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9 Attorneys for Creditor
10 MICHAEL DAVIS

11 UNITED STATES BANKRUPTCY COURT
12 NORTHERN DISTRICT OF CALIFORNIA

13 In re
14 TECHNOLOGY PROPERTIES LIMITED,
15 LLC,
16 Debtor.

17 Case No. 13-51589-SLJ
18 Chapter 7

19 **REQUEST BY CREDITOR MICHAEL**
20 **DAVIS FOR IMMEDIATE PAYMENT**
21 **OF ADMINISTRATIVE EXPENSE**

22 [11 U.S.C. §503(b), B.L.R. 9014-1]

23 Date: August 22, 2016
24 Time: 2:00 p.m.
25 Location: U.S. Bankruptcy Court
26 280 So. First St.
27 San Jose, CA 95113
28 Judge: Stephen L. Johnson

19 REQUEST IS HEREBY MADE by Creditor MICHAEL DAVIS (“Davis”), pursuant to
20 11 U.S.C. sections 503(b)(1)(A) and Bankruptcy Rule 9014-1, that payment of \$455,486.79
21 be made immediately to Davis pursuant to this Court’s prior Order Re Request of Michael
22 Davis For Payment of Administrative Expense dated February 1, 2016 [Docket #739] (the
23 “Order”), which provides that Davis is to be paid the balance of his requested administrative
24 expense immediately if payments are not made as specified in that Order. As set forth below
25 and in the Declaration of Michael Davis filed herewith in support of this Request, the
26 required payments have not been made and the Reorganized Debtor must immediately pay
27 Davis the balance of his administrative expense claim in the amount of \$455,486.79.

1 1. The Order provided, in pertinent part:

2 1. DAVIS' Request for payment of an administrative
3 expense of \$573,175.47 is allowed in the amount of \$375,000,
4 payable as follows:

5 a. \$75,000 shall be paid from funds received from
6 TPL's licensing revenue from licensing deals
7 with HP and Epson, payable within ten (10)
8 business days of receipt by TPL or TPL's
9 litigation counsel. To the extent sufficient funds
10 are not available to pay DAVIS \$75,000 from the
11 first of these transactions completed, the
12 amount paid to DAVIS will be allocated as
13 follows: \$15,000 paid from the Epson revenue
14 and \$60,000 paid from the HP revenue.

15 b. The remainder of the allowed administrative
16 claim (\$300,000) shall be paid through the
17 pooled claim fund (*i.e.*, via the Debtor's
18 Administrative Claim Contribution as set forth in
19 the Plan) *in pari passu* with other administrative
20 claims.

21 c. Payment shall be made within ten business
22 days of the close of each calendar quarter.

23 2. The remainder of DAVIS' requested administrative
24 claim (\$198,175.41) shall be treated as an unsecured claim in
25 Classes 6A and 6B, allocated and paid pursuant to the Plan.

26 3. **If TPL fails to make the payments as specified**
27 **above, the entire amount of the DAVIS' requested**
28 **administrative claim of \$573,175.47, less any amounts**
 actually paid, shall become allowed in full and due and
 payable immediately. In that event, the Debtor and the OCC
 waive any right to challenge the allowed administrative claim.

(Order, 2:7 – 3:1 (emphasis added).)

2 2. In addition, Paragraph 5 of the Order addresses commissions to be paid to
3 Davis and requires a 2% commission to be paid to Davis for certain projects, including HP,

1 Micron, Epson and Canon. (Order, 3:8 – 14.) These commissions were to be paid no later
2 than ten business days after receipt of funds by or on behalf of the Reorganized Debtor for
3 each project. (Order, 3:16 – 18.)¹

4 3. Davis did not receive payment of \$75,000 within 10 business days of the
5 Reorganized Debtor receiving funds from its licensing deals with HP and Epson as required
6 under Paragraph 1.a. Davis is informed and believes that the Reorganized Debtor received
7 proceeds of \$1,925,000 from its licensing deal with HP on April 13, 2016; Davis should have
8 received payment of \$75,000 on or before April 23, 2016. Davis did not timely receive this
9 payment.

10 4. Davis also did not timely receive payment of the commissions due to him from
11 the HP and Micron deals. Davis is informed and believes that the Reorganized Debtor
12 received proceeds of \$650,000 from its licensing deal with Micron on March 8, 2016; Davis
13 should have received payment of his 2% commission of \$13,000 on or before March 18,
14 2016. Davis did not timely receive this payment. As stated above, Davis is informed and
15 believes that the Reorganized Debtor received proceeds of \$1,925,000 from its licensing
16 deal with HP on April 13, 2016; Davis should have received payment of his 2% commission
17 of \$38,500 on or before April 23, 2016. He did not.

18 5. In May, Davis invoked Paragraph 3 of the Order and advised the Reorganized
19 Debtor that, since payment had not been made in compliance with the Order, the entire
20 amount of his requested administrative claim (\$573,175.47) was now due and payable. The
21 Reorganized Debtor thereafter tendered payment of the Micron and HP commissions
22 (\$13,000 and \$38,500, respectively) and the \$75,000 initial payment of Davis'
23 administrative claim to Davis on May 11, 2016.

24 6. Davis accepted the payment on May 11, 2016, but specifically stated that
25 such acceptance was without waiver of any of his rights under the Order, including his right
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27 ¹ As stated in the Order at Paragraph 7, Davis was additionally paid his priority wage claim of \$11,750.00 in
28 January, 2016. This claim and payment are not relevant to this Request.

1 to demand immediate payment of the balance of his entire administrative claim of
2 \$573,175.47, less amounts paid toward that claim.

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

6 8. Davis also received payment of \$42,688.68 on July 17, 2016.

7 9. Only the \$75,000 payment paid on May 11, 2016, and the \$42,688.68 paid on
8 July 17, 2016, totaling \$117,688.68, were made on account of Davis' administrative claim.
9 All other payments were on account of commissions payable to Davis pursuant to
10 Paragraph 5 of the Order.

11 10. Pursuant to Paragraph 3 of the Order, the entire amount of Davis' requested
12 administrative claim of \$573,175.47 is now allowed in full and immediately due and payable,
13 less the \$117,688.68 actually paid toward that claim. Davis accordingly demands immediate
14 payment in full of the balance of that claim in the amount of \$455,486.79.

15
16 Dated: July 28, 2016

GREENFIELD DRAA & HARRINGTON LLP

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18 By: /s/ Maureen A. Harrington
19 MAUREEN A. HARRINGTON
20 Attorneys for Creditor
21 MICHAEL DAVIS
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10 MICHAEL DAVIS

11 UNITED STATES BANKRUPTCY COURT
12 NORTHERN DISTRICT OF CALIFORNIA

13 In re
14 TECHNOLOGY PROPERTIES LIMITED,
15 LLC,
16 Debtor.

17 Case No. 13-51589-SLJ
18 Chapter 7

19 **DECLARATION OF CREDITOR
20 MICHAEL DAVIS IN SUPPORT OF
21 REQUEST FOR IMMEDIATE
22 PAYMENT OF ADMINISTRATIVE
23 EXPENSE**

24 [11 U.S.C. §503(b), B.L.R. 9014-1]

25 Date: August 22, 2016
26 Time: 2:00 p.m.
27 Location: U.S. Bankruptcy Court
28 280 So. First St.
San Jose, CA 95113
Judge: Stephen L. Johnson

I, MICHAEL DAVIS, declare as follows:

1. I am over the age of 18 and a resident of San Francisco, California. I make this Declaration in support of the Request for Immediated Payment of Administrative Expense filed in the above-reference bankruptcy case to request payment of amounts due to me for services performed, as more fully set forth below. The following facts are within my personal knowledge and if called upon and sworn as a witness I could testify competently thereto.

1 2. On October 27, 2015, I filed a Request for Payment of Administrative Expense
2 in the amount of \$573,175.47 [Docket #698]. That Request was opposed by the
3 Reorganized Debtor Technology Properties Limited, LLC [Docket #726]) and by the Official
4 Unsecured Creditor's Committee [Docket #730] and was ultimately heard by this Court on
5 January 27, 2016. An Order Re Request of Michael Davis For Payment of Administrative
6 Expense (the "Order") was thereafter entered by this Court on February 1, 2016 [Docket
7 #739]. A true and correct copy of the Order is attached hereto as Exhibit "A."

8 3. The Order provides, in pertinent part:

9 1. DAVIS' Request for payment of an administrative
10 expense of \$573,175.47 is allowed in the amount of \$375,000,
11 payable as follows:

12 a. \$75,000 shall be paid from funds received from
13 TPL's licensing revenue from licensing deals
14 with HP and Epson, payable within ten (10)
15 business days of receipt by TPL or TPL's
16 litigation counsel. To the extent sufficient funds
17 are not available to pay DAVIS \$75,000 from the
18 first of these transactions completed, the
19 amount paid to DAVIS will be allocated as
20 follows: \$15,000 paid from the Epson revenue
21 and \$60,000 paid from the HP revenue.

22 b. The remainder of the allowed administrative
23 claim (\$300,000) shall be paid through the
24 pooled claim fund (*i.e.*, via the Debtor's
25 Administrative Claim Contribution as set forth in
26 the Plan) *in pari passu* with other administrative
27 claims.

28 c. Payment shall be made within ten business
days of the close of each calendar quarter.

 2. The remainder of DAVIS' requested administrative
claim (\$198,175.41) shall be treated as an unsecured claim in
Classes 6A and 6B, allocated and paid pursuant to the Plan.

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3. If TPL fails to make the payments as specified above, the entire amount of the DAVIS' requested administrative claim of \$573,175.47, less any amounts actually paid, shall become allowed in full and due and payable immediately. In that event, the Debtor and the OCC waive any right to challenge the allowed administrative claim.

(Order, 2:7 – 3:1 (emphasis added).)

4. Paragraph 5 of the Order requires that the Reorganized Debtor pay me a 2% commission for certain projects (specifically HP, Micron, Epson and Canon) no later than ten business days after receipt of funds by or on behalf of the Reorganized Debtor for each project. (Order, 3:8 – 18.)

5. I am informed and believe that the Reorganized Debtor received proceeds of \$1,925,000 from its licensing deal with HP on April 13, 2016. Under the provisions of the Order, I should have received payment of \$75,000 on or before April 23, 2016. I did not receive this payment on or before that date.

6. Based on the same information that the Reorganized Debtor received proceeds of \$1,925,000 from its licensing deal with HP on April 13, 2016, I also should have received payment of my 2% commission for this project in the amount of \$38,500 on or before April 23, 2016. I did not.

7. I am informed and believe that the Reorganized Debtor received proceeds of \$650,000 from its licensing deal with Micron on March 8, 2016. Under the provisions of the Order, I should have received payment of my 2% commission for this project in the amount of \$13,000 on or before March 18, 2016. I did not receive this payment on or before that date.

8. In May, 2016, after failing to receive the above payments when due, I invoked Paragraph 3 of the Order; through my counsel, I advised the Reorganized Debtor that, since payment had not been made in compliance with the Order, the entire amount of my requested administrative claim (\$573,175.47) was now due and payable. In response, the

1 Reorganized Debtor paid the Micron and HP commissions (\$13,000 and \$38,500,
2 respectively) and the \$75,000 initial payment of my administrative claim on May 11, 2016.

3 9. I accepted the payment on May 11, 2016, but my counsel specifically advised
4 the Reorganized Debtor's counsel that my acceptance was without waiver of any of my
5 rights under the Order, including my right to demand immediate payment of the balance of
6 my administrative claim of \$573,175.47, less amounts actually paid.

7 10. I received the amount of \$10,400.00 from the Reorganized Debtor on July 8,
8 2016, which was payment of the commission due to me from the Epson project, under
9 Paragraph 5 of the Order.

10 11. I also received the amount of \$42,688.68 on July 17, 2016 from the
11 Reorganized Debtor.

12 12. Only the \$75,000 payment paid on May 11, 2016, and the \$42,688.68 paid on
13 July 17, 2016, totaling \$117,688.68, were made on account of my administrative claim. The
14 other payments were on account of commissions and paid to me pursuant to Paragraph 5
15 of the Order.

16 13. Pursuant to Paragraph 3 of the Order, the entire amount of the administrative
17 claim I requested in the amount of \$573,175.47 is now allowed in full and immediately due
18 and payable, less the \$117,688.68 actually paid toward that claim. I now request immediate
19 payment in full of the balance of that claim in the amount of \$455,486.79.

20 I declare under penalty of perjury under the laws of the State of California that the
21 foregoing is true and correct to the best of my knowledge, and that this declaration was
22 executed on July 27, 2016 at San Jose, California.

23
24 /s/ Michael Davis
MICHAEL DAVIS



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9 Attorneys for Creditor
10 MICHAEL DAVIS

The following constitutes
the order of the court. Signed February 1, 2016

Stephen L. Johnson
U.S. Bankruptcy Judge

11 UNITED STATES BANKRUPTCY COURT
12 NORTHERN DISTRICT OF CALIFORNIA
13 SAN JOSE DIVISION

14 In re
15 TECHNOLOGY PROPERTIES LIMITED,
16 LLC,
17 Debtor.

Case No. 13-51589-SLJ
Chapter 11

**ORDER RE REQUEST OF MICHAEL
DAVIS FOR PAYMENT OF
ADMINISTRATIVE EXPENSE**

Date: January 27, 2016
Time: 2:00 p.m.
Location: United States Bankruptcy Court
280 South First Street, Room 3099
San Jose, CA 95113
Judge: Honorable Stephen L. Johnson

18
19 MICHAEL DAVIS ("DAVIS"), having duly filed a Request for Payment of
20 Administrative Expense (the "Request" [Docket #698]), and the Reorganized Debtor
21 Technology Properties Limited, LLC (the "Debtor" or "TPL") having filed an Objection to the
22 Request (the "Objection" [Docket #726]), and a Joinder [Docket #730] having been filed by
23 the Official Unsecured Creditor's Committee (the "OCC"); the matter having been set for
24 hearing on January 13, 2016 and then continued to January 27, 2016; Maureen Harrington
25 and Marcia Gerston of Greenfield Draa & Harrington LLP having appeared on behalf of
26 DAVIS, Robert G. Harris of Binder & Malter LLP having appeared on behalf of Debtor and
27 Robert A. Franklin of Dorsey & Whitney LLP having appeared on behalf of the OCC, with
28 other appearances, if any, having been noted on the record; appropriate notice of the

1 hearing on the Request having been provided pursuant to the applicable Federal Rules of
2 Bankruptcy Procedure and the Local Rules for the Northern District of California; the parties,
3 through counsel, having put an agreement on the record regarding resolution of the Request
4 and the Objection, and good cause appearing therefor,
5

6 IT IS HEREBY ORDERED as follows:

7
8 1. DAVIS' Request for payment of an administrative expense of \$573,175.47 is
9 allowed in the amount of \$375,000, payable as follows:

- 10 a. \$75,000 shall be paid from funds received from TPL's licensing revenue
11 from licensing deals with HP and Epson, payable within ten (10) business
12 days of receipt by TPL or TPL's litigation counsel. To the extent sufficient
13 funds are not available to pay DAVIS \$75,000 from the first of these
14 transactions completed, the amount paid to DAVIS will be allocated as
15 follows: \$15,000 paid from the Epson revenue and \$60,000 paid from the
16 HP revenue.
- 17 b. The remainder of the allowed administrative claim (\$300,000) shall be paid
18 through the pooled claim fund (*i.e.*, via the Debtor's Administrative Claim
19 Contribution as set forth in the Plan) *in pari passu* with other administrative
20 claims.
- 21 c. Payment shall be made within ten business days of the close of each
22 calendar quarter.

23 2. The remainder of DAVIS' requested administrative claim (\$198,175.41) shall be
24 treated as an unsecured claim in Classes 6A and 6B, allocated and paid pursuant to the
25 Plan.

26 3. If TPL fails to make the payments as specified above, the entire amount of the
27 DAVIS' requested administrative claim of \$573,175.47, less any amounts actually paid,
28 shall become allowed in full and due and payable immediately. In that event, the Debtor

1 and the OCC waive any right to challenge the allowed administrative claim.

2 4. In the event this bankruptcy case converts to Chapter 7, the full amount of DAVIS'
3 administrative claim of \$573,175.47, less any amounts actually paid, shall be an allowed
4 administrative claim. The Debtor agrees that the amount claimed by DAVIS as an
5 administrative claim is accurate and that DAVIS provided services to the Debtor post-
6 petition equal to the value of the administrative claim.

7 5. With regard to commissions payable to DAVIS:

- 8 a. The Debtor shall pay DAVIS a 2% commission rate for four currently
9 pending non-MMP projects, to wit, HP, Epson, Micron and Canon. The
10 commission of 2% shall be due on the portion of the gross amount of the
11 license or settlement agreements' amounts attributed to assets controlled or
12 licensable by TPL, and not on the portion of the gross amount of the license
13 or settlement agreements' amounts attributable to assets which TPL does
14 not control or have the right to license (I.e. the US'549 patent family). No
15 other deduction (such as attorneys' fees and expenses) shall be allowed for
16 the purposes of calculating Mr. Davis' commission. Said commissions shall
17 be paid no later than ten business days after receipt of funds by or on behalf
18 of TPL for each project.
- 19 b. DAVIS shall share in remaining TPL revenue as an administrative and
20 unsecured creditor as appropriate under the Plan, including revenue to TPL
21 from the transactions referenced in Paragraph 1(a), above. This
22 arrangement does not include funds payable to other participants in the
23 MMP portfolio, and relates only to funds received by TPL.
- 24 c. No other commissions shall be paid to DAVIS for any other projects without
25 a new agreement between DAVIS and the Debtor. A separate commission
26 agreement may be entered into between DAVIS and PDS with regard to the
27 MMP portfolio.
28

1 6. DAVIS shall supply a declaration under penalty of perjury, stating that: a) he has
2 never received any funds for any of the items or commissions listed in Exhibit 2 of his
3 Declaration in Support of the Request, b) he worked on each of the deals listed in that
4 Exhibit, and c) he did not submit a ballot on the Plan in this matter.

5 7. In addition to the administrative claims as set forth above, ^{the Debtor paid Davis'} DAVIS timely filed an
6 ~~petition unsecured claim in the amount of \$2,203,502.00, to which no timely objection~~
7 ~~has been made, and a wage claim in the amount of \$11,750.00 was paid~~ on January 19,
8 2016. ^{PRIORITY}

9 8. If the Debtor and OCC agree to the terms of this resolution, and DAVIS is paid as
10 agreed herein and the case is not converted to a case under Chapter 7, DAVIS agrees to
11 release the Debtor and the OCC from all claims and causes of action (other than the
12 administration of the agreed claims as set forth above and through the Plan).

13
14 Approved as to form and content:

15 BINDER & MALTER LLP

16 /s/ Robert G. Harris

17 Robert G. Harris
18 Attorneys for Reorganized Debtor

19 DORSEY & WHITNEY LLP

20 Robert A. Franklin

21 Robert A. Franklin
22 Attorneys for Official Creditors Committee

23 ***** END OF ORDER *****

COURT SERVICE LIST

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None