

1 Heinz Binder (SBN 87908)
Robert G. Harris (SBN 124678)
2 David B. Rao (SBN 103147)
BINDER & MALTER, LLP
3 2775 Park Avenue
Santa Clara, CA 95050
4 Tel: (408) 295-1700
Fax: (408) 295-1531
5 Email: Heinz@bindermalter.com
Email: Rob@bindermalter.com
6 Email: David@bindermalter.com

7
8 Attorneys for Debtor and Debtor-in-Possession
TECHNOLOGY PROPERTIES LIMITED LLC

9
10 **UNITED STATES BANKRUPTCY COURT**
11 **NORTHERN DISTRICT OF CALIFORNIA**
12 **SAN JOSE DIVISION**

13 In re:
14 TECHNOLOGY PROPERTIES LIMITED,
15 LLC, a California limited liability company,
16 Debtor.

Case No.: 13- 51589SLJ
Chapter 11
Date: February 26, 2014
Time: 10:00 a.m.
Place: Courtroom 3099
280 South First Street
San Jose, California

17
18
19
20
21 **TPL'S OPPOSITION TO MOTION FOR ORDER GRANTING LEAVE, STANDING**
22 **AND AUTHORITY TO INVESTIGATE, COMMENCE, PROSECUTE, AND SETTLE**
23 **ACTIONS OF THE ESTATE**

TABLE OF CONTENTS

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

I. INTRODUCTION..... 1

II. ARGUMENT 4

A. The OCC Has Standing Now To Object To Claims But Not To Bring Actions Reserved To The Trustee Without A Court Order..... 4

B. The OCC Is Not Entitled To Derivative Standing Under The Showing It Has Made And Under The Particular Facts Of This Case. 4

1. Legal Analysis Of Comparative Legal Approaches Among Circuits..... 4

2. No Circuit Level or Appellate Panel Case From The Ninth Circuit Endorses the Four-Part Test..... 7

C. Even if the Four-Part Test is Applicable, the OCC Failed To Satisfy Its Requirements or Prove Benefit to the Estate..... 7

1. The OCC Made No Demand Upon TPL To Prosecute The Derivative Actions. 7

2. The OCC Offers No Analysis of Evidence To Prove That Prosecution of the Derivative Claims Would Benefit The Estate..... 11

3. The OCC Has Failed To List Facts That Include All Required Elements To Prove That The Derivative Actions State Colorable Claims..... 11

D. The OCC’s Unique Effort To Invade Confidentiality and Privilege Should Be Denied... 14

III. CONCLUSION..... 16

TABLE OF AUTHORITIES

Cases

ALA, Inc. v. CCAIR, Inc., 29 F.3d 855 (3d Cir.1994) 12

Ashcroft v. Iqbal, 556 U.S. 662, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009) 11

Biltmore Assoc., LLC v. Twin City Fire Ins. Co., 572 F.3d 663 (9th Cir.2009) 5, 6

Bozzuto v. Cox, Castle & Nicholson, LLP, 255 F.R.D. 673 (C.D. Cal. 2009) 15

Brooks v. City of Winston–Salem, 85 F.3d 178, 181 (4th Cir.1996) 12

Canadian Pac. Forest Prod. Ltd. v. J.D. Irving, Ltd. (In re The Gibson Group, Inc.), 66 F.3d 1436 (6th Cir.1995) 6

Doubleday v. Ruh, 149 F.R.D. 601 (E.D. Cal. 1993)..... 15

Fail–Safe LLC v. A.O. Smith Corp., 744 F.Supp.2d 831 (E.D.Wis.2010)..... 11

Griesenbeck v. Am. Tobacco Co., 897 F.Supp. 815 (D.N.J.1995)..... 12

Hansen v. Finn (In re Curry and Sorensen, Inc.). 57 B.R. 824 (B.A.P. 9th Cir.1986)..... 5, 7

In re Adelpia Communications Corp., 544 F.3d 420 (2nd Cir. 2008)..... 11

In re Archdiocese of Milwaukee, 483 B.R. 855 (Bkrtcy.E.D.Wis. 2012., 858-859.)..... 12

In re Catholic Bishop Of Northern Alaska, 2009 WL 8412174 (Bankr. D. Alaska 2009) 5

In re Curry and Sorensen, Inc., 57 B.R. 824 (9th Cir. B.A.P. 1986)..... 5

In re First Capital Holdings Corp., 146 B.R. 7 (Bankr. C.D. Cal. 1992)..... 7, 9

In re Gibson Group, Inc., 66 F.3d 1436 (6th Cir. 1995)..... 11

In re Morpheus Lights, Inc., 228 B.R. 449 (Bankr. N.D. Cal. 1998)..... 4

In re National Forge Co., 326 B.R. 532 (Bankr. W.D.Pa. 2005) 9

In re Prime Motor Inns, Inc.), 135 B.R. 917 (Bankr.S.D.Fla.1992) 7

In re Yellowstone Mountain Club, LLC, Not Reported in B.R., 2009 WL 982207 (Bkrtcy.D.Mont.,2009) 11

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Liberty Mutual Insurance Company, Inc. v. Official Unsecured Creditor's Committee (In re Spaulding Composites Co.) 207 B.R. 899 (B.A.P. 9th Cir.1997) 5

Louisiana World Expo. v. Fed. Ins. Co., 858 F.2d 233 (5th Cir.1988)..... 6, 7, 8

PW Enters. v. N.D. Racing Comm'n (In re Racing Servs.), 540 F.3d 892 (8th Cir.2008) 11

Torch Liquidating Trust ex rel. Bridge Associates L.L.C. v. Stockstill, 561 F.3d 377 (5th Cir. 2009)..... 11

Unsecured Creditors Comm. v. Noyes (In re STN Enterprises), 779 F.2d 901 (2d Cir.1985)..... 6

Whitaker Chalk, Swindle & Sawyer, LLP v. Dart Oil & Gas Corp., 2009 U.S. Dist. LEXIS 15901 (N.D. Tex. Feb. 23. 2009) 14

Statutes

California Civil Code Section 1622 13

Federal Rule of Evidence 502(d) 14

Other Authorities

CACI 304 Oral or Written Contract Terms 14

5A CHARLES A. WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE § 1357 (2d ed. 1990) 12

7 *Collier on Bankruptcy* ¶ 1103.05[6][a] at 1103–36–1103–37 (15th ed. revised 2009)..... 6

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20

I. INTRODUCTION

The OCC¹ requests in its Motion² “ ... authority pursuant to 11 U.S.C. §§ 105, 1103, and 1109 to investigate and prosecute actions against the Debtor’s insiders and affiliate³ ... so that the Derivative Actions⁴ are thoroughly investigated and, if appropriate, vigorously pursued.”⁵

The Motion should be denied because the relief it seeks is unnecessary.

There is no risk that the Derivative Actions will go without a thorough investigation. The OCC’s discovery has been ongoing for months informally and is continuing with formal discovery. Counsel for the OCC has, upon request, received or been given access to thousands of pages documents from TPL following at least ten requests from the OCC’s counsel. The OCC has applied for an order for examination under Bankruptcy Rule 2004 and will, on a mutually convenient date, examine Daniel E. Leckrone under oath. The OCC’s able counsel is in position to learn whatever it needs to learn about the basis for the Derivative Actions. Standing to file a complaint is not required to investigate the basis for the unsupported allegations about TPL and its management that the OCC has been making since the commencement of this case.

There is also no risk that the Derivative Actions will go unprosecuted: all four possible outcomes for this case preserve the right to prosecute claims, and no statute of limitations is

21 ¹ Official Unsecured Creditors’ Committee.

22 ² Motion For Order Granting Leave, Standing And Authority To Investigate, Commence, Prosecute, And Settle Actions Of The Estate (the “Motion”)

23 ³ Motion, 1:4-6.

24 ⁴ Defined by the OCC as “... actions of any nature including, without limitation, any actions pursuant to Chapter 5 of the Bankruptcy Code, and any actions based on breach of fiduciary duty, diminution of value, self-dealing, conflicts of interest, willful and malicious injury, intentional and negligent misrepresentations, intentional infliction of emotional distress, ultra vires acts, usurping corporate opportunities, fraud, defalcation while acting in a fiduciary capacity, theft, embezzlement, larceny, and conversion.” Motion, 4:15-21.

26 ⁵ Motion, 8:9-10.

1 about to run that would hinder the OCC or a successor. The OCC Plan⁶ imbues the Reorganized
2 Company, under the control of a Board consisting of three members with the power to prosecute
3 the Derivative Claims.⁷ The OCC's Motion to Appoint Trustee⁸ would vest those powers in a
4 Chapter 11 trustee pre-confirmation, while conversion of the case to liquidation would
5 immediately empower a Chapter 7 trustee to bring any litigation necessary. The TPL Plan,⁹ if
6 confirmed instead of the OCC Plan, transfers the power to investigate and prosecute claims and
7 bring litigation, including but not limited to avoidance actions, against any party (not just TPL's
8 management) to a neutral and fully-independent "Creditor Trust Trustee."¹⁰
9

10 The OCC nevertheless asserts that "[t]ime is of the essence in this matter."¹¹ This plea
11 for immediate authority to prosecute the Derivative Claims highlights the OCC's underlying
12 purpose in bringing the Motion: preventing unnamed claimants whom it contends are insiders
13 from voting on any plan in any class that includes non-insider unsecured claimants.¹² The
14 OCC's impression that it needs standing to prosecute the Derivative Actions in order to control
15 which plan can receive sufficient votes to gain acceptance is flawed. The OCC can simply
16 object to the claims it continually asserts are improper and disputed. Once these claims have
17 been identified and challenged with objections, affected claimants can ask for temporary
18

19 ⁶ Official Committee of Unsecured Creditors' Plan of Reorganization (Dated December 17,
20 2013)(the "OCC Plan")

21 ⁷ OCC Plan, 24;24-28; 31:6-7; 31:12-13; 31:22-24.

22 ⁸ Motion Of Creditors' Committee For Orders (1) Directing The Appointment Of A Chapter 11
23 Trustee; And (2) Directing The Debtor And Daniel E. Leckrone To Appear And Show Cause
24 Why They Should Not Be Held In Contempt For Violation Of This Court's Order ("Trustee
25 Motion").

26 ⁹ TPL Plan Of Reorganization (January 21, 2014)(the "TPL Plan"). **Error! Main Document**

27 **Only.**

28 ¹⁰ TPL Plan, ¶¶4.10, 4.11.

¹¹ Motion, 8:10.

¹² Motion, 8:18-19.

1 allowance, and the confirmation process can move forward while the OCC's allegations are
2 heard and determined.

3 A committee does not gain derivative standing to prosecute claims of the estate without
4 making a showing that there are colorable claims that are beneficial to the estate to prosecute
5 that, after demand made, the debtor has unjustifiably refused to undertake. Here, the OCC made
6 no demand. There was nothing to which TPL could respond, and there is now no way for the
7 Court to evaluate a response from TPL that the OCC elected not to seek. Even if the Derivative
8 Claims were directed solely to TPL's management, which they are not, the OCC's claim of
9 excuse from the requirement of demand falls short: numerous insiders already offered in
10 settlement negotiations to subordinate some or all of their claims. Futility offers no excuse for
11 the OCC's failure to make a demand. Moreover, it is impossible to tell if the abbreviated facts
12 alleged by the OCC match with the laundry list of Derivative Claims and can be viewed as
13 colorable at all. Finally, with neither an explanation of the likely benefits or the costs of
14 prosecuting the Derivative Actions, the OCC has failed to meet its obligation to present a cost-
15 benefit analysis showing the benefit to the estate of granting it derivative standing. The only
16 thing that the OCC has shown by eschewing the claim objection process is that it is willing to
17 incur high levels of administrative expense to fulfill its stated goal of confirming the OCC Plan
18 and blocking the TPL Plan.
19

20
21 Finally, at the end of the Motion, comes the OCC's unrelated request to invade all
22 confidential documents of TPL without regard to attorney-client and work-product privilege.
23 The request should be denied. First, the OCC consciously refused to serve the 75 plus current
24 and former professionals whose representation and property interests would be directly affected
25 by the proposed invasion in violation of fundamental principles of due process and the
26 Bankruptcy Local Rules. Their property rights should not be forfeited without notice, nor should
27

1 they be compelled to seek protection through what would undoubtedly be a plethora of motions
2 for protective orders. Some, but far from all have even learned of the Motion. At least one
3 submits herewith a declaration explaining the breaches and violations that granting the OCC
4 blanket access would have with regard to the hundreds of confidentiality agreements and orders
5 of other courts to which TPL is subject that are likely a common denominator among counsel.
6 Finally, and most importantly, the OCC has offered no cogent explanation for why the rules of
7 privilege and discovery should now be abandoned on a wholesale basis and how its request is
8 relevant to its request for standing to prosecute the Derivative Actions. The OCC, if granted
9 derivative standing, should be obliged to conduct discovery like any other litigant.
10

11 II. ARGUMENT

12 A. The OCC Has Standing Now To Object To Claims But Not To Bring Actions 13 Reserved To The Trustee Without A Court Order.

14 The OCC requires bankruptcy court approval to commence suit on the Derivative
15 Actions. Its citation to *In re Morpheus Lights, Inc.*, 228 B.R. 449 (Bankr. N.D. Cal. 1998) and
16 claim to the contrary is unpersuasive. In *Morpheus Lights*, the court was faced with a motion to
17 dismiss a suit by an individual creditor against a lender bank for equitable subordination of its
18 claim and damages for an alleged conspiracy between the lender and debtor's president. Judge
19 Grube did not rule in *Morpheus Lights* on the standing of a committee that had filed suit; he
20 simply ruled that the individual plaintiff who had sued did not have standing. *Id.* at 457. The
21 court's observation about committee standing, made in reliance on a footnote from another case
22 in which the point was essentially allowed to pass without argument, is *dicta* unsupported by any
23 persuasive analysis and should be disregarded
24

25 B. The OCC Is Not Entitled To Derivative Standing Under The Showing It Has 26 Made And Under The Particular Facts Of This Case.

27 1. Legal Analysis Of Comparative Legal Approaches Among Circuits

1 “The exclusive power to commence avoidance actions vested in trustees and debtors-in-
2 possession is permissive rather than mandatory“ *In re Curry and Sorensen, Inc.*, 57 B.R. 824,
3 828 (9th Cir. B.A.P. 1986). There are nevertheless circumstances when an official committee of
4 creditors may be granted derivative standing to prosecute avoidance and other estate causes of
5 action. *Biltmore Assoc., LLC v. Twin City Fire Ins. Co.*, 572 F.3d 663, 674 n. 41 (9th Cir.2009).

6
7 The most thorough analysis of appellate case law from the Ninth Circuit on when
8 derivative standing for creditors’ committees may be granted appears in *In re Catholic Bishop Of*
9 *Northern Alaska*, 2009 WL 8412174 (Bankr. D. Alaska 2009) (“*Catholic Bishop*”). In that case
10 the issues were (1) whether the court could grant the committee standing to assert the debtor’s
11 avoidance actions and possible claims against the Holy See, or was there a blanket prohibition
12 against such standing in the Ninth Circuit, absent the consent of the debtor, and (2) if the court
13 could grant the committee derivative standing, under what circumstances should it be permitted.

14 In *Catholic Bishop*, Bankruptcy Judge Donald MacDonald first found that the right to
15 bring a derivative action upon entry of a court order exists under binding Ninth Circuit
16 precedent. The court then conducted an exhaustive analysis of appellate cases to ascertain the
17 circumstances under which it would be permissible. The court concluded that, unlike the
18 Second, Fifth, and Sixth Circuits, the Ninth Circuit “... hasn’t adopted a definitive standard for
19 evaluating when a creditors’ committee should be granted derivative standing.” *Id. at* *5. The
20 court analyzed the *Spaulding Composites*¹³ and *Curry and Sorenson*¹⁴ cases from the Bankruptcy
21 Appellate Panel in detail and concluded that these cases indicate that a “. . . court should
22 consider whether the proposed litigation is ‘necessary and beneficial’ or the failure of the debtor
23

24
25 ¹³ *Liberty Mutual Insurance Company, Inc. v. Official Unsecured Creditor's Committee (In re*
Spaulding Composites Co.) 207 B.R. 899 (B.A.P. 9th Cir.1997) (“*Spaulding Composites*”)

26 ¹⁴ *Hansen v. Finn (In re Curry and Sorensen, Inc.)*. 57 B.R. 824 (B.A.P. 9th Cir.1986) (“*Curry*
and Sorenson”)
27

1 in possession to act is ‘unjustifiable’ when making this determination.” *Catholic Bishop* at *5.

2 The court went on to note that “the Ninth Circuit has indicated that derivative standing is
3 appropriate where the debtor in possession's failure to bring a suit ‘does not adequately protect
4 the creditor's interests or the chose in action is of inconsequential value to the estate’,” citing to
5 *Biltmore Assoc., LLC v. Twin City Fire Ins. Co.*, 572 F.3d 663, 674 n. 41 (9th Cir. 2009).

6 Judge MacDonald then compared the “more specific” approaches used by the Fifth, Sixth
7 and Second Circuits in determining whether to grant the committee in the case before him
8 derivative standing:
9

10 The Fifth Circuit has stated that bankruptcy courts generally require “that the
11 claim be colorable, that the debtor-in-possession [has] refused unjustifiably to
12 pursue the claim, and that the committee first receive leave to sue from the
13 bankruptcy court.” [citing *Louisiana World Expo. v. Fed. Ins. Co.*, 858 F.2d 233,
14 247 (5th Cir.1988); *Louisiana World Expo., Inc., v. Fed. Ins. Co. (In re Louisiana
15 World Expo., Inc.)*] These criteria have been endorsed by other courts and by
16 *Collier* . (7 *Collier on Bankruptcy* ¶ 1103.05[6][a] at 1103–36–1103–37 (15th ed.
17 revised 2009), and cases cited therein).

18 The Sixth Circuit has adopted a somewhat different test to determine whether
19 derivative standing should be granted:

20 [A] creditor or creditors' committee may have derivative standing to
21 initiate an avoidance action where: 1) a demand has been made upon the
22 statutorily authorized party to take action; 2) the demand is declined; 3) a
23 colorable claim that would benefit the estate if successful exists, based
24 upon a cost-benefit analysis performed by the court, and 4) the inaction is
25 an abuse of discretion (“unjustified”) in light of the debtor-in-possession's
26 duties in a Chapter 11 case [citing *Canadian Pac. Forest Prod. Ltd. v. J.D.
27 Irving, Ltd. (In re The Gibson Group, Inc.)*, 66 F.3d 1436, 1446 (6th
28 Cir.1995)].

29 The Second Circuit has also indicated that the court should conduct a cost-benefit
30 analysis when determining whether derivative standing should be allowed. [citing
31 *Unsecured Creditors Comm. v. Noyes (In re STN Enterprises)*, 779 F.2d 901, 905
32 (2d Cir.1985)].

1
2 *In re Catholic Bishop Of Northern Alaska*, supra, 2009 WL 8412174 *5-*7.

3 **2. No Circuit Level or Appellate Panel Case From The Ninth Circuit**
4 **Endorses the Four-Part Test**

5 Reliance on *Curry and Sorenson* for the proposition that the Bankruptcy Appellate Panel
6 of the Ninth Circuit endorses the four-part test for derivative standing would be error¹⁵ because
7 that case does not even mention the four-part test, let alone suggest that it is law in the Ninth
8 Circuit. Judge Bufford's analysis from the bankruptcy court level case of *In re First Capital*
9 *Holdings Corp.*, 146 B.R. 7, 11 (Bankr. C.D. Cal. 1992) does set forth the four-part test, but the
10 court in that case failed to cite any Ninth Circuit authority.¹⁶

11
12 **C. Even if the Four-Part Test is Applicable, the OCC Failed To Satisfy Its**
13 **Requirements or Prove Benefit to the Estate.**

14 To the extent that the four-part test applies, the Motion, coupled with the absence of a
15 declaration to support it or a cost-benefit analysis, offers neither sufficient legal nor evidentiary
16 support to justify awarding the OCC derivative standing to sue on estate causes of action. The
17 reasons are as follows:

18 **1. The OCC Made No Demand Upon TPL To Prosecute The Derivative**
19 **Actions.**

20 The OCC admits that it never made a demand upon TPL to prosecute any of the claims
21 and causes of action loosely described as the Derivative Actions. It never even identified
22 specifically who the Derivative Action Defendants are beyond Daniel E. Leckrone himself.¹⁷

23
24 ¹⁵ Motion, 6:20-28.

25 ¹⁶ Citing the Fifth Circuit case *Louisiana World Expo.* as well as a Florida bankruptcy court
26 case, *In re Prime Motor Inns, Inc.*, 135 B.R. 917, 919 (Bankr.S.D.Fla.1992).

27 ¹⁷ In the Motion the OCC defines the "Derivative Action Defendants" as Daniel E. Leckrone and
28 "all of the Debtor's affiliates including, without limitation, all entities wholly-owned or partially

1 The Hwang Declaration on which the OCC relies as proof of notification to TPL of the claims
2 the OCC demands is brought fails to allege that any information about the Derivative Claims was
3 conveyed at all. Mr. Hwang seems to have testified to a conversation to which he was not a
4 party.¹⁸ He declares only that “[o]n January 8, 2014, Committee’s counsel advised Debtor’s
5 counsel of its intent to file the Motion and also requested that the Debtor agree to shortened time
6 as requested in the Ex Parte Motion.”¹⁹

7
8 Having failed to make the required demand, the OCC’s asks the Court to excuse its
9 strategic choice to forego doing so by claiming that “... the conflicts of interest between the
10 Debtor, Leckrone, and all Derivative Action Defendants are so profound that any demand would
11 be futile.”²⁰ This falsity of this contention is shown through examination of who the Derivative
12 Action Defendants are. The term’s definition in the Motion lists only Daniel E. Leckrone by
13 name. It is so broad that it includes some members of the OCC, but it is so imprecise that it
14 excludes non-insider employees with incentive compensation claims who the OCC undoubtedly
15 wishes to sue. Neither the OCC nor TPL can know, without more information as to the
16 Derivative Actions themselves, what aspect of the Derivative Actions TPL might be able to act
17 upon or, in the alternative, might consent to allow the OCC to prosecute.

18
19 The three cases that the OCC cited to support its excuse for not making a demand to
20 which TPL could respond are all distinguishable. First, in *Louisiana World Expo*. the court had
21 found that “[t]he Committee *did* ask LWE to bring an action for malfeasance against its directors

22
23 owned by Daniel Leckrone, and all insiders including, without limitation all directors, officers
24 and senior management, past and present.” Motion, 4:12-15.

24
25 ¹⁸ TPL objects to the quoted language from the Hwang Declaration as inadmissible hearsay not
26 within any exception.

25
26 ¹⁹ Declaration of Thomas T. Hwang In Support Of Ex Parte Motion For Order Shortening Time
27 For Hearing On Motion For Order Granting Leave, Standing, and Authority To Investigate,
28 Prosecute, Commence, and Settle Actions of the Debtor’s Estate. 3:10-12.

26
27 ²⁰ Motion, 9:4-6.

1 and officers. LWE refused, apparently being unable to act because of the conflict of interest
2 presented to its decision makers, and the bankruptcy court then granted the Committee's request
3 to sue the directors and officers on behalf of LWE.” *Louisiana World Expo* , 832 F.2d 1391,
4 1397-1398 (emphasis in the original). It was only a second demand that was excused.

5
6 In *In re National Forge Co.*, 326 B.R. 532 (Bankr. W.D.Pa. 2005), the debtor had
7 received ample and specific notice of the OCC’s legal theories and intent to prosecute certain
8 actions. In fact, the debtor had waived the right to prosecute them. The debtor in this case had
9 also filed multiple pleadings showing instances of opposition by the debtor to committee action
10 to prosecute claims that left no doubt as to the certainty of its refusal to cooperate. “Thus, the
11 Debtor was in no way prejudiced by the Committee's failure to formally request that suit be
12 filed.” *Id.* at 544. While TPL and the OCC have disagreed frequently in the current case, TPL
13 has never suggested it would not prosecute actions against management where a basis for dispute
14 exists. Quite the contrary: the TPL Plan calls for an independent third party, the Claims Trust
15 Trustee, to evaluate and bring actions as to possible actions against not only TPL’s management
16 but all holders of disputed claims.

17
18 Finally, in *In re First Capital Holdings Corp.*, 146 B.R. 7 (Bkrcty.C.D.Cal. 1992), the
19 committee filed a motion for leave to file a complaint, on behalf of the estate, against debtor’s
20 current and former officers and directors. The committee argued that it should be excused from
21 making a demand on the debtor to bring the action and waiting for the debtor to respond, in the
22 fear that the debtor might simply refuse to respond at all, leaving uncertainty as to when the
23 committee might have a right to bring a motion before the Court for leave to file its own action.
24 The committee further contended that there was no reasonable possibility that the debtors'
25 officers and directors would initiate or zealously prosecute a suit against themselves and the
26 debtors' principal shareholder. *Id.* at 10. Looking to the California Corporations Code and case
27

1 authority, Judge Bufford noted that California case law excuses such a demand if “the facts
2 pleaded demonstrate such a demand would have been futile and that [s]uch demand is futile
3 where the board itself is alleged to have engaged in fraudulent or illegal conduct. Judge Bufford
4 then enunciated the unique and incorrect theory that California law applies because as “...
5 stockholders are the equitable owners ... of a publicly held corporation, creditors are the
6 presumptive owners of a debtor in bankruptcy ... and [t]his presumptive ownership status gives
7 the creditors standing to assert a claim on behalf of the bankrupt debtor, in order to protect their
8 interest in the estate.” *Id.* at 13.
9

10 The facts of the case at bar are very different from the three cited by the OCC for the
11 following reasons: first, despite the OCC’s free use of unsupported allegations of misdeeds and
12 wrongdoing through the course of this case, it elected not to make a demand upon TPL to bring
13 specifically defined actions against specifically identified individuals. Absent a demand by the
14 OCC, there is no fair notice to TPL of the claims the OCC wishes to bring, and no response for
15 this Court to weigh. The OCC’s choice to forego making a demand is prejudicial to TPL and
16 should preclude any finding that its action was excusable. Second, some of those individuals
17 whom the OCC indicates in its pleading it wishes to target (i.e., certain holders of incentive
18 compensation claims) are not TPL employees and never have been, are not TPL management,
19 and are not even insiders. There can be no presumption that such persons would have been free
20 from consideration if a sufficiently strong case had been made by the OCC. In addition, those
21 individuals are certainly not even on notice based on the definition in the OCC’s Motion. Third,
22 TPL never waived the right to sue on Derivative Actions; to the contrary, the TPL Plan
23 specifically preserves all such claims and provides that they will be prosecuted, if at all, by an
24 independent third party and not members of a committee whose tactics betray a personal animus
25 toward TPL and its principal.
26
27

1 **2. The OCC Offers No Analysis of Evidence To Prove That Prosecution of**
2 **the Derivative Claims Would Benefit The Estate.**

3 A claim that a committee has demanded be prosecuted that is met with an unjustifiable
4 refusal to pursue must not only be colorable but likely to benefit the estate. *Torch Liquidating*
5 *Trust ex rel. Bridge Associates L.L.C. v. Stockstill*, 561 F.3d 377, 388 (5th Cir. 2009); *In re*
6 *Adelphia Communications Corp.*, 544 F.3d 420, 424 (2nd Cir. 2008); *In re Gibson Group, Inc.*,
7 66 F.3d 1436, 1446 (6th Cir. 1995); *In re Yellowstone Mountain Club, LLC*, Not Reported in
8 B.R., 2009 WL 982207 at *6 (Bkrtcy.D.Mont.,2009).

9 Cases from all circuits on derivative standing, including the Ninth Circuit, require proof
10 of benefit to the estate shown through an analysis of costs as well as potential recoveries. The
11 OCC offered no cost-benefit analysis for pursuing the Derivative Actions. The Motion states
12 simply, without reference to costs, delay, or collectability (perhaps the most important factor of
13 all) that “[t]he Committee understands that affirmative claims against the Derivative Defendants
14 may be the largest, if not only asset which may realize a return to non-insider creditors.”²¹ The
15 Court cannot independently divine what the gross or net recoveries might be, and TPL cannot
16 respond in any meaningful way. TPL cannot therefore have “unjustifiably refused” to have
17 brought the actions. For this reason alone, the Motion should be denied.

18 **3. The OCC Has Failed To List Facts That Include All Required Elements**
19 **To Prove That The Derivative Actions State Colorable Claims**

20 A claim is colorable if it could survive a motion to dismiss. *Fail-Safe LLC v.*
21 *A.O. Smith Corp.*, 744 F.Supp.2d 831, 855 (E.D.Wis.2010); *see also PW Enters.*
22 *v. N.D. Racing Comm'n (In re Racing Servs.)*, 540 F.3d 892, 900 (8th Cir.2008)
23 (“[A] creditor's claims are colorable if they would survive a motion to dismiss.”).
24 The Supreme Court explained the standard for evaluating whether a claim
25 survives a motion to dismiss in *Ashcroft v. Iqbal*, 556 U.S. 662, 678–79, 129 S.Ct.
26 1937, 173 L.Ed.2d 868 (2009) (internal citations and quotations omitted):

26 ²¹ Motion, 8:14-16.

1 To survive a motion to dismiss, a complaint must contain sufficient factual matter,
2 accepted as true, to state a claim to relief that is plausible on its face.... The
3 plausibility standard is not akin to a probability requirement, but it asks for more
4 than a sheer possibility that a defendant has acted unlawfully. Where a complaint
5 pleads facts that are merely consistent with a defendant's liability, it stops short of
6 the line between possibility and plausibility of entitlement to relief.... Determining
7 whether a complaint states a plausible claim for relief will, as the Court of
8 Appeals observed, be a context-specific task that requires the reviewing court to
9 draw on its judicial experience and common sense. But where the well-pleaded
10 facts do not permit the court to infer more than the mere possibility of
11 misconduct, the complaint has alleged—but it has not show[n]—that the pleader
12 is entitled to relief.

13 Further, in ascertaining whether a plaintiff has stated a cognizable claim, the court
14 also examines the facts as alleged by the plaintiff for any dispositive affirmative
15 defenses. *Griesenbeck v. Am. Tobacco Co.*, 897 F.Supp. 815, 820 (D.N.J.1995). A
16 complaint may be subject to dismissal for the failure to state a legally cognizable
17 claim when an affirmative defense appears on its face. *ALA, Inc. v. CCAIR, Inc.*,
18 29 F.3d 855, 859 (3d Cir.1994). Although a motion to dismiss normally invites an
19 inquiry into the legal sufficiency of the complaint, not an analysis of potential
20 defenses to the claims set forth therein, dismissal nevertheless is appropriate when
21 the face of the complaint clearly reveals the existence of a meritorious affirmative
22 defense. *Brooks v. City of Winston-Salem*, 85 F.3d 178, 181 (4th Cir.1996)
23 (citation omitted); see generally 5A CHARLES A. WRIGHT & ARTHUR R.
24 MILLER, FEDERAL PRACTICE AND PROCEDURE § 1357 (2d ed. 1990) (“A
25 complaint showing that the statute of limitations has run on the claim is the most
26 common situation in which the affirmative defense appears on the face of the
27 pleading,” rendering dismissal appropriate).

28 *In re Archdiocese of Milwaukee*, 483 B.R. 855, 858-859 (Bkrcty.E.D.Wis.,2012.)

Because the Committee has elected in defining what the Derivative Actions are to offer a
non-exclusive list of potential theories²², many of which are not actual causes of action, and not
to match facts with the elements of actions it does assert, there is no way to tell if it has made

²² For example, the Committee states that it wishes to investigate and commence actions of any
nature, including, without limitation, “any actions pursuant to Chapter 5 of the Bankruptcy
Code” and “any actions based on theories of breach of fiduciary duty, diminution of value, self-
dealing, conflicts of interest, willful an malicious injury, intentional and negligent
misrepresentations, intentional infliction of emotional distress, ultra vires acts, usurping
corporation opportunities, fraud, defalcation while acting in a fiduciary capacity, theft,
embezzlement, larceny and conversion...”

1 colorable claims at all. Moreover, since the Committee has failed to identify the allegedly
2 injured party under each claim, it is impossible for TPL much less the Court to weigh whether,
3 assuming all alleged facts are true, any viable cause of action exists.

4 For example, the Committee’s list of claims includes “intentional infliction of emotional
5 distress” but fails to identify who has suffered emotional distress. The Committee lists
6 “intentional and negligent misrepresentations,” but the injured party and how that could be a
7 generalized claim beneficial to the estate, as opposed to an individual, is unexplained. The
8 Committee lists claims for “diminution in value,” “conflicts of interest,” “self-dealing,” “ultra
9 vires acts” but supplies no elements or other legal support for such causes of action.

10
11 More fundamentally, the “facts” alleged by the Committee in paragraph 9 do not support
12 the non-exclusive laundry list of claims listed by the Committee. The Derivative Actions the
13 Committee seeks standing to bring are based on the following five allegations in paragraph 9 of
14 the Motion: (a) alleged transfers to insiders, (b) the fact Debtor has scheduled debts to insiders,
15 (c) alleged invalid assignment agreements with insiders²³, (d) Leckrone’s common ownership of
16 Debtor and Alliacense, and (e) non-payment of certain creditors. None of these facts touch at all
17 upon the reserved Derivative Actions for intentional infliction of emotional distress, intentional
18 and negligent misrepresentation, defalcation, or larceny.

19
20 There is also a complete defense to at least one of the fact patterns on its face. The OCC
21 asserts as follows: “[t]he Debtor has scheduled debts to insiders based on compensation
22 agreements between these insiders and Alliacense or “oral agreements” with these insiders.”²⁴
23 California Civil Code section 1622 provides that a contract need not be in writing to be

24
25 ²³ As Debtor has noted on prior occasions, a court has already found the assignment agreements
26 in question to be valid.

27 ²⁴ Motion, 3:18-4:7.

1 enforceable: “[a]ll contracts may be oral, except such as are specially required by statute to be in
2 writing.” *See also*, CACI 304 Oral or Written Contract Terms [Contracts may be written or oral.
3 Oral contracts are just as valid as written contracts;]; Cal. Jury Inst. 10.57 [A contract may be
4 oral, written, or partly oral and partly written. An oral, or a partly oral and partly written contract,
5 is as valid and enforceable as a written contract.]

6
7 **D. The OCC’s Unique Effort To Invade Confidentiality and Privilege Should Be Denied**

8 No authority is cited for OCC’s argument that it has or should be entitled to full,
9 “unfettered” access to all TPL’s documents, confidential or otherwise. Bankruptcy Code section
10 105(a) does not provide independent grounds for a committee to be granted full and unfettered
11 access to all of a debtor’s documents, both privileged and non-privileged. The OCC has cited no
12 cases in which 105(a) was used by a court to permit a party full and unfettered access to the
13 entire universe of a company’s documents, including trade secrets and attorney-client
14 communications, much less to serve as a substitute for discovery under the Federal Rules

15 Federal Rule of Evidence 502(d) – states that a court *may* order that privilege is not
16 waived by disclosure, but it does not require it. Neither the Rule nor any case citing it that TPL
17 located provides an independent basis to grant a party full and unfettered access to all documents
18 of a company, both privileged and non-privileged.

19 The *Whitaker* case cited (*Whitaker Chalk, Swindle & Sawyer, LLP v. Dart Oil & Gas*
20 *Corp.*, 2009 U.S. Dist. LEXIS 15901 (N.D. Tex. Feb. 23. 2009)) simply holds what 502(d) states
21 - that a court may order that privilege or protection is not waived by disclose in a case. The case
22 does not hold or stand for the proposition that a party in a bankruptcy has a right to all
23 documents of a debtor, both privileged and non-privileged. *Whitaker* was a case in which a law
24 firm sued its former client for fees, arose in the context of Rule 26 disclosures (not a motion for
25 access to all of a company’s documents), and is an unreported case that was filed in state court
26 and removed to federal court and involved and applied Texas privilege law. In short, *Whitaker*

1 simply holds that 502(d) states. It does not provide any authority for the Committee's request for
2 access to all of Debtor's documents, privileged and non-privileged alike.

3
4 TPL is subject to hundreds of confidentiality agreements. *See* Declaration Of Jeffrey R.
5 Bragalone, Special Litigation Counsel To The Estate, In Support Of TPL's Opposition To
6 Motion For Order Granting Leave, Standing And Authority To Investigate, Commence,
7 Prosecute, and And Settle Actions Of The Estate. These include every license, likely orders in
8 other courts in pending litigation, possible non-disclosure agreements with parties it is currently
9 negotiating with, and potentially other third parties. The granting of unfettered access to the
10 entire universe of TPL documents would be a gross violation of all of these agreements and
11 orders and could have catastrophic implications, including lawsuits from third parties and
12 sanctions from other courts. If the Committee were granted full and unfettered access to all TPL
13 documents, no prospective licensee would communicate with TPL for fear of having everything
14 said become subject to scrutiny and/or public disclosure. This would effectively shut down
15 licensing and TPL.

16 502(d) applies to non-waiver of the attorney-client and work-product privilege. The
17 work product privilege is held by the attorney. *Bozzuto v. Cox, Castle & Nicholson, LLP*, 255
18 F.R.D. 673, 678 (C.D. Cal. 2009); *Doubleday v. Ruh*, 149 F.R.D. 601, 607 (E.D. Cal. 1993),
19 some 75 firms that have not received notice of the Motion. Basic and fundamental due process
20 dictates that all counsel that at any time represented TPL, past and present, be notified and given
21 ample opportunity to object.

22 Finally, it should not be overlooked that the OCC's chairman, Chet Brown, is in active
23 litigation over the appeal of a judgment rendered in his favor. The Motion, by its terms, would
24 hand confidential information about TPL's litigation with Brown to him. The conflict of interest
25 that this presents for the OCC is obvious.

26 ///

1
2 **III. CONCLUSION**

3 TPL respectfully submits that at the hearing on February 26th, consideration of approval of
4 approval of disclosure statements regarding both the OCC Plan and TPL Plan should be taken up
5 first. If approved, TPL expects that a schedule for voting and trial setting conference for
6 confirmation will then be discussed. Neither the issue of derivative standing for the OCC nor the
7 timing of prosecution of the Derivative Actions (and the estimated nine months the OCC asserts
8 is needed to reach a resolution) should affect that schedule. If the OCC wishes to object to
9 claims, then a deadline for it to do so and a time frame for motions and hearings on temporary
10 allowance should be set.
11

12 The Motion distract, unnecessarily, for the choice that creditors face with competing plans.
13 The OCC has no need of the relief it seeks and, having failed to meet the case law requirements
14 for approval or shown the benefit to the estate from being granted standing now, the Motion
15 should be denied.

16 Dated: February 12, 2014

BINDER & MALTER, LLP

17 By: /s/ Robert G. Harris
18 Robert G. Harris
19 Attorneys for Debtor and
20 Debtor-in-Possession Technology
21 Properties Limited
22
23
24
25
26
27

1 Heinz Binder (SBN 87908)
2 Robert G. Harris (SBN 124678)
3 David B. Rao (SBN 103147)
4 BINDER & MALTER, LLP
5 2775 Park Avenue
6 Santa Clara, CA 95050
7 Tel: (408) 295-1700
8 Fax: (408) 295-1531
9 Email: Heinz@bindermalter.com
10 Email: Rob@bindermalter.com
11 Email: David@bindermalter.com

12 Attorneys for Debtor and Debtor-in-Possession
13 TECHNOLOGY PROPERTIES LIMITED LLC

14 **UNITED STATES BANKRUPTCY COURT**
15 **NORTHERN DISTRICT OF CALIFORNIA**
16 **SAN JOSE DIVISION**

17 In re:

18 TECHNOLOGY PROPERTIES LIMITED,
19 LLC, a California limited liability company,
20
21 Debtor.

Case No.: 13- 51589SLJ

Chapter 11

Date: February 26, 2014

Time: 2:00 p.m.

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

22 **DECLARATION OF JEFFREY R. BRAGALONE, SPECIAL LITIGATION COUNSEL**
23 **TO THE ESTATE, IN SUPPORT OF TPL'S OPPOSITION TO MOTION FOR ORDER**
24 **GRANTING LEAVE, STANDING AND AUTHORITY TO INVESTIGATE,**
25 **COMMENCE, PROSECUTE, AND SETTLE ACTIONS OF THE ESTATE**

1 I, Jeffrey R. Bragalone, declare as follows:

2
3 1. I have personal knowledge of the matters stated in this Declaration, and if called
4 as a witness could competently testify with regard to these matters.

5 2. I am a member of the State Bar of Texas in good standing. I am one of the
6 founding attorneys of Bragalone Conroy PC (“BCPC”). BCPC is a law firm headquartered in
7 Dallas Texas, whose attorneys have significant experience handling contingent fee patent
8 infringement litigation. Though BCPC is a relatively small firm, our attorneys have,
9 collectively, over fifty years of experience handling patent infringement litigation. BCPC is
10 involved on a daily basis in preparing cases for trial. As part of this daily litigation work, BCPC
11 is entrusted with significant amounts of confidential and proprietary information.

12
13 3. BCPC is counsel for debtor and debtor in possession Technology Properties
14 Limited, LLC (“TPL”) in the matter styled *HSM Portfolio LLC and Technology Properties*
15 *Limited, LLC, v. Fujitsu Limited, et al.*, Cause No. 1:11-cv-00770-RGA, in the United States
16 District Court for the District of Delaware (hereafter, the “Fast Logic Litigation”). The Fast
17 Logic Litigation is a complex patent litigation action. When initiated, the Fast Logic Litigation
18 had over twenty defendants in numerous defendant groups. Of the Defendants, the following
19 major technology companies produced significant amounts of confidential and proprietary
20 information in the Fast Logic Litigation: Advanced Micro Devices, Inc.; Micron Technology,
21 Inc.; Qualcomm, Inc.; Toshiba Corporation, Toshiba America, Inc. and Toshiba America
22 Electronic Components, Inc.; Marvell Semiconductor, Inc.; Sony Corporation, Sony Corporation
23 of America, Sony Electronics, Inc., Sony Computer Entertainment, Inc., and Sony Computer
24 Entertainment America LLC; Hynix Semiconductor, Inc., Hynix Semiconductor America, Inc.,
25 and Hynix Semiconductor Manufacturing America, Inc.; Zoran Corporation; Fujitsu Limited,

1
2 Fujitsu America, Inc., and Fujitsu Semiconductor America, Inc.; SanDisk Corporation; Elpida
3 Memory, Inc. and Elpida Memory (USA), Inc.; ON Semiconductor Corporation; Promos
4 Technologies, Inc.; STMicroelectronics Inc. and STMicroelectronics, N.V. In addition to the
5 foregoing Defendants, numerous third parties, including other technology companies such as
6 Spansion LLC, have also produced confidential information to BCPC as counsel for TPL.

7 2. I have read the Motion For Order Granting Leave, Standing And Authority To
8 Investigate, Commence, Prosecute, And Settle Actions Of The Estate (the “Motion”) filed by the
9 Official Unsecured Creditors’ Committee (the “OCC”) in this case. At page 10 of the Motion,
10 the OCC makes the remarkable demand that it should be provided with “unfettered access to all
11 the books, records, and other documents in the possession, custody, or control of the Debtor, or
12 in which the Debtor has an interest as property of the estate, ***whether or not the documents are***
13 ***subject of a claim of privilege or confidentiality....***” (emphasis added).
14

15 3. Collectively, Defendants and third parties in the Fast Logic Litigation have
16 produced to BCPC over 160 GB of CONFIDENTIAL, HIGHLY CONFIDENTIAL – OUTSIDE
17 ATTORNEYS’ EYES ONLY, and HIGHLY CONFIDENTIAL – SOURCE CODE materials
18 under the applicable Protective Order. *See HSM Portfolio LLC, et al. v. Fujitsu Limited, et al.*,
19 Case No. 1:11-cv-00770-RGA (D. Del.), ECF No. 314 ¶¶ 1(c), 1(g), 1(h), a copy of which is
20 attached to this Declaration as Exhibit A.

21 4. Significantly, these productions include the underlying design documents for the
22 accused products, including both native and PDF circuit schematics, which Defendants consider
23 to be among their “crown jewels.” *See id.*, ECF No. 293 (“These native design files are among
24 defendants’ most sensitive intellectual property—their crown jewels.”). Certain Defendants have
25 also made available for inspection selected design documents for the accused products, including
26
27

1
2 GDSII files, in a highly secured and restricted review environments. The Protective Order places
3 heightened access restrictions on these materials because the Defendants allege that they could
4 be readily used to fabricate copies of the accused products. While BCPC does not have
5 possession of Defendants' Source Code Materials, these Defendants have produced paper and
6 electronic printouts of their Source Code Materials to BCPC, which BCPC cannot even copy
7 electronically without Defendants' permission.

8 5. In certain circumstances, BCPC has received permission to share selected
9 confidential information of Defendants – such as Defendants' sales figures and internal financial
10 information – with employees of TPL and select employees of Alliacense.

11 6. If TPL, Alliacense, or BCPC were to disclose any of the above materials to
12 unauthorized third parties, such as members of the Official Creditors' Committee, TPL,
13 Alliacense, and/or BCPC would be in violation of the Protective Order. *See, e.g., id.*, ECF No.
14 314 ¶ 5 (“Except upon consent of the designating party or upon order of the Court, all
15 CONFIDENTIAL, HIGHLY CONFIDENTIAL – OUTSIDE ATTORNEYS’ EYES ONLY, or
16 HIGHLY CONFIDENTIAL – SOURCE CODE Material produced in this action shall not be
17 used by any Receiving Party or disclosed to anyone for any purpose other than in connection
18 with this action and any appeals. Material designated CONFIDENTIAL, HIGHLY
19 CONFIDENTIAL – OUTSIDE ATTORNEYS’ EYES ONLY, or HIGHLY CONFIDENTIAL –
20 SOURCE CODE shall not be disclosed by the Receiving Party to anyone other than those
21 persons designated in paragraphs 7, 8, and 9 below consistent with the provisions therein, as the
22 case may be, unless and until the restrictions herein are removed by order of the Court or by the
23 Producing Party.”). Such a violation could subject TPL, Alliacense, and/or BCPC to sanctions
24 under Federal Rule of Civil Procedure 37(b)(2), such as, for example, reasonable expenses,
25
26
27
28

1 including, attorney's fees, caused by the failure. *See Apple Inc. v. Samsung Elecs. Co., Ltd.*, Case
2 No. 5:11-cv-01846-LHK (PSG) (N.D. Cal. Jan. 29, 2014) (sanctioning the Quinn Emanuel law
3 firm "for any and all costs and fees incurred in litigating this motion and the discovery associated
4 with it" as a result of a violation of the protective order); *see also MobileMedia Ideas LLC v.*
5 *Apple Inc.*, C.A. No. 10-258-SLR/MPT, 2012 WL 5379056, at *2-3 (D. Del. Oct. 31, 2012)
6 (recommending a sanction of reasonable expenses against the plaintiff for violating a protective
7 order), *adopted by* 2013 WL 5314709 (D. Del. Sept. 16, 2013).

8
9 7. Because BCPC, TPL, and Alliacense are already subject to an order from the
10 United States District Court for the District of Delaware that precludes them from sharing with
11 the OCC any Protected Material, BCPC cannot comply with the OCC's unprecedented demand
12 that it be granted "unfettered access to all the books, records, and other documents in the
13 possession, custody, or control of the Debtor ... whether or not the documents are subject of a
14 claim of privilege or confidentiality."

15
16 8. Moreover, although the identities and counsel of record for all of the Defendants
17 and third parties who have produced Protected Materials in the Fast Logic Litigation is a matter
18 of public record, the OCC has not made any effort to notify the Defendants or third parties of this
19 effort to access their highly confidential and proprietary information.

20 9. In addition, BCPC has in its possession numerous privileged communications
21 (including emails) and draft documents that relate to matters where BCPC has advised TPL on
22 matters where it would be adverse to the OCC, including but not limited to TPL's Opposition To
23 Motion Of Creditors' Committee For Orders (1) Directing The Appointment Of A Chapter 11
24 Trustee; And (2) Directing The Debtor And Daniel E. Leckrone To Appear And Show Cause
25 Why They Should Not Be Held In Contempt For Violation Of This Court's Order. It would be a
26

1 violation of the existing attorney-client privilege and attorney work product privilege if BCPC
2 were to disclose to the OCC any of these protected and privileged materials.
3

4 10. Finally, in the unlikely event that the Court would actually order BCPC to comply
5 with an order requiring it to disgorge all documents in its possession, custody, or control
6 irrespective of issues of privilege or confidentiality, it would be extraordinarily expensive to
7 comply with such an order, and doing so would be highly disruptive to BCPC's ongoing efforts
8 to prosecute the Fast Logic Litigation. At minimum, I estimate that it would take several man
9 months and over \$300,000 to make any realistic effort to comply with the OCC's unprecedented
10 demand.

11 I declare under penalty of perjury of the laws of the United States that the foregoing is
12 true and correct. Executed on this the 12th day of February, 2014, at Dallas, Texas.
13

14
15 /s/ Jeffrey R. Bragalone

16 Jeffrey R. Bragalone
17
18
19
20
21
22
23
24
25
26
27

1 Heinz Binder (SBN 87908)
2 Robert G. Harris (SBN 124678)
3 David B. Rao (SBN 103147)
4 BINDER & MALTER, LLP
5 2775 Park Avenue
6 Santa Clara, CA 95050
7 Tel: (408) 295-1700
8 Fax: (408) 295-1531
9 Email: Heinz@bindermalter.com
10 Email: Rob@bindermalter.com
11 Email: David@bindermalter.com

12 Attorneys for Debtor and Debtor-in-Possession
13 TECHNOLOGY PROPERTIES LIMITED LLC

14 **UNITED STATES BANKRUPTCY COURT**
15 **NORTHERN DISTRICT OF CALIFORNIA**
16 **SAN JOSE DIVISION**

17 In re:
18 TECHNOLOGY PROPERTIES LIMITED,
19 LLC, a California limited liability company,
20
21 Debtor.

22 Case No.: 13- 51589SLJ
23 Chapter 11
24 Date: February 26, 2014
25 Time: 2:00 p.m.
26 Place: Courtroom 3099
27 280 South First Street
28 San Jose, California

29 **DECLARATION OF LARRY E. HENNEMAN IN SUPPORT OF AND JOINING TPL'S**
30 **OPPOSITION TO MOTION FOR ORDER GRANTING LEAVE, STANDING AND**
31 **AUTHORITY TO INVESTIGATE, COMMENCE, PROSECUTE, AND SETTLE**
32 **ACTIONS OF THE ESTATE**

1 I, Larry E. Henneman, know the following matters to be true of my own, personal
2 knowledge and, if called as a witness, could and would testify competently thereto:
3

4 1. I am a member in good standing of the State Bar of California and Michigan, and
5 registered to practice before the U.S. Patent and Trademark Office as a patent attorney. My law
6 firm (Henneman & Associates, PLC) represented debtor and debtor in possession Technology
7 Properties Limited, LLC (“TPL”) in the prosecution of various matters before the U.S. Patent
8 and Trademark Office.

9 2. I have read the Motion For Order Granting Leave, Standing And Authority To
10 Investigate, Commence, Prosecute, And Settle Actions Of The Estate (the “Motion”) filed by the
11 Official Unsecured Creditors’ Committee (the “OCC”) in this case. At page 10 of the Motion,
12 the OCC requests “ ... unfettered access to all the books, records, and other documents in the
13 possession, custody, or control of the Debtor, or in which the Debtor has an interest as property
14 of the estate, *whether or not the documents are subject of a claim of privilege or confidentiality*
15 *....*”
16

17 3. I oppose the Motion, based upon my knowledge and experience as counsel for
18 TPL, for the following reasons:

19 a. My representation of the Debtor has been almost exclusively in the realm
20 of patent prosecution and the defense of licensed patents against reexamination requests filed
21 with the U.S. Patent and Trademark Office by third parties.

22 b. In representing of the Debtor, I have developed significant attorney-work
23 product related to extremely sensitive aspects of patents that Debtor relies on for licensing
24 revenue. My work product includes, but is not limited to, interim opinions regarding the scope
25
26
27

1 of claims of licensed patents, the characterization of prior art asserted against the licensed
2 patents, and the possible infringement of claims by potential licensees.

3
4 c. The intentional or unintentional disclosure of my work product would
5 have a potentially devastating effect on future patent prosecutions, reexamination of defenses,
6 and/or licensing efforts with respect to the patents and/or applications that the Debtor relies on
7 for licensing revenue.

8 d. The nature of legal services I have provided to the Debtor (patent
9 prosecution and reexamination defense) are completely unrelated to any of the “Derivative
10 Actions” (“breach of fiduciary duty, diminution of value, self-dealing, ...and conversion”) the
11 OCC seeks to investigate and prosecute.

12 e. Henneman & Associates is a small firm. In addition to me, we have one
13 patent lawyer, one engineer/draftsman, one paralegal, and two to four other secretarial/support
14 staff at various times. We have hundreds of patent files that we have handled for TPL over the
15 years, most of which are now inactive. An order to provide access to all documents in our
16 possession would be devastating to our ability to maintain our day-to-day operations.

17
18 I declare under penalty of perjury of the laws of the United States that the foregoing is
19 true and correct. Executed this 12th day of February, 2014, at Three Rivers, Michigan.

20
21 /s/ LARRY E. HENNEMAN, JR.
22 LARRY E. HENNEMAN, JR.

1 Heinz Binder (SBN 87908)
2 Robert G. Harris (SBN 124678)
3 David B. Rao (SBN 103147)
4 BINDER & MALTER, LLP
5 2775 Park Avenue
6 Santa Clara, CA 95050
7 Tel: (408) 295-1700
8 Fax: (408) 295-1531
9 Email: Heinz@bindermalter.com
10 Email: Rob@bindermalter.com
11 Email: David@bindermalter.com

12 Attorneys for Debtor and Debtor-in-Possession
13 TECHNOLOGY PROPERTIES LIMITED LLC

14 **UNITED STATES BANKRUPTCY COURT**
15 **NORTHERN DISTRICT OF CALIFORNIA**
16 **SAN JOSE DIVISION**

17 In re:
18 TECHNOLOGY PROPERTIES LIMITED,
19 LLC, a California limited liability company,
20
21 Debtor.

22 Case No.: 13- 51589SLJ
23 Chapter 11
24 Date: February 26, 2014
25 Time: 2:00 p.m.
26 Place: Courtroom 3099
27 280 South First Street
28 San Jose, California

29 **DECLARATION OF J. MARK THACKER IN SUPPORT OF AND JOINING TPL'S**
30 **OPPOSITION TO MOTION FOR ORDER GRANTING LEAVE, STANDING AND**
31 **AUTHORITY TO INVESTIGATE, COMMENCE, PROSECUTE, AND SETTLE**
32 **ACTIONS OF THE ESTATE**

1
2 I, J. Mark Thacker, declare:

3 1. I am an attorney at law licensed to practice before the court of the State of
4 California, and am a member of the law firm Ropers, Majeski, Kohn & Bentley (“RMKB”),
5 counsel of record for debtor and debtor in possession Technology Properties Limited, LLC
6 (“TPL”) in the following pending matters: *Brown v. TPL*, Santa Clara County Superior Court,
7 Case No. 1-09-CV-159452, and a related appeal before the Court of Appeal, Sixth Appellate
8 District, Appeal No. H040110; *Leckrone v. Marcoux*, Santa Clara County Superior Court, Case
9 No. 1-09-CV-159593; and *Moore v. TPL*, Santa Clara County Superior Court, Case No. 1-10-
10 CV-183613. I am the attorney primarily responsible for handling these matters. Additionally,
11 RMKB was counsel of record for TPL in *Patriot v. TPL*, Santa Clara County Superior Court,
12 Case No. 1-10-CV-169836, which has been dismissed. Further, RMKB has been consulted on
13 behalf of TPL on numerous occasions concerning matters that have not involved pending or past
14 litigation.

15
16 2. I know the matters stated herein to be true of my own, personal knowledge and, if
17 called as a witness, I could and would testify competently thereto.

18 3. I have read the Motion For Order Granting Leave, Standing And Authority To
19 Investigate, Commence, Prosecute, And Settle Actions Of The Estate (the “Motion”) filed by the
20 Official Unsecured Creditors’ Committee (the “OCC”) in this case. At page 10 of the Motion,
21 the OCC requests “unfettered access to all the books, records, and other documents in the
22 possession, custody, or control of the Debtor, or in which the Debtor has an interest as property
23 of the estate, *whether or not the documents are subject of a claim of privilege or confidentiality*
24” [Emphasis added.] RMKB objects to the Motion on the grounds stated below and joins in
25 TPL’s opposition to the Motion.
26
27
28

1
2 4. The Motion seeks, among other things, the disclosure of attorney work product
3 materials. Under California law, RMKB is exclusively the “holder” of this protection with
4 respect to such materials developed during the course of several matters in which it has
5 represented TPL. [*E.g.*, *State Compensation Insurance Fund v. Superior Court* (2001) 91 Cal.4th
6 1080, 1091-1092.] However, the OCC or its counsel did not notify my firm of this Motion, and
7 therefore, my firm has not had a fair opportunity to respond or object to the OCC’s efforts to set
8 aside a fundamental protection for attorneys and their clients.

9 5. The Motion seeks “unfettered” access to confidential and privileged information
10 directly and indirectly related to pending actions in which my firm represents TPL. In two of
11 these pending actions (i.e., *Brown v. TPL* and *Leckrone v. Marcoux*) certain members of the
12 OCC are adverse to TPL. Consequently, permitting the OCC any access to such information will
13 likely result in substantial prejudice to TPL, and substantially interfere with my firm’s ability to
14 represent TPL effectively.

15
16 6. Finally, RMKB also represented additional entities and individuals in the actions
17 identified above. Thus, as a practical matter, disclosure as requested by the Motion may
18 necessarily result in the disclosure of communications and information that would prejudice the
19 interests of others. The Motion does not address this issue.

20 I declare under penalty of perjury of the laws of the United States and the State of
21 California that the foregoing is true and correct.

22 Executed this 12th day of February, 2014, at San Jose, California.

23
24 By: /s/ J. Mark Thacker
J. Mark Thacker

1
2 Heinz Binder (SBN 87908)
3 Robert G. Harris (SBN 124678)
4 Roya Shakoori (SBN 236383)
5 BINDER & MALTER, LLP
6 2775 Park Avenue
7 Santa Clara, CA 95050
8 Tel: (408) 295-1700
9 Fax: (408) 295-1531

10 Email: Heinz@bindermalter.com
11 Email: Rob@bindermalter.com
12 Email: Roya@bindermalter.com

13 Attorneys for Debtor and Debtor In
14 Possession Technology Properties Limited, LLC

15
16
17
18
19
20
21
22
23
24
25
26
27
28
UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

29 In re:
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100
101
102
103
104
105
106
107
108
109
110
111
112
113
114
115
116
117
118
119
120
121
122
123
124
125
126
127
128
129
130
131
132
133
134
135
136
137
138
139
140
141
142
143
144
145
146
147
148
149
150
151
152
153
154
155
156
157
158
159
160
161
162
163
164
165
166
167
168
169
170
171
172
173
174
175
176
177
178
179
180
181
182
183
184
185
186
187
188
189
190
191
192
193
194
195
196
197
198
199
200
201
202
203
204
205
206
207
208
209
210
211
212
213
214
215
216
217
218
219
220
221
222
223
224
225
226
227
228
229
230
231
232
233
234
235
236
237
238
239
240
241
242
243
244
245
246
247
248
249
250
251
252
253
254
255
256
257
258
259
260
261
262
263
264
265
266
267
268
269
270
271
272
273
274
275
276
277
278
279
280
281
282
283
284
285
286
287
288
289
290
291
292
293
294
295
296
297
298
299
300
301
302
303
304
305
306
307
308
309
310
311
312
313
314
315
316
317
318
319
320
321
322
323
324
325
326
327
328
329
330
331
332
333
334
335
336
337
338
339
340
341
342
343
344
345
346
347
348
349
350
351
352
353
354
355
356
357
358
359
360
361
362
363
364
365
366
367
368
369
370
371
372
373
374
375
376
377
378
379
380
381
382
383
384
385
386
387
388
389
390
391
392
393
394
395
396
397
398
399
400
401
402
403
404
405
406
407
408
409
410
411
412
413
414
415
416
417
418
419
420
421
422
423
424
425
426
427
428
429
430
431
432
433
434
435
436
437
438
439
440
441
442
443
444
445
446
447
448
449
450
451
452
453
454
455
456
457
458
459
460
461
462
463
464
465
466
467
468
469
470
471
472
473
474
475
476
477
478
479
480
481
482
483
484
485
486
487
488
489
490
491
492
493
494
495
496
497
498
499
500
501
502
503
504
505
506
507
508
509
510
511
512
513
514
515
516
517
518
519
520
521
522
523
524
525
526
527
528
529
530
531
532
533
534
535
536
537
538
539
540
541
542
543
544
545
546
547
548
549
550
551
552
553
554
555
556
557
558
559
560
561
562
563
564
565
566
567
568
569
570
571
572
573
574
575
576
577
578
579
580
581
582
583
584
585
586
587
588
589
590
591
592
593
594
595
596
597
598
599
600
601
602
603
604
605
606
607
608
609
610
611
612
613
614
615
616
617
618
619
620
621
622
623
624
625
626
627
628
629
630
631
632
633
634
635
636
637
638
639
640
641
642
643
644
645
646
647
648
649
650
651
652
653
654
655
656
657
658
659
660
661
662
663
664
665
666
667
668
669
670
671
672
673
674
675
676
677
678
679
680
681
682
683
684
685
686
687
688
689
690
691
692
693
694
695
696
697
698
699
700
701
702
703
704
705
706
707
708
709
710
711
712
713
714
715
716
717
718
719
720
721
722
723
724
725
726
727
728
729
730
731
732
733
734
735
736
737
738
739
740
741
742
743
744
745
746
747
748
749
750
751
752
753
754
755
756
757
758
759
760
761
762
763
764
765
766
767
768
769
770
771
772
773
774
775
776
777
778
779
780
781
782
783
784
785
786
787
788
789
790
791
792
793
794
795
796
797
798
799
800
801
802
803
804
805
806
807
808
809
810
811
812
813
814
815
816
817
818
819
820
821
822
823
824
825
826
827
828
829
830
831
832
833
834
835
836
837
838
839
840
841
842
843
844
845
846
847
848
849
850
851
852
853
854
855
856
857
858
859
860
861
862
863
864
865
866
867
868
869
870
871
872
873
874
875
876
877
878
879
880
881
882
883
884
885
886
887
888
889
890
891
892
893
894
895
896
897
898
899
900
901
902
903
904
905
906
907
908
909
910
911
912
913
914
915
916
917
918
919
920
921
922
923
924
925
926
927
928
929
930
931
932
933
934
935
936
937
938
939
940
941
942
943
944
945
946
947
948
949
950
951
952
953
954
955
956
957
958
959
960
961
962
963
964
965
966
967
968
969
970
971
972
973
974
975
976
977
978
979
980
981
982
983
984
985
986
987
988
989
990
991
992
993
994
995
996
997
998
999
1000

Case No: 13-51589 SLJ
Chapter 11
Date: February 26, 2014
Time: 2:00 p.m.
Place: Courtroom 3099
280 South First Street
San Jose, California
Judge: Honorable Stephen L. Johnson

CERTIFICATE OF SERVICE

I, Brandy Garrison, declare:

I am employed in the County of Santa Clara, California. I am over the age of eighteen (18) years and not a party to the within entitled cause; my business address is 2775 Park Avenue, Santa Clara, California 95050.

On February 12, 2014, I served a true and correct copy of the following document(s):

- 1
2
3 **1. TPL'S OPPOSITION TO MOTION FOR ORDER GRANTING LEAVE, STANDING AND AUTHORITY TO INVESTIGATE, COMMENCE, PROSECUTE, AND SETTLE ACTIONS OF THE ESTATE;**
- 4
5
6 **2. DECLARATION OF LARRY H. HENNEMAN IN SUPPORT OF AND JOINING TPL'S OPPOSITION TO MOTION FOR ORDER GRANTING LEAVE, STANDING AND AUTHORITY TO INVESTIGATE, COMMENCE, PROSECUTE, AND SETTLE ACTIONS OF THE ESTATE;**
- 7
8
9 **3. DECLARATION OF J. MARK THACKER IN SUPPORT OF AND JOINING TPL'S OPPOSITION TO MOTION FOR ORDER GRANTING LEAVE, STANDING AND AUTHORITY TO INVESTIGATE, COMMENCE, PROSECUTE, AND SETTLE ACTIONS OF THE ESTATE; and**
- 10
11
12 **4. DECLARATION OF JEFFREY R. BRAGALONE IN SUPPORT OF AND JOINING TPL'S OPPOSITION TO MOTION FOR ORDER GRANTING LEAVE, STANDING AND AUTHORITY TO INVESTIGATE, COMMENCE, PROSECUTE, AND SETTLE ACTIONS OF THE ESTATE.**

13 by sending via electronic transmission or via the Court's CM/ECF Noticing systems to those parties registered to receive notice as addressed as follows:

14 **U.S. Trustee**

15 John Wesolowski, Esq.
 16 United States Trustee
 17 Office of the U.S. Trustee
 18 280 So. First St., Room 268
 19 San Jose, CA 95113
 20 Email: john.wesolowski@usdoj.gov

21 **Unsecured Creditors Committee Attorney**

22 c/o John Walshe Murray, Esq.
 23 c/o Robert Franklin, Esq.
 24 c/o Thomas Hwang, Esq.
 25 Dorsey & Whitney LLP
 26 305 Lytton Avenue
 27 Palo Alto, CA 94301
 28 Email: murray.john@dorsey.com
 Email: franklin.robert@dorsey.com
 Email: hwang.thomas@dorsey.com

Special Notice

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

Special Notice

Peter C. Califano, Esq.
 Cooper, White & Cooper LLP
 201 California Street, 17th Floor
 San Francisco, California 94111
 E-Mail: pcalifano@cwclaw.com

Attorney for Fujitsu Limited
 G. LARRY ENGEL
 KRISTIN A. HIENSCH
 Morrison & Foerster LLP
 425 Market Street
 San Francisco, California 94105-2482
 E-mail: Lengel@mofo.com
 E-mail: Khiensch@mofo.com

Attorney for Creditors Chester A. Brown, Jr. and
 Marcie Brown
 Randy Michelson
 Michelson Law Group
 220 Montgomery Street, Suite 2100
 San Francisco, CA 94104
 Email: randy.michelson@michelsonlawgroup.com

Sallie Kim
 GCA Law Partners LLP
 2570 W. El Camino Real, Suite 510
 Mountain View, CA 94040
 Email: skim@gcalaw.com

1
2 Arockiyaswamy Venkidu
3 c/o Javed I. Ellahie
4 Ellahie & Farooqui LLP
5 12 S. First St., Suite 600
6 San Jose, CA 95113
7 Email: javed@eflawfirm.com

8 Attorney for OneBeacon Technology Insurance
9 Gregg S. Kleiner, Esq.
10 McKENNA LONG & ALDRIDGE LLP
11 One Market Plaza
12 Spear Tower, 24th Floor
13 San Francisco, CA 94105
14 Email: gkleiner@mckennalong.com

15 Charles H. Moore
16 c/o Kenneth Prochnow, Esq.
17 Chiles and Prochnow, LLP
18 2600 El Camino Real, Suite, 412
19 Palo Alto, Ca 94306
20 Email: kprochnow@chilesprolaw.com

21 Phil Marcoux
22 c/o William Thomas Lewis, Esq.
23 Robertson & Lewis
24 150 Almaden Blvd., Suite 950
25 San Jose, CA 95113
26 Email: wtl@roblewlaw.com

27 Farella Braun + Martel LLP
28 Attn: Gary M. Kaplan, Esq.
29 235 Montgomery Street, 18th Floor
30 San Francisco, CA 94104
31 Email: gkaplan@fbm.com

32 Cupertino City Center Buildings
33 c/o Christopher H. Hart, Esq.
34 Schnader Harrison Segal & Lewis LLP
35 One Montgomery Street, Suite 2200
36 San Francisco, CA 94104
37 Email: chart@schnader.com

Attorneys for Apple, Inc.
Adam A. Lewis, Esq.
Vincent J. Novak, Esq.
Morrison & Foerster LLP
425 Market St.
San Francisco, CA 94105
Email: alewis@mofo.com
Email: vnovak@mofo.com

Attorneys for Interested Parties Toshiba America
Consumer Products, LLC, Toshiba America
Electronic Components, Inc., Toshiba America
Information Systems, Inc., Toshiba America
Information Systems, Inc. Toshiba America, Inc.,
Toshiba Corporation

Jon Swenson
Baker Botts L.L.P.
1001 Page Mill Road
Building One, Suite 200
Palo Alto, CA 94304
Email: jon.swenson@bakerbotts.com

C. Luckey McDowell
Baker Botts L.L.P.
2001 Ross Avenue, Suite 600
Dallas, TX 75201
Email: luckey.mcdowell@bakerbotts.com

Jessica L. Voyce, Esq.
Baker Botts L.L.P.
2001 Ross Avenue, Suite 600
Dallas, TX 75201
Email: jessica.voyce@bakerbotts.com

38 I declare under penalty of perjury that the foregoing is true and correct, and that
39 this Declaration was executed on February 12, 2014, at Santa Clara, California.

40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100
101
102
103
104
105
106
107
108
109
110
111
112
113
114
115
116
117
118
119
120
121
122
123
124
125
126
127
128
129
130
131
132
133
134
135
136
137
138
139
140
141
142
143
144
145
146
147
148
149
150
151
152
153
154
155
156
157
158
159
160
161
162
163
164
165
166
167
168
169
170
171
172
173
174
175
176
177
178
179
180
181
182
183
184
185
186
187
188
189
190
191
192
193
194
195
196
197
198
199
200
201
202
203
204
205
206
207
208
209
210
211
212
213
214
215
216
217
218
219
220
221
222
223
224
225
226
227
228
229
230
231
232
233
234
235
236
237
238
239
240
241
242
243
244
245
246
247
248
249
250
251
252
253
254
255
256
257
258
259
260
261
262
263
264
265
266
267
268
269
270
271
272
273
274
275
276
277
278
279
280
281
282
283
284
285
286
287
288
289
290
291
292
293
294
295
296
297
298
299
300
301
302
303
304
305
306
307
308
309
310
311
312
313
314
315
316
317
318
319
320
321
322
323
324
325
326
327
328
329
330
331
332
333
334
335
336
337
338
339
340
341
342
343
344
345
346
347
348
349
350
351
352
353
354
355
356
357
358
359
360
361
362
363
364
365
366
367
368
369
370
371
372
373
374
375
376
377
378
379
380
381
382
383
384
385
386
387
388
389
390
391
392
393
394
395
396
397
398
399
400
401
402
403
404
405
406
407
408
409
410
411
412
413
414
415
416
417
418
419
420
421
422
423
424
425
426
427
428
429
430
431
432
433
434
435
436
437
438
439
440
441
442
443
444
445
446
447
448
449
450
451
452
453
454
455
456
457
458
459
460
461
462
463
464
465
466
467
468
469
470
471
472
473
474
475
476
477
478
479
480
481
482
483
484
485
486
487
488
489
490
491
492
493
494
495
496
497
498
499
500
501
502
503
504
505
506
507
508
509
510
511
512
513
514
515
516
517
518
519
520
521
522
523
524
525
526
527
528
529
530
531
532
533
534
535
536
537
538
539
540
541
542
543
544
545
546
547
548
549
550
551
552
553
554
555
556
557
558
559
560
561
562
563
564
565
566
567
568
569
570
571
572
573
574
575
576
577
578
579
580
581
582
583
584
585
586
587
588
589
590
591
592
593
594
595
596
597
598
599
600
601
602
603
604
605
606
607
608
609
610
611
612
613
614
615
616
617
618
619
620
621
622
623
624
625
626
627
628
629
630
631
632
633
634
635
636
637
638
639
640
641
642
643
644
645
646
647
648
649
650
651
652
653
654
655
656
657
658
659
660
661
662
663
664
665
666
667
668
669
670
671
672
673
674
675
676
677
678
679
680
681
682
683
684
685
686
687
688
689
690
691
692
693
694
695
696
697
698
699
700
701
702
703
704
705
706
707
708
709
710
711
712
713
714
715
716
717
718
719
720
721
722
723
724
725
726
727
728
729
730
731
732
733
734
735
736
737
738
739
740
741
742
743
744
745
746
747
748
749
750
751
752
753
754
755
756
757
758
759
760
761
762
763
764
765
766
767
768
769
770
771
772
773
774
775
776
777
778
779
780
781
782
783
784
785
786
787
788
789
790
791
792
793
794
795
796
797
798
799
800
801
802
803
804
805
806
807
808
809
810
811
812
813
814
815
816
817
818
819
820
821
822
823
824
825
826
827
828
829
830
831
832
833
834
835
836
837
838
839
840
841
842
843
844
845
846
847
848
849
850
851
852
853
854
855
856
857
858
859
860
861
862
863
864
865
866
867
868
869
870
871
872
873
874
875
876
877
878
879
880
881
882
883
884
885
886
887
888
889
890
891
892
893
894
895
896
897
898
899
900
901
902
903
904
905
906
907
908
909
910
911
912
913
914
915
916
917
918
919
920
921
922
923
924
925
926
927
928
929
930
931
932
933
934
935
936
937
938
939
940
941
942
943
944
945
946
947
948
949
950
951
952
953
954
955
956
957
958
959
960
961
962
963
964
965
966
967
968
969
970
971
972
973
974
975
976
977
978
979
980
981
982
983
984
985
986
987
988
989
990
991
992
993
994
995
996
997
998
999
1000