JOHN WALSHE MURRAY (074823)
ROBERT A. FRANKLIN (091653)
THOMAS T. HWANG (218678)
DORSEY & WHITNEY LLP
305 Lytton Avenue
Palo Alto, CA 94301
Telephone: (650) 857-1717
Facsimile: (650) 857-1288
Email: murray.john@dorsey.com
Email: franklin.robert@dorsey.com
Email: hwang.thomas@dorsey.com

Attorneys for Official
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: January 23, 2014
	Time: 2:00 p.m.
Debtor.	Place: United States Bankruptcy Court 280 S. First Street, Room 3099 San Jose, CA 95113
	Judge: Honorable Stephen L. Johnson

REPLY TO TPL'S OPPOSITION TO MOTION OF CREDITORS' COMMITTEE FOR ORDERS: (1) DIRECTING THE APPOINTMENT OF A CHAPTER 11 TRUSTEE; AND (2) DIRECTING THE DEBTOR AND DANIEL E. LECKRONE TO APPEAR AND SHOW CAUSE WHY THEY SHOULD NOT BE HELD IN CONTEMPT OF COURT FOR VIOLATION OF THIS COURT'S ORDER

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The Official Committee of Unsecured Creditors herein (the "Committee") hereby submits its reply to TPL'S OPPOSITION TO MOTION OF CREDITORS' COMMITTEE FOR ORDERS (1) DIRECTING THE APPOINTMENT OF A CHAPTER 11 TRUSTEE; AND (2) DIRECTING THE DEBTOR AND DANIEL E. LECKRONE TO APPEAR AND SHOW CAUSE WHY THEY SHOULD NOT BE HELD IN CONTEMPT FOR VIOLATION OF THIS COURT'S ORDER (the "Opposition") filed by Technology Properties Limited, LLC's (the "Debtor" or "TPL"), the debtor herein.

I. INTRODUCTION

The Committee has filed its motion (the "Motion") because it is convinced that a chapter 11 trustee is necessary to ensure that creditors are fairly treated for the duration of this case. The Debtor's Opposition to the Motion does not change that conviction. Instead, the Opposition: (a) confirms that the Debtor violated the Settlement Protocol Order and failed to respond to the Committee's requests for information regarding the unauthorized settlements; (b) confirms the existence of Mr. Leckrone's conflicts of interest, self-dealing and breach of his duties as a fiduciary of the bankruptcy estate; (c) fails to explain why the Debtor continues to employ non-essential personnel for what is no more than a holding company; and (d) admits the Committee's allegations of Mr. Leckrone's threats against, and attempted intimidation of, members of the Committee.

In addition, since the filing of the Motion, the Committee has learned that Mr. Leckrone has obtained confidential information from Committee members and has used such information in litigation with a Committee member. Also, since the filing of the Motion, the Committee has become aware of an decision by the United States International Trade Commission (the "ITC") involving the Debtor which raises serious questions regarding the viability of the Debtor's litigation strategy in the pursuit of its business plan.

In the end, the Opposition only confirms that the appointment of a trustee is necessary and in the best interests of creditors in this case. For the reasons set forth in the Motion and below, the Court should overrule the Debtor's Opposition and grant the Motion.

II. UPDATED FACTUAL BACKGROUND

1. Since the filing of the Motion, several developments have occurred. First, the Debtor has filed the Opposition in which it belatedly provided information requested by the Committee for

several weeks, including the disposition of the unauthorized settlement proceeds. It was only after the Committee filed the Motion that this information was provided. The information establishes that Alliacense[1] received over $800,000 or 20% of the revenues from the settlements.

2. The Opposition also confirms Mr. Leckrone's efforts to intimidate certain Committee members by making unfounded accusations of improper conduct aimed to convince these Committee members to acquiesce to Mr. Leckrone's positions in this bankruptcy case. Mr. Leckrone does not deny that such attempts were made; he merely says he has a different recollection and attempts to argue the truth behind his threats.

3. Second, the Committee has learned of an attempt by Mr. Leckrone to use confidential information regarding the deliberations of the Committee as a weapon against a Committee member in pending state court litigation. Concurrently herewith, the Committee has filed its Request for Judicial Notice (the "RJN") requesting that the Court take judicial notice of, among other things, pleadings filed in a state court case involving Mr. Leckrone and Committee member Philip Marcoux (the "Marcoux Litigation"). A copy of a declaration signed by Mr. Leckrone is attached to the RJN as Exhibit "A" and incorporated herein by reference. Specifically, Mr. Leckrone states the following:

> I have only recently received information from one or more members of the Official Creditors Committee in TPL' s Chapter 11 proceeding confirming that Mr. Marcoux has made similarly critical; disparaging and defamatory statements about me, TPL, the TPL management team, Alliacense, and the Alliacense management team, in written statements, including emails.
>
> I have been unable to obtain copies of these written statements by Mr. Marcoux from the members without a subpoena.

[See Exhibit "A" to RJN: DECLARATION OF DANIEL E. LECKRONE IN SUPPORT OF DANIEL LECKRONE'S OPPOSITION TO MARCOUX'S MOTION PURSUANT TO C.C.P. 664.6.]

This declaration was filed at approximately 4:00 p.m. on January 9, 2014. Thus, it appears that Mr. Leckrone has actively sought out Committee members to provide him with confidential documents

[1] Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Motion.

which he can use against other Committee members.

4. Third, the ITC recently issued its decision (the "ITC Decision") in a case involving the Debtor finding that the Debtor's and Alliacense's licensing activities are insufficient to meet the existence of a "domestic industry" which is required to establish the elements of 11 U.S.C. § 337. [See Exhibit "B" to RJN: NOTICE OF COMMISSION DETERMINATION TERMINATING THE INVESTIGATION WITH A FINDING OF NO VIOLATION OF SECTION 337]. Charles Moore, inventor of the MMP Portfolio, contends that by virtue of this decision, licensing efforts alone will not suffice to demonstrate a "domestic industry" in need of protection from infringement. He further asserts that under the ITC decision, efforts to protect patents from infringement will require a demonstration "of the existence of articles practicing the asserted patents." The effect of the ITC Decision may ultimately invalidate TPL's business plan and present litigation strategy.

III. ARGUMENT

A. Standard of Proof

5. The Debtor correctly notes the "strong presumption that the debtor should be permitted to remain in possession absent a showing of need for the appointment of a trustee." Opposition at 3:2-4, quoting A. Resnick & H. Sommer, 7 COLLIER ON BANKRUPTCY [16TH ED.] Sec. 1104.02[3][b][i], at 1104-9 [Rel. 124-12/2012]. Still, in appropriate cases, courts have not hesitated to remove a debtor in possession and appoint a trustee. *In Re Parker Grande Development, Inc.*, 64 B.R. 557, 560-63 (Bankr. S.D. Ind. 1986)(acknowledging presumption in favor of debtor-in-possession but nonetheless appointing trustee); *In Re Evans*, 48 B.R. 46, 47-49 (Bankr. W.D. Tex. 1985)(acknowledging presumption but nonetheless appointing trustee).

6. As the Debtor admits, "a court considering a motion to appoint a trustee should generally balance the benefit to be gained by such an appointment against the detriment to the reorganization effort and the rights of the debtor that may result from such an appointment. Opposition at 4:3-6, quoting 7 COLLIER ON BANKRUPTCY, *supra*, Par. 1104.02[3][a] at 1104-8. Striking this balance has led to the appointment of a trustee, and removal of a debtor in possession, in any number of circumstances. *See, e.g.*, *In re Bibo, Inc.*, 76 F.3d 256, 259 (9th Cir. 1996)(affirming appointment of a chapter 11 trustee where debtor misappropriated estate funds

through independent company hired to provide property management services to debtor); *In re Veblen West Dairy LLP*, 434 B.R. 550 (Bankr. D.S.D. 2010) (even where no gross mismanagement was established, numerous pre-petition transactions between the debtor and related entities mandated appointment of a trustee to investigate possible avoidance actions); *In re L.S. Good & Co.*, 8 Bankr. 312, 315 (Bankr. N.D. W.Va. 1980) (trustee appointed *sua sponte* where over $1 million in intercompany transactions with parent company resulted in conflict of interests between current management and creditors; continuation of current management would result in potential conflicts of interest); *In re McCorhill Pub., Inc.*, 73 B.R. 1013, 1017 (Bankr. S.D.N.Y. 1987) (trustee appointed where debtor failed to maintain proper accounting, and intercompany transfers led to inference of corporate misconduct as well as conflict of interest); *In re Nat'l Farm Fin. Corp.*, 2008 Bankr. LEXIS 398, 17-18 (Bankr. N.D. Cal. Feb. 12, 2008)(trustee appointed where debtor's actions indicated it could not impartially weigh interests of creditors and noting that "[t]he interest of the estate is to maximize the value of its assets, not to ensure a particular disposition of those assets."); *In re Evans*, 48 B.R. 46, 48-49 (Bankr. W.D. Tex. 1985)(trustee appointed where debtor failed, among other things, to investigate potential preferential transfers which could have provided valuable asset to estate); *In re William H. Vaughan & Co.*, 40 B.R. 524 (Bankr. E.D. Pa. 1984) (appointing trustee where corporate debtor failed to pursue potential preference to debtor's president; no need to establish elements of preference required).

7. In *In re PRS Ins. Group, Inc.*, 274 B.R. 381 (Bankr. D. Del. 2001), the debtor was a holding company with no business operations which had transferred funds to its principal's trust and other companies which he owned. The debtor also paid for the principal's personal expenses, including for his children's tuition. The court found that no actual contracts existed to justify the transfers to the companies even though the debtor's controller suggested that they were based on reinsurance agreements or other relationships between the companies. With respect to payment of personal expenses, the principal suggested that they were bonus compensation under his employment agreement but could not produce evidence to substantiate his assertion. Notably, in denying the debtor's request that the third party report evidencing all of the transfers should be sealed, the court reminded that "[t]he Bankruptcy Code is designed to bring the Debtor's affairs to

light, not to hide them." *Id*. at 385. Ultimately, in appointing a chapter 11 trustee, the court found that the debtor's failure to provide adequate support and explanation for the transfers indicated that there was no legitimate basis or that the debtor was incompetent, but that in either case, appointment of a trustee was mandated. *Id*. at 387.

8. In *In re Embrace Systems Corp.*, 178 B.R. 112, 128-29 (Bankr. W.D. Mich. 1995), the debtor's principal was found to have an irreconcilable conflict of interest through his ownership position in another enterprise seeking to acquire the debtor's technology. There, as here, the debtor-in-possession proved to be more concerned with his other enterprise than with the debtor. The *In Re Embrace Systems* court found that an independent, disinterested person was necessary to manage the debtor and investigate various causes of action against the debtor in possession that might exist; acting *sua sponte*, the court appointed a trustee. The case for independent, disinterested management – and investigation of the creditor claims and offsets that Mr. Leckrone advances – is no less compelling here.

9. In *Keeley & Grabanski Land Partnership v. Keeley*, 455 B.R. 153, 163-65 (8th Cir. B.A.P. 2011), a controlling partner rented land from the debtor/partnership at a below market rate and as debtor-in-possession failed to move the chapter 11 case forward. The court affirmed the appointment of a trustee under both the "cause" test of section 1104(a)(1) and the section 1104(a)(2) "best interests" standard.

10. In *In re Marvel Entertainment Group*, 140 F.3d 463, 472-74 (3d Cir. 1998), intense, irreconcilable acrimony between the debtor in possession and its creditors led to the appointment of a chapter 11 trustee. See also *In re Celeritas Techs, LLC*, (Bankr. D. Kan. 2011), 446 B.R. 514, 519-21 (acrimony, coupled with debtor using bankruptcy as a litigation tactic and the filing of reorganization proposals that were mere ruses, led to a finding of "cause" for the appointment of a trustee under section 1104(a)(1), as well as under an "in the interests of creditors" finding for such appointment under section 1104(a)(2)).

11. These and other cases demonstrate that courts have not hesitated to direct the appointment of a chapter 11 trustee for cause under section 1104(a)(1) or as in the best interests of creditors under section 1104(a)(2).

B. The Settlement Protocol Order

12. Both parties have clearly laid out their arguments regarding this issue. [See Motion ¶¶ 2-14; Opposition ¶¶8-23]. However, it is helpful to recall the context of why the Settlement Protocol Order was entered. The Debtor filed the Settlement Motion seeking unilateral authority to enter into settlements of litigation. Both the United States Trustee (the "UST") and the Committee filed objections to the Settlement Motion because the Debtor was requesting blanket authority to enter into litigation settlements without any notice to, or review and input by, the Court, the Committee or the UST. After a contested hearing, the Debtor and the Committee agreed on a protocol for the Debtor to seek the consent of a subcommittee of the Committee to enter into any litigation settlements, which protocol is reflected in the Settlement Protocol Order. In other words, the protocol was established to ensure that the Committee and the UST could provide their input and approval on settlements, and if agreement could not be reached, ". . . TPL may request a hearing to have the Bankruptcy Court consider the proposed settlement upon such shortened notice as the court will allow." [Settlement Protocol Order, ¶8, p. 4:1-5].

13. There is no possible way that the Debtor could have concluded that the settlements were "deemed approved" by the Committee in light of the Committee's response. The Debtor was mandated to bring the matter before the Court. The Debtor's contention that it "complied strictly with the terms" of the order [Opposition ¶31] is ingenuous. Did the Debtor comply with the requirement that it "provide a written statement to the attorney for the Office of the U.S. Trustee when a case will be settled under this order and whether the creditors' committee has no objection to the settlement terms." [Settlement Protocol Order ¶6]. If so, it would be of interest to determine how the Debtor relayed the Committee's position to the UST and how the UST responded.

14. Even if it were remotely tenable that the Debtor did not violate the Settlement Protocol Order, it still would be a blatant breach of the Debtor's fiduciary duties to the estate. As the Opposition acknowledges: the "debtor-in-possession is a fiduciary of the creditors and, as a result, has an obligation to refrain 'from acting in a manner which could damage the estate, or hinder a successful reorganization.'" How can the Debtor justify consummating the settlements after the Committee's counsel, on numerous occasions, stated the Committee's positions first opposing the

settlements and second that doing so would constitute a violation of the Court's order?

15. The Debtor not only consummated settlements without the Committee's knowledge and consent, it concealed its actions and only confirmed that it entered into the settlements after the Committee's numerous inquiries, in derogation of its fiduciary duties to provide such information. *See Petit v. New England Mortgage Serv., Inc.*, 182 B.R. 64, 69 (Bankr. D. Me. 1995)("One of the most fundamental and crucial duties of a debtor-in-possession is to keep the Court and creditors informed about the nature, status and condition of the business undergoing reorganization..."). In fact, the Committee is now aware that the Debtor consummated three settlements, one of which was executed *after the Committee filed the Motion*. [Franklin Declaration, ¶3]. The Debtor has no interest in even hearing, much less addressing, the concerns of the Committee as the representative of the estate's creditors, and is instead incentivized to enter into settlements which will immediately benefit its insiders and affiliates, before unsecured, non-insider creditors can benefit. Clearly, Mr. Leckrone and the Debtor continue time and time again to breach their fiduciary duties[2].

16. The significance of Mr. Leckrone's and the Debtor's violation cannot be understated. As the Debtor has made clear, its business is focused on negotiating licenses or litigating against alleged infringers of its patents. By entering into each settlement, a limited, potential source of revenue for the estate is dissipated. Due to the finite number of infringers and patents and the fact that the patents have a limited duration before expiration, these potential revenue streams are limited both in number and time. Thus, with every settlement, the estate loses a valuable asset. By excluding creditors (and the Court) from this process, the Debtor's insiders (and its affiliates such as Alliacense) reap the benefits to the detriment of general unsecured creditors.

C. Waste of Assets

17. In attempting to address the wasteful dissipation of estate assets, the Debtor again casts the focus away from the fact that, based on the Debtor's Monthly Operating Report for the month ending November 2013, the Debtor's total receipts during the case have averaged less than

[2] The Committee is not the only party with concerns about the Debtor's entry into below value settlements and its impetus in doing so. [See DECLARATION OF CHARLES H. MOORE IN SUPPORT OF SUPPORTING MOTION TO APPOINT CHAPTER 11 TRUSTEE AND TO REMOVE DEBTOR-IN-POSSESSION [Docket 345-2] (the "Moore Declaration"), ¶31].

$700,000 monthly, and the Debtor has lost over $2,000,000[3], with over $2.0 million in post-petition payables. Of this amount, at least $580,000 has been paid to Mr. Leckrone, his daughter Susan Anhalt and Janet Neal.[4] In addition, the Committee estimates that $1,344,430 has gone or has accrued to Mr. Leckrone's company, Alliacense ($440,288 in patent prosecution fees, 15% of gross sales of $4.6 million or $904,142), without inclusion of additional fees for litigation support. Further, based on numbers extrapolated from the Debtor's projected revenues, the Debtor would pay approximately 30% of its gross revenue for the period from November 2013 through February 2014. EXHIBIT A TO DECLARATION OF DWAYNE HANNAH IN SUPPORT OF SECOND MOTION TO APPROVE USE OF CASH COLLATERAL (FRBP 4001(B) [Docket 255].

18. The Debtor misleadingly claims that its performance is on the upswing based on its November/December numbers [Opposition ¶42] which include the settlements entered into by the Debtor in contravention to the Settlement Protocol Order. There is no indication of the true value of the licenses granted pursuant to these unauthorized settlements, but it is clear that the settlements enable the Debtor to continue to pay outrageous salaries to senior management and enormous sums to Alliacense.

19. It is likely that such licenses were granted for the purpose of inflating the Debtor's revenue performance a very critical juncture of the case, similar to the Debtor's poor decision making and waste of potential license revenue with respect to the litigation in the Northern District of California. [See Moore Declaration ¶¶29-33 (citing testimony that TPL had issued some MMP licenses not because they were market rate but because TPL was short of funds)]. Even with the unauthorized settlements, the Debtor was left with only a net $774,000 in proceeds prior to paying the Debtor's operating expenses of at least $300,000 a month. These funds will be dissipated by payments of excessive salaries to insiders and excess personnel and payments to Alliacense in less than 3 months.

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[3] The Debtor nonetheless contends that its actual net losses are "only" $1.1 million, excluding professional fees [Opposition ¶42], which still could only be classified as poor in terms of performance and would not portend well for the Debtor's future performance.

[4] The Opposition indicates that these three individuals have agreed to a 10% salary reduction. Presumably, this refers to a proposed 10% deferral in the Debtor's proposed plan, and no such reduction has occurred during this case.

20. The issue is not one of whether the Debtor's disbursements of funds have fallen under budgets approved by its secured creditors and pursuant to agreements with affiliated insiders such as Alliacense, as the Debtor contends[5]. The Committee does not doubt that the Debtor is willing to (a) maintain amicable relations with its secured creditors to ensure that its scheme remains uninterrupted and (b) invent whatever explanations it may have for its payments to Alliacense (as discussed below). The issue is that while performing poorly during the bankruptcy case, the Debtor's management continues to waste assets without regard to all creditors (not merely secured creditors and insiders) while insiders and affiliates collect. For example, Alliacense is owned by Mr. Leckrone who therefore could require it to reduce its collected fees and expenses during the bankruptcy case (just as Mr. Leckrone could reduce his own salary), but he has chosen not to do so, acting in his own interests rather than those of the estate. Undeniably, this is a clear breach of his fiduciary duties to the bankruptcy estate.

D. Conflicts of Interest

21. The Debtor's inability to grasp the fundamental conflict of interest between management and Alliacense is astonishing. Because of the obvious conflicts between Mr. Leckrone, the Debtor and Alliacense, the Debtor now discloses that Mr. Leckrone has conveniently stepped down as the manager of Alliacense and that, consequently, there is no conflict. [Opposition ¶30]. This statement is remarkably shortsighted. Even if Mr. Leckrone were completely uninvolved in Alliacense, which the Committee does not know to be the case, Alliacense is still operated by his son Mac Leckrone, employs TPL employees such as Dwayne Hannah and Janet Neal, and is owned by Mr. Leckrone. It also would not affect any transfers that had already occurred between Mr. Leckrone, Alliacense, TPL and other insiders, including the numerous transfers set forth in the Debtor's AMENDED STATEMENT OF FINANCIAL AFFAIRS, Attachments to No. 3c and No. 23 [Docket

[5] The Debtor attempts to compare its actual versus budgeted expenses [Declaration of Dwayne Hannah filed in support of the Opposition, Exhibit C] presumably to demonstrate that it has performed efficiently during the past two months. This comparison is not only irrelevant, it is not compelling as it is likely the product of the Debtor's creative, self-serving accounting. For example, with the patent and prosecution expenses budgeted for Alliacense, a lower amount paid in the month of December does not necessarily mean that accrued amounts have been deferred and remain unpaid. Notably, the Debtor's balance sheet indicates post-petition liabilities owing as of November 30, 2013 of $2.8M but professional fees total only $2.2M, leaving an unidentified balance of $600,000. [See Monthly Operating Report for month ending November 2013; Opposition ¶42].

No. 96].[6]

22. In fact, Mr. Leckrone has vigorously pursued Alliacense's interests both before and after he allegedly removed himself. [See DECLARATION OF CARLTON JOHNSON IN SUPPORT OF MOTION OF CREDITORS' COMMITTEE FOR ORDERS: (1) DIRECTING THE APPOINTMENT OF A CHAPTER 11 TRUSTEE; AND (2) DIRECTING THE DEBTOR AND DANIEL E. LECKRONE TO APPEAR AND SHOW CAUSE WHY THEY SHOULD NOT BE HELD IN CONTEMPT OF COURT FOR VIOLATION OF THIS COURT'S ORDER ¶¶ 10-13 (the "Johnson Declaration"); DECLARATION OF CLIFFORD FLOWERS IN SUPPORT OF MOTION OF CREDITORS' COMMITTEE FOR ORDERS: (1) DIRECTING THE APPOINTMENT OF A CHAPTER 11 TRUSTEE; AND (2) DIRECTING THE DEBTOR AND DANIEL E. LECKRONE TO APPEAR AND SHOW CAUSE WHY THEY SHOULD NOT BE HELD IN CONTEMPT OF COURT FOR VIOLATION OF THIS COURT'S ORDER ¶¶ 3-6] (the "Flowers Declaration").

23. Without denying the indisputable evidence that Mr. Leckrone directed TPL to transfer to Alliacense at least $42,000,000 (plus an additional $15,000,000 accrued since 2006) for operating expenses, the Opposition argues, unconvincingly, that payments were authorized pursuant to "oral" agreements which are enforceable and points out that a written agreement was consummated in 2007[7] without explanation how such agreement authorized the transfers to Alliacense (because it did not).

24. Regarding the $15,000,000, the Debtor claims that the amount was offset by $16,300,000 owed to Alliacense as part of an Amended Services Agreement entered into in March 2012[8]. This offset was not, of course, mentioned by the Debtor's Chief Financial Officer when questioned about it in May 2012. See DECLARATION OF SALLIE KIM IN SUPPORT OF MOTION OF

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[6] Relief under sec. 1104(a) may be warranted even if based solely on post-petition management's pre-petition conduct. *In re Rivermeadows Assocs.*, 185 B.R. 615 (Bankr. D. Wyo. 1995).

[7] The Debtor's representation that a written agreement existed in 2007 again demonstrates its willingness to obfuscate facts. The Debtor fails to acknowledge that the written agreement was never executed (and therefore could not constitute a meeting of the minds "agreement") as the Debtor's CFO testified. [DECLARATION OF SALLIE KIM IN SUPPORT OF MOTION OF CREDITORS' COMMITTEE FOR ORDERS: (1) DIRECTING THE APPOINTMENT OF A CHAPTER 11 TRUSTEE; AND (2) DIRECTING THE DEBTOR AND DANIEL E. LECKRONE TO APPEAR AND SHOW CAUSE WHY THEY SHOULD NOT BE HELD IN CONTEMPT OF COURT FOR VIOLATION OF THIS COURT'S ORDER (the "Kim Declaration") Exhibit "A", p. 1158:27-1159:6.

[8] This arrangement was not disclosed on the Debtor's Statement of Financial Affairs until it was amended. [See AMENDED STATEMENT OF FINANCIAL AFFAIRS [Docket No. 96], No. 10a].

CREDITORS' COMMITTEE FOR ORDERS: (1) DIRECTING THE APPOINTMENT OF A CHAPTER 11 TRUSTEE; AND (2) DIRECTING THE DEBTOR AND DANIEL E. LECKRONE TO APPEAR AND SHOW CAUSE WHY THEY SHOULD NOT BE HELD IN CONTEMPT OF COURT FOR VIOLATION OF THIS COURT'S ORDER (the "Kim Declaration") Exhibit "A", p. 1164:25 – 1165:19. Nor has the Debtor provided any reasonable explanation or documentation to substantiate the accrual of deferred advances over a six year period and the sudden offset thereof. These transactions are not reflective of an arm's length and separate relationship.

25. Clearly, the entry into the May 2012 agreement with Alliacense and the offset were part of the Debtor's pre-bankruptcy planning. No matter how the Debtor now attempts to justify these dubious transactions, the conflicts of interest and self-dealing are unavoidable. The fact that the Debtor has gone to extensive lengths to defend and argue on behalf of Alliacense only further demonstrates where the Debtor's allegiances lay. Clearly, these are transactions which the Debtor will not pursue and, in fact, have defended against, counter to the interests of the estate. Appointment of a trustee, therefore, is appropriate.

E. The Debtor's Reprehensible Behavior

26. As set forth in the Motion, Mr. Leckrone has threatened to take action against certain Committee members unless they acquiesce to his demands on behalf of Alliacense at TPL's expense. In his declaration in support of the Opposition, Mr. Leckrone does not deny that he has engaged in such conduct, he instead argues the truth behind his baseless threats. These threats show that Mr. Leckrone is not fit to run TPL.

27. In addition, Mr. Leckrone has filed a declaration in the Marcoux Litigation on January 9, 2014 in which he states that he has recently received information from one or more Committee members regarding confidential communications among the Committee members. He has attempted to obtain copies of these communications from the Committee members but states he cannot do so without a subpoena. [RJN Exhibit A.] Such conduct is outrageously inappropriate. Not only is Mr. Leckrone knowingly and willingly receiving (and apparently soliciting) confidential communications among Committee members, he is also using the confidential information as a weapon against one of the Committee members in state court litigation.

F. Committee Frustration

28. The Debtor's analysis regarding its inability to meet the Committee's demand to set aside 20% of proceeds [Opposition ¶46] clearly demonstrates why the Debtor is incapable of acting as a fiduciary for the estate. The Debtor states that a 20% set aside would render it incapable of paying its employees and expenses and therefore require it to cease operations. This is problematic for two reasons. First, the Debtor never communicated this to the Committee, notwithstanding the Settlement Protocol Order. Otherwise, a resolution could have been discussed with a lesser set aside. Second, a large portion of employee salaries and litigation expenses require payments to Mr. Leckrone and Alliacense among other insiders. Mr. Leckrone has control over at least two of these entities and could effect a reduction in the amounts paid to them. Yet this obvious alternative, which would benefit all creditors, is never considered by the Debtor. Instead, the only alternative considered by the Debtor is a shutdown of operations.

G. Appointment of a Trustee Is In the Best Interests of the Estate.

29. The Opposition reviews four factors which are considered in determining whether the appointment of a trustee is in the best interests of the estate under section 1102(a)(2). [Opposition ¶46]. In doing so, the Debtor has ignored salient facts with respect to factors one (the trustworthiness of the debtor) and four (whether benefits outweigh costs) which weigh strongly in favor of the appointment of a trustee.

1. Trustworthiness of the Debtor.

30. The Debtor dismisses this factor because it "has not violated the Settlement Procedures Order" and "no challenge to TPL's trustworthiness has been brought." This of course ignores the obvious fact that (a) the Debtor did violate the Settlement Protocol Order, as established in the Motion and discussed above, and (b) acrimony and distrust between members of the Committee and the Debtor's management is well-documented. Committee members are not alone in their distrust of Mr. Leckrone. [See generally, Moore Declaration].

31. Distrust for Mr. Leckrone is fully justified. The Debtor's questionable conduct has led to substantial litigation with at least Patriot, Charles Moore, and Marcie and Chester Brown. The judgment obtain by the Browns, in fact, precipitated the filing of the bankruptcy case. As

established in the Motion, Mr. Leckrone has bullied and threatened Committee members during the case. [See Johnson and Flowers Declarations; DECLARATION OF GLORIA FELCYN IN SUPPORT OF MOTION OF CREDITORS' COMMITTEE FOR ORDERS (1) DIRECTING THE APPOINTMENT OF A CHAPTER 11 TRUSTEE; AND (2) DIRECTING THE DEBTOR AND DANIEL E. LECKRONE TO APPEAR AND SHOW CAUSE WHY THEY SHOULD NOT BE HELD IN CONTEMPT FOR VIOLATION OF THIS COURT'S ORDER]. The Opposition dismisses this grave conduct explaining that Mr. Leckrone has a different recollection of his experiences with Ms. Felcyn and Mr. Johnson [Opposition ¶ 43], a statement allegedly supported by Mr. Leckrone's declaration filed in support of the Opposition which contains more baseless allegations. To address Mr. Leckrone's fabrications, Ms. Felcyn and Mr. Johnson were compelled to file supplemental declarations. See SUPPLEMENTAL DECLARATION OF GLORIA FELCYN IN SUPPORT OF MOTION OF CREDITORS' COMMITTEE FOR ORDERS (1) DIRECTING THE APPOINTMENT OF A CHAPTER 11 TRUSTEE; AND (2) DIRECTING THE DEBTOR AND DANIEL E. LECKRONE TO APPEAR AND SHOW CAUSE WHY THEY SHOULD NOT BE HELD IN CONTEMPT FOR VIOLATION OF THIS COURT'S Order (the "Supplemental Felcyn Declaration") and SUPPLEMENTAL DECLARATION OF CARL JOHNSON IN SUPPORT OF MOTION OF CREDITORS' COMMITTEE FOR ORDERS (1) DIRECTING THE APPOINTMENT OF A CHAPTER 11 TRUSTEE; AND (2) DIRECTING THE DEBTOR AND DANIEL E. LECKRONE TO APPEAR AND SHOW CAUSE WHY THEY SHOULD NOT BE HELD IN CONTEMPT FOR VIOLATION OF THIS COURT'S ORDER.

32. Moreover, as discussed above, in Mr. Leckrone's litigation with another Committee member, Philip Marcoux, Mr. Leckrone filed a Declaration which clearly indicates he has had improper contacts with the Committee and demonstrates his distrustful conduct. Specifically, he states:

> I have only recently received information from one or more members of the Official Creditors Committee in TPL' s Chapter. 11 proceeding confirming that Mr. Marcoux has made similarly critical; disparaging and defamatory statements about me, TPL, the TPL management team, Alliacense, and the Alliacense management team, in written statements, including emails.
>
> I have been unable to obtain copies of these written statements by Mr. Marcoux from the members without a subpoena.

[RJN Exhibit A].

33. This revelation is consistent with Mr. Leckrone's ongoing conduct during the bankruptcy case, contacting Committee members, to improperly influence or extract information from them. More importantly, it demonstrates why Debtor's management is not trustworthy as Mr. Leckrone obtained confidential information from one or more members of the Committee, which he knew was improper. Mr. Leckrone's conduct was unquestionably against the interests of creditors and constitutes yet another breach of his fiduciary duty to the bankruptcy estate.

2. Benefits Outweigh Costs

34. The Debtor argues, without support, that it is impossible that a trustee's appointment outweighs the costs. [Opposition ¶48]. Nothing could be further from the truth. The Debtor has retained numerous professionals in this case and outsources almost all of its operations. TPL is essentially a holding company[9], and a trustee would run the company in a much more streamlined manner with reduced salaries and expenses. [Supplemental Felcyn Declaration ¶6; Moore Declaration ¶35]. The Debtor's current management is not necessary for the successful operation of its business. In fact, the Debtor's and Alliacense's questionable decision making, negotiation and litigation strategies have severely undercut the realized value of potential licenses. [Moore Declaration ¶¶30-34]. Meanwhile, the Debtor's performance leading up to and during the bankruptcy case shows that there has been no benefit derived from the Debtor for creditors.

35. Indeed, the Debtor has historically operated for the benefit of its insiders and affiliates. According to its website, the Debtor has entered into 135 licenses from April 2006 to April 2013. Of those licenses, 103 were entered into between January 2008 and April 2013. From 2008 through April 2013, TPL has reported $87 million in revenue. For that same time period, it has reported $25 million in "direct costs" and $96 million for its other operating costs [See December 23 Disclosure Statement, Exhibit "B-2"]. Meanwhile, during this period, the Debtor simply incurred and ignored debts owed to its non-insider creditors. [See, e.g., PROOF OF CLAIM No. 4 of Robert Neilson (attaching Complaint for unpaid amounts accruing commencing 2008); PROOF OF CLAIM

[9] The Debtor describes itself as "a managerial and litigation support entity." [DEBTOR'S DISCLOSURE STATEMENT RE TPL PLAN OF REORGANIZATION (DECEMBER 23, 2013) [Docket No. 340], p. 23:26]. Given the numerous third party counsel and litigation support professionals it employs, this begs the question of to what extent does TPL play a role in generating revenue.

No. 19 of Beresford & Co. (accruing amounts starting at the end of 2007); PROOF OF CLAIM No. 21 of Dr. Ribic GmbH (accruing amounts in 2009 for services provided in 2009); Moore Declaration ¶16].

36. Furthermore, the ITC Decision gravely hinders the Debtor's ability to license and commercialize patents. Specifically, the ITC's finding that TPL's and Alliacense's licensing activities are insufficient to meet the "domestic industry" prong required by those licensing or litigating against infringers in proceedings before the ITC. [See CREDITOR CHARLES H. MOORE'S POINTS AND AUTHORITIES IN SUPPORTING MOTION TO APPOINT CHAPTER 11 TRUSTEE AND TO REMOVE DEBTOR-IN-POSSESSION [Docket No. 345-1] (the "Moore Motion") p. 7:5-21; CREDITOR CHARLES H. MOORE'S REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF HIS SUPPORTING MOTION TO APPOINT CHAPTER 11 TRUSTEE AND TO REMOVE DEBTOR-IN-POSSESSION, Exhibit 4; RJN Ex. B; Moore Declaration ¶6].

37. As a result of the ITC's landmark ruling, without the participation and cooperation of inventors, the Debtor and Alliacense are hamstrung. The inventor of the MMP patent urges the replacement of the Debtor with a trustee and also indicates he will be willing to participate as an inventor in such instance. [Moore Motion, p. 7:15-17]. Accordingly, no more compelling and direct reason can be provided as to why appointment of a trustee will far outweigh the costs.

3. Other Factors

38. The remaining two factors – the Debtor's past and present performance and confidence in the Debtor – also favor appointment of a trustee. The Debtor's performance during this case is discussed above and in the Motion and speaks for itself. In addition, notwithstanding the Debtor's expectation that its "numerous creditors and professionals" will join in opposing appointment of a trustee, thus far, the only creditor who has spoken out favors appointment of a trustee.

IV. CONCLUSION

39. Section 1104(a) is unambiguous:

> The court ***shall order the appointment of a trustee*** –
>
> (1) for cause, including fraud, dishonesty, incompetence, or gross

> mismanagement of the affairs of the debtor by current management, either before or after the commencement of the case, or similar cause, but not including the number of holders of securities of the debtor or the amount of assets or liabilities of the debtor; or
>
> (2) ***if such appointment is in the interests of creditors,*** any equity security holders, and other interests of the estate, without regard to the number of holders of securities of the debtor or the amount of assets or liabilities of the debtor.

11 U.S.C. § 1104(a) (emphasis added).

40. This case is replete with irreconcilable conflicts of interest, self-dealing, preferential treatment, questionable conduct and decision making, and obfuscation. In addition, the ITC's ruling gravely hinders the Debtor's ability to continue its business operations. All factors and circumstances point to the need for a trustee to immediately replace the Debtor's management to salvage value for non-insider creditors. Accordingly, the Committee respectfully requests that the Court grant the Motion.

Dated: January 16, 2014

DORSEY & WHITNEY, LLP

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

JOHN WALSHE MURRAY (074823)
ROBERT A. FRANKLIN (091653)
THOMAS T. HWANG (218678)
DORSEY & WHITNEY LLP
305 Lytton Avenue
Palo Alto, CA 94301
Telephone: (650) 857-1717
Facsimile: (650) 857-1288
Email: murray.john@dorsey.com
Email: franklin.robert@dorsey.com
Email: hwang.thomas@dorsey.com

Attorneys for Official
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: January 23, 2014
	Time: 2:00 p.m.
Debtor.	Place: United States Bankruptcy Court 280 S. First Street, Room 3099 San Jose, CA 95113
	Judge: Honorable Stephen L. Johnson

DECLARATION OF ROBERT A. FRANKLIN IN SUPPORT OF REPLY TO TPL'S OPPOSITION TO MOTION OF CREDITORS' COMMITTEE FOR ORDERS: (1) DIRECTING THE APPOINTMENT OF A CHAPTER 11 TRUSTEE; AND (2) DIRECTING THE DEBTOR AND DANIEL E. LECKRONE TO APPEAR AND SHOW CAUSE WHY THEY SHOULD NOT BE HELD IN CONTEMPT OF COURT FOR VIOLATION OF THIS COURT'S ORDER

I, Robert A. Franklin, hereby declare:

1. I am an attorney duly licensed to practice in this State and before this Court and of counsel to the law firm of Dorsey & Whitney LLP, attorneys for the Official Committee of Unsecured Creditors (the "Committee") in the case of Technology Properties Limited LLC, the debtor and debtor in possession (the "Debtor"). I have personal knowledge of the facts set forth in this declaration, and, if called to testify, would and could testify competently thereto.

2. This Declaration is filed in support of the Committee's REPLY TO TPL'S OPPOSITION TO MOTION OF CREDITORS' COMMITTEE FOR ORDERS (1) DIRECTING THE APPOINTMENT OF A CHAPTER 11 TRUSTEE; AND (2) DIRECTING THE DEBTOR AND DANIEL E. LECKRONE TO APPEAR AND SHOW CAUSE WHY THEY SHOULD NOT BE HELD IN CONTEMPT FOR VIOLATION OF THIS COURT'S ORDER filed concurrently herewith.

3. On January 13, 2013, I received copies from Debtor's counsel of the most recent three licenses (the "Settlements") which have been entered into by the Debtor. Based on my review of the Settlements, one of the Settlements was consummated after the Committee filed its MOTION OF CREDITORS' COMMITTEE FOR ORDERS (1) DIRECTING THE APPOINTMENT OF A CHAPTER 11 TRUSTEE; AND (2) DIRECTING THE DEBTOR AND DANIEL E. LECKRONE TO APPEAR AND SHOW CAUSE WHY THEY SHOULD NOT BE HELD IN CONTEMPT FOR VIOLATION OF THIS COURT'S ORDER, and all three were consummated after the date of all of the communications between Committee and Debtor's counsel set forth on Exhibits "C" through "I" of the DECLARATION OF JOHN WALSHE MURRAY IN SUPPORT OF MOTION OF CREDITORS' COMMITTEE FOR ORDERS (1) DIRECTING THE APPOINTMENT OF A CHAPTER 11 TRUSTEE; AND (2) DIRECTING THE DEBTOR AND DANIEL E. LECKRONE TO APPEAR AND SHOW CAUSE WHY THEY SHOULD NOT BE HELD IN CONTEMPT FOR VIOLATION OF THIS COURT'S ORDER.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on January 16, 2014, in the City of Palo Alto, County of Santa Clara, State of California.

/s/ Robert A. Franklin
Robert A. Franklin

JOHN WALSHE MURRAY (074823)
ROBERT A. FRANKLIN (091653)
THOMAS T. HWANG (218678)
DORSEY & WHITNEY LLP
305 Lytton Avenue
Palo Alto, CA 94301
Telephone: (650) 857-1717
Facsimile: (650) 857-1288
Email: murray.john@dorsey.com
Email: franklin.robert@dorsey.com
Email: hwang.thomas@dorsey.com

Attorneys for Official
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
Debtor.	Chapter 11
	Date: January 23, 2014 Time: 10 a.m. Place: United States Bankruptcy Court 280 S. First Street, Room 3099 San Jose, CA 95113 Judge: Honorable Stephen L. Johnson

SUPPLEMENTAL DECLARATION OF GLORIA FELCYN IN SUPPORT OF MOTION OF CREDITORS' COMMITTEE FOR ORDERS: (1) APPOINTING A CHAPTER 11 TRUSTEE; AND (2) DIRECTING DANIEL E. LECKRONE TO APPEAR AND SHOW CAUSE WHY HE SHOULD NOT BE HELD IN CONTEMPT FOR VIOLATION OF THIS COURT'S ORDER

I, Gloria Felcyn, hereby declare:

1. I am a Certified Public Accountant licensed in California and a member of the Board of Directors of Patriot Scientific Corporation ("Patriot"). I am a member of the Official Committee of Unsecured Creditors (the "Committee") in the case of Technology Properties Limited LLC, the debtor and debtor in possession (the "Debtor"). I have personal knowledge of the facts set forth in

this Declaration, except as to those matters set forth on information and belief and as to those matters, I believe them to be true. If called to testify, I would and could testify competently thereto.

2. I offer this Declaration in response to Dan Leckrone's declaration dated January 9, 2014 in this matter.

3. I have no idea why Mr. Leckrone believes I engaged in "insider trading" or "trading irregularities" (if he does). The contention is not true. For many years now, Patriot has had an Insider Trading Policy pursuant to the Securities & Exchange Act of 1934. Under Patriot's policy, Officers and Directors are allowed to purchase stock provided it is not within the "trading blackout" period of Patriot's trading policy. I have purchased substantial amounts of stock in Patriot over the years and have always done so in accordance with and pursuant to Patriot's trading policy. At each and every time that a purchase of stock has been made by me, I have filed the required SEC Form 4 to publicly disclose for all to see because Patriot is a publicly-traded company.

4. I have not sold any of my Patriot stock over the years.

5. Mr. Leckrone's contention that the OCC ended our settlement discussions is false. These discussions ended because after months of discussion, Mr. Leckrone was unwilling to agree and make any effort to reduce TPL's excessive operating expenses by anything beyond a miniscule amount and refused to make reductions to an excess number of unnecessary employees, in spite of the fact that TPL is currently operating as nothing more than a holding company. Further, it became apparent that under TPL's proposed plan, a continuation of excess payments to TPL insiders would occur while continuing to again defer for as long as possible payments to the unsecured creditors.

6. The estate and all creditors would greatly benefit by replacement of Mr. Leckrone with a Chapter 11 trustee. Without that step Mr. Leckrone will continue his efforts to funnel funds by way of excessive operating expenses and payments to Alliacense, (his wholly owned LLC corporation). The TPL plan will simply become another means to find employment and funding for Alliacense operations, and the TPL reorganization will fail with its creditors receiving little or nothing.

7. In his declaration Mr. Leckrone makes a point of letting the Court know of the numerous settlements to date since the filing of the bankruptcy petition by Debtor. Yet not one penny has been set aside for the unsecured creditors, while hundreds of thousands are being paid to Alliacense. This is the pattern of Debtor for many years now. Debtor has allowed its insiders to collects millions of dollars in fees, wages and contractual payments while leaving the unsecured creditors unpaid for years and years and years.

I declare under penalty of perjury under the laws of the State of California and of the United States that the foregoing is true and correct and that this Declaration was executed on January 13, 2014 in the County of Santa Clara, State of California.

/s/ Gloria H. Felcyn
Gloria H. Felcyn

JOHN WALSHE MURRAY (074823)
ROBERT A. FRANKLIN (091653)
THOMAS T. HWANG (218678)
DORSEY & WHITNEY LLP
305 Lytton Avenue
Palo Alto, CA 94301
Telephone: (650) 857-1717
Facsimile: (650) 857-1288
Email: murray.john@dorsey.com
Email: franklin.robert@dorsey.com
Email: hwang.thomas@dorsey.com

Attorneys for Official
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: January 23, 2014
	Time: 10 a.m.
Debtor.	Place: United States Bankruptcy Court 280 S. First Street, Room 3099 San Jose, CA 95113
	Judge: Honorable Stephen L. Johnson

SUPPLEMENTAL DECLARATION OF CARLTON JOHNSON, JR. IN SUPPORT OF MOTION OF CREDITORS' COMMITTEE FOR ORDERS: (1) APPOINTING A CHAPTER 11 TRUSTEE; AND (2) DIRECTING DANIEL E. LECKRONE TO APPEAR AND SHOW CAUSE WHY HE SHOULD NOT BE HELD IN CONTEMPT FOR VIOLATION OF THIS COURT'S ORDER

I, Carlton Johnson, Jr., hereby declare:

1. I am an attorney at law duly licensed to practice in Florida, Alabama and Georgia. I am competent to and would testify to all matters set forth in this Declaration if called upon to do so as a witness.

2. I offer this Declaration in response to Dan Leckrone's Declaration in this matter dated January 9, 2014.

3. The Harman Security Agreement he references related to a loan by Patriot to TPL at

that time. The terms of the Security Agreement provided for Patriot to be repaid from the proceeds of the second installment of the Harman license. The Gibson Dunn & Crutcher law firm represented TPL when that transaction was negotiated.

4. When the second installment arrived, I received an opinion from the law firm Luce Forward Hamilton & Scripps that I could unilaterally repay Patriot's loan at that time based on the Security Agreement. I did so because Patriot did not want to extend the loan or issue a new loan to TPL at that time. In no way did I deceive Wells Fargo into allowing that payment to occur. I was authorized by the Wells Fargo account agreement and by the terms of the Security Agreement to make that payment. In his mind Mr. Leckrone appears to contend that "he" didn't authorize the payment, but the reality is that I repaid the loan before he had an opportunity to beg/ threaten Patriot for another loan.

5. I have made multiple requests for Mr. Leckrone to abstain from PDS matters when his conflicts stand out (such as in our dealings with Alliacense). Because Mr. Leckrone continues to ignore his conflicts, we have instructed counsel to file an American Arbitration Association claim pursuant to paragraph 4.2(c) of the PDS Operating Agreement so that a third PDS manager can be appointed through that process. I did not take that step previously because I had hoped he would not force me to take that step. We are supposed to try to agree on the identity of the third manager before initiating arbitration but he refuses to have that conversation. I also am aware that he has a history of delaying arbitration proceedings and so I am concerned that process will drag out.

I declare under penalty of perjury under the laws of the State of California and of the United States that the foregoing is true and correct and that this Declaration was executed on January 14th, 2014 in Atlanta, Georgia.

/s/ Carlton Johnson, Jr.
Carlton Johnson, Jr.