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

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

COMES NOW the Official Committee of Unsecured Creditors in this case (the "Committee") who respectfully moves the Court as follows:

I. INTRODUCTION

1. As more fully set forth and described below, Technology Properties Limited LLC, the debtor and debtor in possession herein, ("TPL" or the "Debtor") and Daniel E. Leckrone ("Mr. Leckrone"), the Debtor's manager and "responsible individual" appointed pursuant to B.L.R. 4000-1, have knowingly and willfully violated an order of this Court that was entered for the

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protection of creditors and to insure the integrity of the bankruptcy process. In light of the Debtor's inexcusable conduct in the case, the Committee believes it is necessary and appropriate for this Court to immediately order the appointment of a Chapter 11 trustee and directing the Debtor and Mr. Leckrone to appear and show cause why they should not be held in contempt of court for their illegal and detrimental conduct in this case.

II. VIOLATION OF COURT ORDER

2. On March 20, 2013, the Debtor filed its Voluntary Petition under Chapter 11. [DOCKET NO. 1].

3. On April 9, 2013, August B. Landis, the acting United States Trustee for Region 17 (the "UST") filed his NOTICE OF APPOINTMENT OF COMMITTEE OF UNSECURED CREDITORS [DOCKET NO. 53].

4. On March 21, 2013, the Debtor filed its APPLICATION TO APPROVE DESIGNATION OF RESPONSIBLE INDIVIDUAL FOR DEBTOR [DOCKET NO. 12] requesting the appointment of Mr. Leckrone, the Debtor's manager, as the Debtor's "responsible individual" pursuant to B.L.R. 4000-1. On March 25, 2013, the Court entered its ORDER APPROVING DESIGNATION OF RESPONSIBLE INDIVIDUAL FOR DEBTOR [DOCKET NO. 18] appointing Mr. Leckrone as the Debtor's "responsible individual" (the "Responsible Individual Order"). A true and correct copy of the Responsible Individual Order is attached as **Exhibit "A"** to 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 OF COURT FOR VIOLATION OF THIS COURT'S ORDER (the "Murray Declaration") submitted concurrently herewith.

5. On April 3, 2013, the Debtor filed its MOTION REGARDING SETTLEMENT PROCEDURES (the "Settlement Motion") [Docket No. 40] seeking unilateral authority to enter into settlements of litigation. On April 17, 2013, the UST filed his OBJECTION BY ACTING UNITED STATES TRUSTEE TO MOTION REGARDING SETTLEMENT PROCEDURES [DOCKET NO. 64] on the grounds that the Settlement Motion requested a blanket authorization of settlements by the Debtor

without any notice to or review by the Court, the Committee or the UST. On April 17, 2013, the Committee filed its COMMITTEE'S OPPOSITION TO DEBTOR'S MOTION REGARDING SETTLEMENT PROCEDURES [DOCKET NO. 65] objecting to the Settlement Motion on similar grounds.

6. 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 (the "Settlement Committee") to enter into any settlements. This protocol is reflected in the Courts ORDER ON MOTION REGARDING SETTLEMENT PROCEDURES (the "Settlement Protocol Order") entered on May 7, 2013. [Docket No. 124]. A true and correct copy of the Settlement Protocol Order is attached as **Exhibit "B"** to the Murray Declaration.

7. The Settlement Protocol Order provides a procedure for the Debtor to request a meeting with the Settlement Committee to discuss proposed settlements and provides that if "the Settlement Committee fails to (a) agree to a time for a conference within 48 hours, (b) attend an agreed-on conference, or **(c) provide a written statement of its position as described in paragraph 5**, then it is deemed that the Creditors Committee has not objected to the proposed settlement . . ." (Settlement Protocol Order, page 4, lines 6-10 (*Emphasis added*)). On June 1st, June 9th, July 29th, August 17th and November 13th of 2013, the Settlement Committee approved settlements as requested by the Debtor. However, due to the lack of progress in the case and the Debtor's continuing dissipation of estate assets in total disregard of the interests of creditors, the November 13, 2013 approval contained the following admonition: "I have been requested to inform you that without significant progress in the negotiations regarding the plan, you should not expect approval of further proposed licensing transactions/settlements." A true and correct copy of this communication to the Debtor is attached as **Exhibit "C"** to the Murray Declaration.[1]

8. On November 18, 2013, the Debtor requested a call with the Settlement Subcommittee to discuss approval of a new settlement. On November 19, 2013, the Committee responded as follows: "The committee will only consider further proposed settlements if 20% of

[1] All communications to the Debtor attached to the Murray Declaration have been redacted such that only information relevant to this motion is included.

the gross settlement proceeds is deposited into a trust account for the benefit of creditors." A true and correct copy of this communication to the Debtor is attached as **Exhibit "D"** to the Murray Declaration. Identical communications were sent to the Debtor on November 20, 2013 and November 29, 2013 (twice). True and correct copies of these communications to the Debtor are attached as **Exhibits "E," "F" and "G"** to the Murray Declaration.

9. On November 21, 2013, out of a growing concern that the Debtor would enter into settlements without the Committee's consent, the Committee communicated to the Debtor as follows: "There is a concern on the part of the Committee that the debtor will consummate these licenses without committee approval. As you know, this would be in direct violation of the court's order." A true and correct copy of this communication to the Debtor is attached as **Exhibit "H"** to the Murray Declaration.

10. Similarly, on November 29, 2013, out of a continuing concern that the Debtor would consummate settlements without the Committee's consent, the Committee again communicated to the Debtor as follows: "The Committee's concern mentioned below continues. Please confirm to us that the debtor has not consummated these licenses without committee approval. If you cannot or do not so confirm, we will assume that the debtor has consummated licenses without committee approval in violation of the court's order of May 7, 2013, and we will bring it to the court's attention. Your immediate response would be most appreciated." A true and correct copy of this communication to the Debtor is attached as **Exhibit "I"** to the Murray Declaration.

11. The Debtor did not respond to either of the aforementioned communications from the Committee.

12. On December 10, 2013, the Committee was advised by the Debtor that it had, without the Committee's consent, consummated two settlements of pending litigation, all of which were clearly contemplated to be within the scope of this Court's Settlement Protocol Order. This communication will be submitted under seal if such relief is granted by the Court.

13. The Committee's response to all of the Debtor's requests could not have been clearer: "The committee will only consider further proposed settlements if 20% of the gross

settlement proceeds is deposited into a trust account for the benefit of creditors."

14. In complete disregard of the Committee's stated position and in a contemptuous violation of this Court's Settlement Protocol Order, the Debtor, at Mr. Leckrone's direction, consummated at least two settlements, without the Committee's consent, for total receipts of approximately $2,000,000. While it is not clear, it would appear from communications from Susan Anhalt that the Debtor has consummated three or more settlements for between $3,250,000 and $3,700,000. These communications will be submitted under seal if such relief is granted by the Court. None of the proceeds of these settlements have been set aside for the benefit of creditors. Where did the proceeds of these illegal settlements go? They most likely went to the payment of the outlandish salaries of the Debtor's insiders and to Alliacense, LLC ("Alliacense"), a company owned solely by Mr. Leckrone, and controlled by Mr. Leckrone and his children, Mac Leckrone and Susan Anhalt. This Court should direct the Debtor to immediately disclose how many settlements have been illegally consummated, the revenue received by the Debtor from such settlements, where those revenues went, and to sequester such proceeds for the benefit of creditors.

III. WASTEFUL DISSIPATION OF ESTATE ASSETS

15. According to its monthly operating report, the Debtor's post-petition revenues less direct costs of revenue through October total $2,621,307. Of this amount, $1,452,686 has gone to pay employee salaries, and specifically, over $630,000 has been paid to Mr. Leckrone, his daughter Susan Anhalt, and Janet Neal. In addition, the Committee estimates that $1.1 million has gone or has accrued to Mr. Leckrone's company, Alliacense ($401,721 in patent prosecution fees, 15% of gross sales of $4.6 million or $700,000), excluding additional fees for litigation support. See Debtor's October operating report [Docket No. 272]

16. The relationship between Janet Neal and Mr. Leckrone is unclear. Testimony produced in litigation between Chet and Marcie Brown and Dan Leckrone (the "Trial") established that prior to the bankruptcy case, Mr. Leckrone authorized the disbursement of funds from TPL for the personal expenses of Ms. Neal, although those payments were not authorized or justified by any written policy or written contract. TPL paid Ms. Neal, a fulltime resident of the

United Kingdom and TPL's "Vice–President of Administration," a consulting fee of approximately $200,000 to $250,000 a year and also paid her daughter's private school tuition as late as 2011. 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 "MURRAY DECLARATION") AND Exhibit "A" thereto, pp.1196:7 – 1197:18; 1304: 16 – 1314: 22; Kim Decl., Exhibit "B" (12/14/11 Leckrone Dep. 488: 3 – 490: 1). TPL paid Ms. Neal far more than the compensation listed in her written consulting agreement, and her consulting agreement did not provide for payment of her daughter's private school tuition. Kim Decl. Exhibit "C". TPL's chief financial officer, Dwayne Hannah, made those tuition payments without a contract or written authorization because Mr. Leckrone ordered him to do so. Kim Decl., Exhibit "A", RT, Vol. 12 at 197: 19–25. TPL also paid Ms. Neal approximately $800,000 to $900,000 as part of an "incentive compensation program" from the proceeds of the MMP Patents. Kim Decl., Exhibit "A", 1304: 16 – 1314:22; (12/14/11 Leckrone Dep. 490: 2–15). Ms. Neal is a fulltime resident of the United Kingdom, and her home address was listed by TPL on its website as its "European headquarters." Kim Decl., Ex. A, p1198: 9–12. Mr. Leckrone testified at deposition that TPL provided funds at his instruction – possibly in the amount of $1 million – for Ms. Neal to purchase her home, as a "bridge loan." Kim Decl., Exhibit "A", pp. 1304; 16 – 1314:22 Kim Decl., Exhibit "B" (12/14/11 Leckrone Dep. 487: 11 – 23). Despite having provided funds for the purchase of the house and despite listing the house as the "European headquarters of TPL," Mr. Leckrone stated that he does not know who actually owns the house in which Ms. Neal resides. Kim Decl., Exhibit "A", pp. 1304: 16 – 1314: 22; Kim Decl. Exhibit "B", (12/14/11 Leckrone Dep. 486: 24 – 487: 9).

17. In this bankruptcy case, Ms. Neal is paid an annual salary of $250,000. Unbelievably, Ms. Neal has also received a guaranty of lifetime employment. [See Proof of Claim No. 27 filed by Janet Neal, and attachment thereto entitled "Salary Continuation Plan".] Her total compensation package puts her at par or exceeds that of other "key" employees within the TPL

Group. See, e.g., Exhibit "A" to DECLARATION OF DWAYNE HANNAH IN SUPPORT OF SECOND MOTION TO APPROVE USE OF CASH COLLATERAL [Docket No. 255].

18. Ms. Neal performs the following tasks: keeps Mr. Leckrone's calendar, arranges for Mr. Leckrone's telephonic conference calls, takes minutes of these calls although she does not participate in such calls, travels from her home in the United Kingdom to the United States for purposes unknown to the Committee, and travels with Mr. Leckrone. See Debtor's December 9, 2013 Disclosure Statement and Exhibit thereto. While much of Ms. Neal's involvement with the Debtor is a mystery to the Committee, it is clear that her compensation cannot be justified by any measure; she adds no value to the company, and her "employment" is strictly for the benefit of Mr. Leckrone individually.

IV. CONFLICTS OF INTEREST

a. **Alliacense**.

i. Prior to 2007, Alliacense was part of the "TPL Group". On April 17, 2007, Alliacense was formed as a Delaware limited liability company. On March 19, 2008, Alliacense was re-formed as a California limited liability company. Both LLCs are owned and managed by Mr. Leckrone as its sole shareholder and sole member. [See Debtor's Motion To Use Cash Collateral, filed on April 15, 2013 [Docket No. 57].[2] Testimony produced in the Trial established that Mr. Leckrone directed TPL to pay Alliacense at least $42,000,000 without a written contract and an additional $15 million for "operating expenses." Kim Decl., Exhibit "A", pp. 1156: 14 – 21. This was done to enhance revenues flowing to Mr. Leckrone and other insiders while maintaining liabilities in TPL and to divert revenues from TPL by allowing licensing fees to be paid from TPL, who was responsible for licensing the MMP Portfolio, to Alliacense. It was undisputed that there was no signed written agreement between TPL and Alliacense authorizing any payments to Alliacense. Kim Decl., Exhibit "A" , pp. 234: 8 – 12 and 291: 10–14. Furthermore, Dwayne Hannah, TPL's Chief Financial Officer, testified that TPL listed the payment of $15 million as a loan to Alliacense and thus an asset of TPL (Kim Decl.

[2] Mr. Leckrone caused Alliacense to appoint Mac Leckrone, Dan Leckrone's son, as the president and COO of Alliacense. Kim Decl., Exhibit "A", RT, Vol. 2, at 233: 27– 234: 7

Exhibit "A", pp 1156:14 – 21).

ii. Shortly after Trial and within 10 months of the filing of this bankruptcy case, the loan had removed from TPL's books. TPL now claims that the $15 million loan was "offset" by approximately $16 million in services provided by Alliacense to TPL with Alliacense now filing a proof of claim in the amount of $1,700,000. Thus, instead of listing a debt from Alliacense to TPL of $15 million, which would be an asset of the bankruptcy estate that the creditors could collect, TPL now claims that Alliacense owes it nothing and that TPL owes Alliacense money.

iii. The conflict is apparent. TPL claims to have made continuing advances to Alliacense from 2006 through 2012 in excess of $15 million. It was only after the conclusion of the Trial and within 10 months of bankruptcy that the Debtor forgave a $15,000,000 account receivable owed by Alliacense to the Debtor without a reasonable and cogent explanation. This, more than anything, shows the treatment of Alliacense as Debtor's right pocket. Why else would the Debtor be content to simply advance and advance over a period of 6 years without resolution of advances? The relationship between Alliacense and TPL, both owned and controlled by Mr. Leckrone, is rife with self-dealing and conflicts of interest. There is no way that Mr. Leckrone or the Debtor can make objective decisions for the benefit of the estate which they are required to do to satisfy their fiduciary obligations to the bankruptcy estate.

iv. Patriot Scientific Corporation, the Debtor's joint venturer in PDS, has recognized the conflict as well. 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 (the "Johnson Declaration") and Paragraphs 12, 13 and 14. As set forth therein, Mr. Johnson has asked Dan Leckrone on several occasions to confer with me about appointing a third member of the PDS management committee so that PDS can have the benefit of a tie-breaker vote because of his conflicts. The PDS Operating Agreement has provisions for that but he has ignored them. This has resulted in the current dynamic where PDS cannot make

decisions unless he and Mr. Johnson agree on them. PDS asserts that it cannot pursue decisions in its best interests unless Dan Leckrone goes along with them, but he consistently places Alliacense's interests ahead of PDS's or TPL's interests in communications with PDS.

19. **Insider salaries**. As demonstrated above, the salaries paid to the Debtor's senior management and insiders described above are outrageous. It is an obvious conflict of interest when the Debtor's insiders receive such unconscionable salaries in light of its post-petition losses of $2,132,601 through October. In light of these unjustified salaries, how can the Debtor possibly deny the reasonableness of the Committee's request that twenty percent (20%) of all settlement proceeds be set aside for the benefit of unsecured creditors?

V. THE DEBTOR'S REPREHENSIBLE BEHAVIOR THIS CASE.

a. As set forth more fully in the Felcyn Declaration, the Johnson Declaration and the DECLARATION OF CLIFF 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, in an effort to intimidate Committee members into submission, Mr. Leckrone has threatened unmeritorious litigation against at least one committee member. Such bullying should not be tolerated by this Court, and the Debtor, a trustee for the estate, should not be allowed to persist in such conduct.

b. The Debtor has collected over $7,000,000 and perhaps more in unauthorized settlements in 2013 and has yet to reserve one cent for the benefit of creditors. If this conduct is allowed to continue, the Committee is convinced that creditors will receive nothing in this case.

VI. COMMITTEE'S FRUSTRATION

20. The Committee has spent over six months negotiating with the Debtor toward a consensual plan of reorganization. When it seemed progress was being made, the Debtor would back track on commitments previously made. The Debtor has clearly conducted its negotiations with the Committee in bad faith for the purpose of delaying the case and allowing its insiders to continue to pillage the estate. See Felcyn Declaration.

21. The Debtor continues to pay exorbitant salaries despite its continuing losses

during this case. Notwithstanding the fact that the Debtor has collected millions of dollars from illegal settlements, not one penny has been reserved for the payment of creditors.

22. The Committee's patience with the Debtor is exhausted. Its frustration over Mr. Leckrone's payment of outlandish salaries and fees to himself, his children, his executive team and his related entities, and his continuing refusal to set aside any funds for creditors will no longer be tolerated. The Committee is fed up, frustrated and angry over the continued delays in the case, the obvious conflicts of interest, the siphoning off of estate assets for the benefit of Alliacense, the unauthorized settlements in violation of the Settlement Protocol Order and the Debtor's continued refusal to make even the slightest provisions for creditors. *Ibid.* Enough is enough. It is imperative that this Court step in and put an end to this outrageous behavior.

VII. LEGAL DISCUSSION

A. APPOINTMENT OF CHAPTER 11 TRUSTEE.

Section 1104 (a) of the Bankruptcy Code provides as follows:

> "At any time after the commencement of the case but before confirmation of a plan, on request of a party in interest or the United States trustee, and after notice and a hearing, 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."

In IN RE AG SERV. CTRS, 239 B.R. 545, 550-551 (BANKR. W.D. MO. 1999), the Court stated:

> The Debtor's repeated and continued failure to comply with the orders of this Court and the dictates of the Bankruptcy Code would warrant the appointment of a trustee under § 1104(a)(1) or (2), inasmuch as compliance with Court orders and the Code is a fortiori in the interests of creditors and the estate. However, the character of the Debtor-in-Possession's conduct lends itself better to analysis under § 1104(a)(1).

Section 1104(a)(1) does not specifically list "noncompliance with court orders" or "failure to comply with the Bankruptcy Code" as causes for the appointment of a trustee, but such conduct clearly falls within the scope circumscribed by the statute-either as a "similar cause" or as a permutation of "incompetence, or gross mismanagement." And if the Court determines that there is cause, which it has in this case, the appointment of a trustee is mandatory." (internal citations omitted).

B. CONTEMPT OF COURT.

a. In Committee of Dalkon Shield Claimants v. A.H. Robins Co., 828 F.2d 239 (4th Cir. Va. 1987), the court held that "[t]he violation of a court order itself provides the grounds for contempt finding. The Ninth Circuit has further explained the standard "[T]: the moving party has the burden of showing by clear and convincing evidence that the contemnors violated a specific and definite order of the court Knupfer v. Lindblade (In re Dyer), 322 F.3d 1178, 1190-91 (9th Cir.). 2003). The burden then shifts to the contemnor to explain why it did not comply with the order. See Renwick v. Bennett (In re Bennett), 298 F.3d 1059, 1069 (9th Cir. 2002) (internal citation and quotations omitted). Here, it is unquestionable that the Debtor violated the Settlement Protocol Order. There is no reasonable interpretation of the order which would permit the Debtor's violation in the face of the Committee's clear objections, nor can there be any good faith explanation for such violation. Nonetheless, the Debtor and Mr. Leckrone are entitled, and in fact should be compelled, to appear and show cause to justify their misconduct.

VIII. CONCLUSION

The Committee believes that there is overwhelming evidence supporting the appointment of a trustee in this case. The Debtor and Mr. Leckrone have breached their fiduciary obligations to the estate, and have willfully and flagrantly violated this Court's Settlement Protocol Order. As such, the Committee believes it is necessary and appropriate for this Court to immediately order the appointment of a Chapter 11 trustee and direct the Debtor and Mr. Leckrone to appear and show cause why they should not be held in contempt of court for their errant behavior in this case.

WHEREFORE, the Committee prays that the Court immediately enter its order:

1. Appointing a Chapter 11 trustee in this case;

2. Directing the Debtor and Mr. Leckrone to appear and show cause why they

should not be held in contempt of court for their willful violation of this Court's Settlement Protocol Order;

3. Directing the Debtor and Mr. Leckrone to immediately disclose how many settlements have been consummated without the Committee's consent, what the receipts are from those settlements, and where those receipts went;

4. Directing the Debtor to sequester the illegally generated funds for the benefit of the creditors of the estate;

5. Postponing the hearing on approval of the Debtors disclosure statement and any hearing on confirmation of the Debtor's plan to parallel the hearings on approval of the Committee's disclosure statement and confirmation of the Committee's plan;

6. Taking judicial notice of this Motion and its supporting declarations for all purposes in this case; and

7. For such other relief that the Court deems just and proper.

Respectfully submitted,

Dated: December 16, 2013

DORSEY & WHITNEY LLP

By: */s/ John Walshe Murray*
Attorneys for the Official Committee of Unsecured Creditors

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