn't disclose that STM has agreed to a settlement in the case.
Page 38:12-42:13	Under Article X (Feasibility), Section D (MMP Management), the discussion is redundant and argumentative and should be eliminated.

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	Date: November 12, 2014
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Debtor.	Place: United States Bankruptcy Court 280 S. First Street, Room 3099 San Jose, CA 95113
	Judge: Honorable Stephen L. Johnson

CERTIFICATE OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF SANTA CLARA)

I am a citizen of the United States and employed in Santa Clara County. I am over the age of eighteen years and not a party to the above-entitled action; my business address is 305 Lytton Avenue, Palo Alto, California 94301.

On November 5, 2014, at my place of business, I served a true and correct copy of the following document(s):

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/ / /

OBJECTION OF OFFICIAL COMMITTEE OF UNSECURED CREDITORS TO DISCLOSURE STATEMENT RE: MOORE MONETIZATION PLAN OF REORGANIZATION DATED OCTOBER 29, 2014

in the manner indicated below:

☒ **BY ELECTRONIC FILING** said document(s) and transmission of the Notification of Electronic Filing by the Clerk to a Registered Participant(s), addressed as follows:

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This Certificate was executed on November 5, 2014 at Palo Alto, Santa Clara County, California. I declare under penalty of perjury that the foregoing is true and correct.

/s/ Cecilia Cavazos
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