EXHIBIT G

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TECHNOLOGY PROPERTIES LIMITED LLC

UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFONRIA

SAN JOSE DIVISION

In re: TECHNOLOGY PROPERTIES LIMITED, LLC, a California limited liability company, Debtor.	Case No.: 13- 51589SLJ Chapter 11 Date: January 23, 2014 Time: 10:00 a.m. Place: Courtroom 3099 280 South First Street San Jose, California

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

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

I. INTRODUCTION

1. Only weeks before a vote by creditors can take place on two remarkably similar competing plans that both call for unsecured claimants to take over the right to manage and collect proceeds from the MMP Portfolio which differ primarily as to who will manage the rest of TPL post-confirmation and whether Portfolios other than MMP are commercialized by TPL, the OCC[1] seeks a different end to the case. In its Motion[2], the OCC seeks (1) appointment of a trustee, (2) issuance of an order to show cause re: contempt, (3) disclosure of (a) the details of settlements proposed to the OCC that were deemed approved under the terms of this Court's Settlement Procedures Order[3], (b) the status of proceeds from those approved settlements, and (4) an injunction directing sequestration of 100% of the proceeds of the approved settlements.[4]

2. While the OCC cites both Bankruptcy Code section 1104(a)(1) and 1104(a)(2) in its Motion, the main thrust of the filing appears to be that the alleged violation of this Court's Settlement Procedures Order constitutes cause for relief. The facts surrounding TPL's strict adherence to and the OCC's disregard of the Settlement Procedures Order are straightforward and undisputed. TPL proposed nine settlements to the OCC under the terms of the Settlement Procedures Order. The OCC approved the first six settlements but failed to exercise its rights as to the remaining three, choosing instead to make demands for new concessions not within the four corners of the Settlement Procedures Order, for reasons beyond the purpose and intent of the

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[1] Official Unsecured Creditors' Committee.

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

[3] Order on Motion Regarding Settlement Procedures dated May 7, 2013, docket no. 124.

[4] The OCC also requested that approval of the OCC's disclosure statement be tracked with that of the TPL Plan and that confirmation of both run parallel; the Court granted that request at a December 18, 2013 hearing.

procedures established in the Settlement Procedures Order, that could not in any event be performed without violating other court orders and causing the cessation of TPL's operations.

3. The OCC disregarded its obligations under the Settlement Procedures Order because it elected (a) within 48 hours of receiving notification of three settlements from TPL conduct a call or meeting with TPL, (b) immediately following such meeting to communicate to TPL whether it opposed the settlement in a statement of position, and (c) to explain in its statement of position why the settlements proposed were "not in the best interest of the bankruptcy estate, or why Settlement Committee believes a better settlement[s] could be obtained." As a result, all three settlements were deemed approved under the terms of the Settlement Procedures Order and promptly documented and paid. Since the facts are undisputed, this Court will be in a position at the January 23, 2014 hearing to determine which party followed the requirements of the Settlement Procedures Order and which did not.

4. The OCC has not otherwise met its high evidentiary burden to establish cause for the appointment of a trustee or established by clear and convincing evidence that appointment of a trustee is in the best interests of the estate under Bankruptcy Code section 1104(a)(2). TPL believes the appointment of a trustee will significantly negatively impact its Portfolios and the revenue to be earned therefrom and should not occur at this time.

II. ARGUMENT

A. Appointment of a Trustee Is An Extraordinary Remedy, and The OCC's Unsupported and Erroneous Allegations Do Not Fulfill Its Burden of Proof as to Cause.

5. "The appointment of a trustee in a chapter 11 case is an extraordinary remedy. The drafters of the Code recognized that, as a general rule, in the absence of fraud, dishonesty, incompetence, gross mismanagement, or similar grounds, the debtor's management should be

given an opportunity to propose a plan of reorganization for the debtor. For this reason there is a strong presumption that the debtor should be permitted to remain in possession absent a showing of the need for appointment of a trustee . . . ." 7 Collier on Bankruptcy Par. 1104.02[3][b][i] (Alan N. Resnick and Henry J. Sommer eds., 16th ed.) at 1104-9. As the OCC seemingly acknowledges (Motion, 11:8-10), "'[t]he party moving for appointment of a trustee ... must prove the need for a trustee ... **by clear and convincing evidence.'** *See Sharon Steel,* 871 F.2d at 1226. 'It is settled that appointment of a trustee should be the exception, rather than the rule.' *Id.* at 1225. In the usual chapter 11 proceeding, the debtor remains in possession throughout reorganization because 'current management is generally best suited to orchestrate the process of rehabilitation for the benefit of creditors and other interests of the estate.' *In re V. Savino Oil & Heating Co.,* 99 B.R. 518, 524 (Bankr.E.D.N.Y.1989). Thus the basis for **the strong presumption against appointing an outside trustee** is that there is often no need for one: 'The debtor-in-possession is a fiduciary of the creditors and, as a result, has an obligation to refrain from acting in a manner which could damage the estate, or hinder a successful reorganization.' *Petit v. New England Mort. Serves.,* 182 B.R. 64, 69 (D.Me.1995). **The strong presumption** also finds its basis in the debtor-in-possession's usual familiarity with the business it had already been managing at the time of the **bankruptcy** filing, often making it the best party to conduct operations during the reorganization. *See Sharon Steel,* 871 F.2d at 1226. " *In re G-I Holdings, Inc.*, 385 F. 3d 313, 319 (3rd Cir, 2004)(emphasis in the original), *quoting In re Marvel Entertainment Group, Inc.*, 140 F.3d 463, 471 (3rd Cir. 1998).

6 . "A trustee unfamiliar with the business and its creditors will usually suffer delay and expense learning facts and circumstances that the trustee needs to know in order to facilitate the debtor's reorganization. Nevertheless, the House Report recognized that in some cases fraud,

gross mismanagement, or other circumstances might be present under which the benefit of a trustee would outweigh the detriment. In view of this expressed purpose, it would seem that a court considering a motion to appoint a trustee should generally balance the benefit to be gained by such an appointment against the detriment to the reorganization effort and the rights of the debtor that may result from such an appointment. 7 Collier on Bankruptcy Par. 1104.02[3][a] at 1104-8.

7 . As set forth below, the OCC has failed to meet its high evidentiary burden to show either cause for relief or that appointment of a trustee is, on the eve of voting on plans of reorganization, in the best interests of creditors. Significantly, the OCC has failed to explain what precisely a trustee would do, other than replacing management, and what he or she could hope to accomplish in the few remaining weeks before creditors are solicited simultaneously with two plans voting occurs and what it would cost in terms of fees and lost settlement opportunities. The OCC's plan, if it is confirmed, will result in the replacement of management, the very remedy sought in the Motion – and likely other employees who the OCC asserts are overpaid, unnecessary, or both. Prospective licensees have already shown their propensity to "wait and see" what happens in this case which has made it difficult to generate revenue; the appointment of a trustee will likely cause the prospective licensee community to chill even further which may limit or preclude the ability of TPL or the OCC to proceed with any plan. Given the procedural status of this case, no trustee should be appointed to replace current management when two competing plans, one from the OCC replacing management, and the other from TPL retaining management, are about to be set by this Court for coordinated solicitation, voting, and confirmation. *See e.g. In re Sundale Ltd.*, 400 B.R. 890, 909 ((Bankr. S.D. Fla. 2009)(where the case is moving forward, plan is on file, and debtors' ability to

reorganize will be tested through the confirmation process within next three months, lack of confidence in management was found not to merit appointment of trustee.)

B. TPL Has Complied Strictly With The Terms Of The Settlement Procedures Order, And No Cause For Appointment of A Trustee Exists.

8. TPL initially responded on December 17, 2013 to the allegations in the Motion that it had violated the Settlement Procedures Order with its Statement of Position.[5] TPL incorporates that Statement of Position, the accompanying declaration of Heinz Binder, and the exhibits to that declaration filed under seal by this reference as if set forth herein in full.

9. The OCC has noted correctly that the Settlement Procedures Order was the product of a contested motion and was only entered after a hearing. What the OCC fails to recount is that the approval procedure agreed to by the OCC and TPL is streamlined because negotiating settlements with litigation defendants under these facts is incredibly time sensitive and must be capitalized upon in real-time. TPL explained this point in its April 22, 2013 Reply to Objection to Motion Regarding Settlement Procedures ("Reply"):

> **" Negotiating the settlement of a Patent Action is complex, is usually done in person, and requires the immediate authority to enter into an agreement.**
>
> > 'The only significant unknown element in the Allowed Resolutions is the amount that would be paid by the defendants. That amount cannot be known until it is actually negotiated; this, in turn, cannot practically occur without the authority to do so. *Negotiations to settle TPL's patent cases are done in person. TPL and its licensing-services vendor, Alliacense, require that prospective licensees come to the table with the authority to settle, and that expectation is mutual.*'"

Reply, 6:18-25 (emphasis added).

10. Paragraph 3 of the Settlement Procedures Order therefore sets forth the accelerated 48-hour presentation and consideration procedure which TPL and the OCC

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[5] TPL's Statement Of Position Regarding Application And Interpretation Of Court Order

negotiated so that settlements with defendants could be presented and considered within a specific and limited timeframe:

> "When TPL wishes to settle litigation by way of the issuance of a license or otherwise, it will send a notice to the settlement Committee and the committee counsel identifying the adverse party and the terms of the proposed settlement. Counsel for the committee and for TPL will then schedule a conference call to consider the proposed settlement at a mutually-convenient time (but in no event later than 48 hours from the date and time of the notice) among the Settlement Committee, committee counsel, TPL's bankruptcy counsel, TPL's special litigation counsel and the licensing director for Alliacense Limited LLC."

11. Pursuant to paragraph 3 of the Settlement Procedures Order, on November 18, 2013, TPL provided electronic notice to the OCC with the terms of its proposed settlement with one defendant from the Patent Cases in accordance with the procedures above,[6] consistent with the practice employed for the six settlements presented to the Committee prior to that date. The OCC even acknowledges that TPL "requested a call with the Settlement Subcommittee to discuss approval of a new settlement." Motion, 3:24-26. On November 19, 2013, TPL reiterated its request for a call on the first proposed settlement and announced its desire to discuss a second settlement.[7] On November 20, 2013, TPL provided electronic notice to the OCC with the terms of the second proposed settlement and requested a call to discuss it.[8] On November 26, 2013, TPL provided the OCC with electronic notice of a third proposed settlement and requested a call to discuss it.[9]

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[6] See Exhibit "C" to Declaration of Heinz Binder in support of Statement of Position.
[7] See Exhibit "D" to Declaration of Heinz Binder in support of Statement of Position
[8] See Exhibit "F" to Declaration of Heinz Binder in support of Statement of Position
[9] See Exhibit "I" to Declaration of Heinz Binder in support of Statement of Position

12. The OCC failed to schedule, within 48 hours of each notification to it of any of the three settlements, or at any later time, " . . . a conference call to consider the proposed settlement . . . among the Settlement Committee, committee counsel, TPL's bankruptcy counsel, TPL's special litigation counsel and the licensing director for Alliacense Limited LLC." Following each of the three electronic notifications of settlement described in the preceding paragraph, the OCC's only response was to respond in an email that "[t]he 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." Motion, 3:25-4:5.

13. Paragraph 5 of the Settlement Procedures Order specifies the actions the OCC shall (not may) take after receiving a settlement proposal from TPL and how long it has to respond.

> "Immediately following a presentation described in Paragraph 3 or 4 above [the one the OCC is required to schedule within 48 hours of receipt of a notice of settlement], the Settlement Committee shall convene to discuss the proposed settlement and decide if it does or does not support it. Immediately thereafter, committee counsel shall notify TPL's bankruptcy counsel in writing of the Settlement Committee's position regarding the proposal."

Settlement Procedures Order, Par. 5.

14. Paragraph 7 of the Settlement Procedures Order then specifies what an objection of the OCC to a proposed settlement, if any, must contain:

> "If the Settlement Committee objects to TPL's proposed settlement, committee counsel will communicate such decision in writing to TPL's bankruptcy counsel setting out the basis for that opposition, including the reason the Settlement Committee claims the proposed settlement is not in the best interest of the bankruptcy estate, or why Settlement Committee believes a better settlement could be obtained."

Settlement Procedures Order, Par. 7.

15. Paragraph 9 of the Settlement Procedures Order provides for deemed approval of settlements should the OCC fail to perform its duties under paragraphs 3, 5, and 7:

> "If TPL provides the notice described in paragraph 3, and 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 [in other words, following the "presentation" or conference call required in paragraph 3], then it is deemed that the creditors committee has not objected to the proposed settlement, and TPL may enter into it as described in paragraph 6."

16. It is undisputed that the OCC did not agree to a time for a conference within 48 hours (as required by paragraph 3) or attend an agreed-on conference (as required by paragraph 5). The OCC flatly refused to meet with TPL at all to consider any of the proposed settlements, all of which were several years in the making, extraordinarily time sensitive, and substantially beneficial to the Portfolio being licensed owing to the size and position of the licensees in the market.

17. The OCC asserts that its blanket refusals to consider settlements (Motion, 3:25-4:5) constituted written responses sufficient to comply with paragraph 9 of the Settlement Procedures Order. The OCC is wrong for two reasons.

a. First, the prerequisite for a qualifying statement of position under paragraph 5 is a *meeting or conference call* between the OCC and the specific list of parties necessary to present a settlement that the OCC could then evaluate. ("Immediately following a presentation described in Paragraph 3 or 4 above, the Settlement Committee shall convene to discuss the proposed settlement and decide if it does or does not support it. Immediately

thereafter, committee counsel shall notify TPL's bankruptcy counsel in writing of the Settlement Committee's position." Settlement Procedures Order, Par. 5.).

b. Second, the text of the OCC's blanket refusals to consider settlements is deficient and cannot constitute qualifying responses. Paragraph 7 of the Settlement Procedures Order requires that the OCC, if it objects, set out in the objection " . . . the basis for that opposition, including the reason the Settlement Committee claims the proposed settlement is not in the best interest of the bankruptcy estate, or why Settlement Committee believes a better settlement could be obtained." The purpose of this in the Order is to ensure TPL has sufficient information to then address the OCC's concerns by either supplying the OCC with more information or restructuring the settlement. The OCC's demand for an economic concession and for the set aside of funds in derogation of the rights of secured parties, contingency counsel, and in a manner not permitted by the agreed cash collateral orders in place, in no way addressed why any of the three proposed settlements themselves (as opposed to direction or re-direction of proceeds paid after consummation) were not in the best interest of the estate, much less why better settlements could be obtained. In fact, TPL believes the settlements were in the best interests of the estate and that no better settlements could be obtained.

18. The OCC consciously elected to disregard the Settlement Procedure Order for improper purposes. The OCC freely admits in the Motion why it did so, and the timing of that admission is as damning as its substance. The OCC advised TPL on November 13, 2013, that " . . . without significant progress in the negotiations regarding the plan, you should not expect approval of further proposed licensing transactions/settlements." Motion, 3:17-23. This was transmitted at a time that the B.D.R.P. process ordered by this Court to generate a consensual plan had not yet concluded. It was not until November 18, 2013, that the OCC advised Judge

Montali that a further session would "not be productive" and unilaterally terminated the B.D.R.P.process.

19. The fact that the OCC began sending emails, after it had disregarded its obligations under the Settlement Procedures Order, is not relevant to the question of whether cause for relief exists under Bankruptcy Code section 1104(a)(1). The issue is whether TPL complied with the Settlement Procedures Order. The OCC's communications subsequent to the deemed approval of three settlements suggest only that the OCC belatedly reviewed the terms of the Settlement Procedures Order and realized the consequences of its failed effort to block all further settlements and defund the estate.

20. As set forth in paragraph 7 above, TPL consistently followed the specific requirements of the Settlement Procedures Order from the date of its entry. The first six settlements TPL proposed to the OCC were proposed in the same format, with the same information provided, and the OCC scheduled calls promptly. TPL notified the OCC of each of the last three settlements it negotiated in the same manner, and asked that the OCC schedule meetings with TPL to evaluate them; there have been no other settlements. TPL will continue to follow the requirements of the Settlement Procedures Order and present all settlements to the OCC whenever they are negotiated.

21. TPL is including with this Opposition Brief a declaration from its Chief Financial Officer, Dwayne Hannah. Mr. Hannah details the uses of funds received from the last three settlements and $4,000,000 received. All amounts paid were within the allowed amounts for categories of expenses approved by this Court pursuant to TPL's Second Motion to Approve Use of Cash Collateral (FRBP 4001(b)). It is noteworthy that the OCC's allegations as to "wasteful dissipation of assets" (Motion, 5:16-7:10) describe expenditures in budget categories and

amounts to which the secured creditors of this case have stipulated and, with two exceptions (the first and last cash collateral hearings) to which the OCC has agreed as well.

22. It is also noteworthy that the demand made by the Committee to set aside 20% of the gross amounts of the licenses for unsecured creditors was mathematically impossible in light of TPL's other obligations under to contingency payment agreements with (i) litigation counsel, (ii) the Fast Logic Portfolio partner, and (iii) Alliacense (which negotiated all three settlements and whose work made them possible), as well as the required adequate protection payments to TPL's secured creditors, and the carve out payments to professionals demanded by the OCC if TPL was to pay expenses and any kind of payroll. TPL repeatedly informed the OCC subcommittee that the 20% gross formula was infeasible; the explanation was apparently ignored.

23. TPL respectfully submits that the Court should deny the Motion to the extent that its seeks relief based upon allegations made regarding the Settlement Procedures Order, decline to issue an order to show cause re: contempt, find that the settlements proposed to the OCC have been disclosed as required in the Settlement Procedures Order, and decline to issue an injunction directing sequestration of the proceeds of current or future settlements.

C. The Other Facts Alleged by The OCC Are Not Sufficient as Cause for Relief under Bankruptcy Code Section 1104(a)(1)

24. In the conclusion of the Motion, the OCC alleges that TPL and Daniel E. Leckrone have " . . . breached their fiduciary obligations to the estate . . . ." Motion, 11:20. The Motion contains four categories of allegations that the OCC is apparently pressing as cause for appointment of a trustee to support the point. Each are addressed in turn below.

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1. Case Expenditures to Date

25. The OCC categorizes TPL's court-approved expenditures for employee salary and vendor payments to Alliacense[10], all authorized for payment without objection from the OCC to cash collateral authority requested (at least until the December 4, 2013 final hearing), as "outlandish" (Motion, 5:10) and a "wasteful dissipation of assets" (Motion, 5:16). The OCC however offers no explanation of why the salaries paid to TPL insiders are "outlandish[11]," and supplies no evidence to support its position. The OCC must be aware that its chairman, Chet Brown, litigated this very issue in the *Brown v. TPL* trial in the Santa Clara Superior Court (case number 1-09-CV-159452). Judge Huber's finding, which the OCC now apparently seeks to re-litigate, is instructive:

> "It is also clear that there is no evidence to suggest that [Dan Leckrone's children] did not perform adequately in their respective positions with the company…..While Brown implies that the family members were well paid, there is no evidence to suggest their remuneration was disproportionate to job performance or that their compensation exceeded that of others similarly situated in the industry."

Statement of Decision, 3:21-26.

26. In the event that this Court does wish to revisit Judge Huber's ruling and take further evidence on the reasonableness of salaries paid to TPL management or insiders, TPL has retained the services of Mr. Greg Goodere for testimony. Mr. Goodere, an expert in the field of human resources and salary levels in this field and geographic location and has assisted TPL in the past in setting compensation, has conducted an analysis of the qualifications of and compensation to TPL's employees and management and is able to testify thereto.

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[10] TPL will address all issues related to Alliacense at once when responding to claims of a conflict of interest.

[11] The OCC also overstates the combined salaries of three top members of management as $630,000 rather than their actual total of $580,000.

27. The allegations made in the Motion (5:12-7:10) as to the duties of and compensation to employee Janet Neal is rife with inaccuracies and mischaracterization of prior testimony. For example, the allegation that "TPL paid Ms. Neal far more than the compensation listed in her written consulting agreement…." (Motion, 6:8-10) is entirely unsupported. The only thing that the OCC did cite is Exhibit "C" to the Kim declaration - a copy of Ms. Neal's consulting agreement - which provides no support for the statement that she was paid "far more" than in her agreement.. The OCC's reference to Exhibit "A" of Ms Kim's declaration is unavailing as well as an attempt to support their statements, inappropriately suggested as fact, that TPL loaned money for Ms. Neal to purchase her home. The Exhibit contains nothing but unequivocal testimony by Dwayne Hannah that TPL did not provide any funds for Ms. Neal's home. [1198:16-28.] No money was ever loaned by TPL to Ms. Neal for her home. The statement made by the OCC that they do not know what Ms. Neal does is supported only by a declaration from the OCC's attorney, Mr. Murray, who has never met nor worked with Ms. Neal. TPL is prepared to refute the OCC's remaining attacks on its employment of Ms. Neal, point-by-point, at an evidentiary hearing on the Motion.

2. Alleged Conflicts Of Interest

28. The OCC includes section IV of its brief allegations regarding Mr. Leckrone's relationship with Alliacense, conjecture regarding pre-petition advances and offset thereof, Mr. Leckrone's role on the board of PDS, and insider salaries. None create a conflict of interest that merits the removal of TPL's management.

a. Allegations Regarding Alliacense

29. The OCC alleges that Alliacense was, prior to 2007, part of a "TPL Group." Motion, 12:13-14, but does not articulate any significance to this characterization, and further

misstates Alliacense's corporate history. Alliacense was formed as a Nevada corporation on January 4, 2005, and it operated under that name until it was merged into an existing Delaware LLC (named Alliacenes LLC) on December 31, 2008, which was then renamed Alliacense Limited LLC. The "TPL Group" referenced by the OCC was a marketing denomination for services rendered by separate entities and does not describe a legal relationship. Alliacense has always been maintained and operated as a free standing entity to provide essential Licensing Program services to TPL.

30. The OCC's central argument as to conflict of interest is that both TPL and Alliacense are " . . . owned and managed by Mr. Leckrone as its sole shareholder and sole member," (Motion, 7:15-17), in a manner that resulted in "self dealing" (Motion, 8:16). The authority cited for the claim of not only ownership but control is to a motion filed by TPL dated April 15, 2013. TPL believes that no conflict exists between Mr. Leckrone's in his role as responsible individual for TPL and his ownership of Alliacense for the reasons set forth in TPL's Response to Objection[12]:

> . . . Until June 2013, Dan Leckrone was the sole owner and manager of Alliacense and Mac Leckrone, his son, was the President. In June 2013, Mr. Leckrone resigned as manager of the company and has not participated in the management of Alliacense since that time. Corporate formalities are strictly observed. TPL does not believe there is a conflict for Mr. Leckrone because (1) he no longer is the manager of the company; (2) even prior to his formal resignation, Mac Leckrone handled the day-to-day operations of the company as President and (3) TPL is confident that it is being charged at or below market rates for the services provided. TPL does not believe any conflict arises due to the common ownership between the companies, and the Committee has not identified an actual conflict to which TPL can respond.

Response to Objection, 11:3-11.

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[12] Response By Debtor To Objection Of Official Committee Of Unsecured Creditors To Debtor's Disclosure Statement Re: TPL Plan Of Reorganization (December 9, 2013)(the "TPL Response to Objection").

31. The OCC alleges that pre-petition payments to Alliacense occurred under an earlier version of the Services Agreement that had not been reduced to writing and later, when it was, had not been signed. Motion, 7:17-19. California Civil Code section 1622 provides that a contract need not be in writing to be enforceable: "[a]ll contracts may be oral, except such as are specially required by statute to be in writing." *See also,* CACI 304 Oral or Written Contract Terms [Contracts may be written or oral. Oral contracts are just as valid as written contracts;]; Cal. Jury Inst. 10.57 [A contract may be oral, written, or partly oral and partly written. An oral, or a partly oral and partly written contract, is as valid and enforceable as a written contract.]

32. TPL's Disclosure Statement discusses in substantial detail the history of TPL's relationship with Alliacense as well as the history of the agreements. Counter to the misstatements in the OCC's Motion that there was not a written agreement, there has been a written agreement between the parties since 2007 and Mr. Hannah unequivocally testified to this in the *Brown v. TPL* case; in fact, the testimony is found in Exhibit A to Ms. Kim's declaration at page 1158, lines 21-28. The 2007 Services Agreement was also provided to the OCC by TPL on April 30, 2013.

33. The OCC theorizes, without any evidentiary support, that that amounts paid by TPL to Alliacense were " . . . 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." Motion, 7:20-23. In fact, Alliacense is paid for services it renders to TPL, which are essential to the successful commercialization of its Portfolios. In fact, TPL has not been responsible for licensing the MMP Portfolio since July 2012. The issues the OCC has with the licensing of the MMP Portfolio, which TPL disputes virtually in their entirety, are at any rate not currently relevant to the issue of the appointment of a trustee since TPL has not been responsible for

licensing MMP since July 2012. The OCC fails to suggest how a trustee would have any impact with respect to licensing the MMP Portfolio given that TPL does not manage the MMP Portfolio licensing effort. Since TPL's Plan calls for the OCC to appoint a representative to the PDS management committee to take over any remaining involvement TPL has in the MMP Portfolio, even the prospective effect of appointing a trustee to address this concern is negligible.

34. OCC Chairman Brown's efforts in litigation yielded a critical finding in December, 2012, with regard to the relationship between Alliacense and TPL and the value of Alliacense's services. Judge Huber stated in his Statement of Decision, that "[i]n the case of Alliacense, a contract existed which paid that company 15 percent of licensing recovers [sic] as a service fee. No evidence has been introduced to suggest that Alliacense did not provide appropriate services for the amount of income they received. To the extent that money was provided to Alliacense over and above the 15 percent, to keep them in operation, those monies were treated as either a distribution to Leckrone or an intercompany transfer; if the latter Alliacense owes that amount to TPL. [¶] The evidence demonstrates that the work performed by Alliance was necessary to the well-being of TPL. The Court has seen no evidence of excessive expense or that Alliacense did anything improper with the funding it received under its contract or loans for additional operating expenses received from TPL." Statement of Decision, 4:23-5:5.

35. The OCC inaccurately asserts that TPL made a $15 million "loan" to Alliacense; TPL's Disclosure Statement and that testimony of Mr. Hannah. Motion, 7:25-26. The statements in the Motion mischaracterize Mr. Hannah's testimony as review of the transcript pages cited by the OCC will show. As TPL explained in its Disclosure Statement[13] " . . . the advances made by TPL to Alliacense from 2006 to 2012 totaled approximately $15 million; in

[13] Disclosure Statement Re: TPL Plan Of Reorganization (December 23, 2013)

addition, the hourly time and expense calculation for the Alliacense Litigation Support services and Prosecution and Maintenance services totaled $16.3 million for that period." Disclosure Statement, 72:10-13. Moreover, the $15 million was not forgiven (Motion, 8:11), as the OCC incorrectly alleges, it was offset as a negotiated term of the Amended Services Agreement in March, 2012, a fact which TPL has openly disclosed from the outset of this case. It is worth noting that Alliacense would, had the offset not occurred, retained offset and recoupment rights of its own; under such circumstances, and the collectability of $15 million from Alliacense would have been a doubtful proposition at best. In any event, both the OCC and TPL plans preserve the right to pursue Alliacense for any avoidance claims that may exist for pursuit by a CreditorTrust Trustee in the case of the TPL Plan and the OCC under its own proposal. In either case, the obligation to investigate and, if necessary, prosecute claims against Alliacense has been preserved, and two-year statute of limitations is nowhere near running. TPL has therefore fulfilled its fiduciary obligations with respect to claims against Alliacense.

b. Claims Regarding Leckrone Role On PDS Board

36. The OCC references Mr. Leckrone's disagreement with the other PDS board members on appointment of a third member of the board, though it does not explain exactly how alleged conflicts as board member of that non-debtor entity that has resulted in an inability to make decisions (Motion, 8:28-9:3) automatically translate to a conflict in this bankruptcy case. There is merely an unspecified allegation that Mr. Leckrone "places Alliacense's interests ahead of PDS's or TPL's interests in communications with PDS." The facts are worth reviewing as they show that any discontinuity of decision-making results not from inaction by Mr. Leckrone but the PDS Board's inexplicable refusal to implement the contractual remedy available to it to fill the third board seat.

37. The vacancy arose under the following circumstances: during the course of rancorous litigation initiated by PTSC Directors Felcyn and Johnson against TPL in April of 2010, the five-year term of the Independent Member of the PDS Management Committee Robert Neilson expired, and PTSC's Directors (not TPL) refused to reengage his services on the financial basis he was proposing. The Independent Member position has remained vacant ever since with no effort by PTSC Directors to exercise their right under Article 4 of the PDS Operating Agreement to cause the appointment of an Independent Member by employing an Arbitrator to make the selection.

38. PTSC's apparent motivation in seeking appointment of a third board member was disclosed in its 2013 10Q Statement, which TPL discussed in its Response to Objection:

> Third, the reason that TPL proposed in the Plan that the seat would revert to Mr. Leckrone in the event of a capital call is compelling: PTSC has an unwaivable conflict of interest with respect to PDS, and should the OCC be incapable of or unwilling to protect the MMP Proceeds directed to the Creditor Trust by voting against capital calls for the benefit of *all* creditors in the estate, including those not in Class 6A, Mr. Leckrone is duty-bound to step in to ensure this key asset of the estate is maintained and protected. Were a capital call made that TPL could not meet, which might well be the case since its free cash is devoted under the Plan to pay creditors, TPL would lose its controlling interest in the MMP Portfolio. PDS has stated this to be the case in its October 15, 2013 10Q Statement filed with the Securities and Exchange Commission:
>
> > On March 20, 2013, TPL filed a petition under Chapter 11 of the United States Bankruptcy Code. We have been appointed to the creditors' committee and will be closely monitoring the progress in this matter as it relates to our interest in PDS. ***If we provide funding to PDS that is not reciprocated by TPL, our ownership percentage in PDS will increase and we will have a controlling financial interest in PDS, in which case, we will consolidate PDS in our consolidated financial statements***. If we determine that it is appropriate to consolidate PDS, we would measure the assets, liabilities and noncontrolling interests of PDS at their fair values at the date that we have the controlling financial interest (emphasis added).

TPL Response to Objection, 8:23-9:12.

39. PTSC has the contractual right to seek appointment of a third board member but has elected not to act. Mr. Leckrone's refusal to agree to appoint a board member of PTSC's choosing and support PTSC's desire to take control over the MMP Portfolio to the detriment of this estate cannot be considered a conflict in this bankruptcy case, much less cause for appointment of a trustee.

c. Insider Salaries

40. Finally, the OCC asserts that the payment of "unconscionable" salaries to insiders is a conflict of interest in light of asserted post-petition losses in excess of $2 million. As was argued above, TPL contends that it does not pay management or other employees either "outlandish" or "unconscionable" salaries, and no evidence has been submitted to prove otherwise.

41. The OCC offers no authority that a debtor develops a "conflict" when it pays salaries and operating expenses during a period when post-filing operations are not profitable in any particular month or months. From the outset, TPL has acknowledged that its income stream is "lumpy" as it depends upon the sale of licenses and settlement with litigation defendants whose activity is often timed to court hearings, panel rulings, and trials. In addition, TPL has emphasized the negative effect on revenues the Chapter 11 case has caused. TPL's management and employees have taken the burden of the lumpy income stream upon themselves by agreeing to receive minimum wage payrolls when cash is short, extending the practice employed since long before this case was filed. Beyond that, Mr. Leckrone, Ms. Neal, and Ms. Anhalt have already agreed to a reduction of salaries by 10%.

42. As was disclosed to the Court at the last hearing, and as set forth in the accompanying Declaration of Dwayne Hannah, TPL is getting back on track with its original cash collateral projections for revenues created at the outset of this case and exceeded the projections for November/December period. Contrary to the allegations of the OCC, TPL has not lost more than $2 million from operations. The net loss is only $1.1 million and, excluding professional fees (a total of $2.2 million has been expensed through December), operations alone are profitable despite the stigma and damper to settlement caused by the bankruptcy filing.

3. Alleged Incidents Between Principal and OCC Members

43. The OCC refers in the Motion (at 9:10-18) to discussions that Mr. Leckrone had with Ms. Felcyn and Mr. Johnson that are recalled rather differently by Mr. Leckrone. Over the course of various conversations regarding PDS Management Committee operations in which PTSC Director Felcyn has actively participated, the adverse impact of the pendency of TPL's bankruptcy on the MMP Licensing Program was often discussed. Mr. Leckrone urged the importance of streamlining the process and avoiding distractions and issues which would embolden infringers, damage the MMP Licensing Program, and consume precious resources, including specifically the airing of the scores of various PTSC/TPL disputes which Director Felcyn was urging be pursued, including whatever TPL claims might exist with respect to the PDS bank transaction that may have been manipulated by PTSC Director Johnson, as well as trading irregularities by Director Felcyn with respect to PTSC stock based on inside information. The characterization thereof as "threats" to PTSC Directors Johnson and Felcyn is not correct inasmuch as the assessment of risk given was and remains factual. Nothing said between PDS Board members regarding legal risks being caused by the actions of PTSC Directors s should serve as cause for appointment of a trustee in this bankruptcy case.

4. Committee Frustration

44. While the content of settlement negotiations between the OCC and TPL are confidential, the oft-repeated assertion that it was TPL that moved the goalposts in this case is far from true. TPL could produce to the Court a table that it maintained and shared with the members of a settlement subcommittee of the OCC with the essential points necessary to achieve a consensual plan in this case. This table contained the results of months of negotiations. The evolution of this table is instructive in that it shows that it was the OCC that backtracked on agreed positions in this case, time and again. The OCC flatly contends that it has the "superior position" in this case and that TPL should accede to its will on all points, which apparently led the OCC to believe that it could not only take any position it desired but could change any point to which it had already agreed. It was this attitude and pattern that, employed by the OCC throughout the B.D.R.P. process, resulted in an inability to settle and led the parties to have competing plans about to go out to vote.

45. TPL objects to the characterization that it has prosecuted this Chapter 11 case for the past 10 months to allow insiders to "pillage" the estate (Motion, 9:26-27). TPL prepared cash collateral budgets to which the OCC consented (with the exception of the December 4th final hearing). TPL was prepared to file a plan in July, 2013, and delayed doing so at the request of the OCC in the hope that a joint plan could be negotiated, so it can hardly be said to be the author of delay. TPL has paid its management and employees their contractual salaries, without any incentive compensation. TPL has paid Alliacense only the amounts to which its continued services under the Amended Services Agreement entitle it and Bankruptcy Code section 365 require it be paid.

46. The OCC apparently believes that operating post-petition for 10 months without setting aside the 20% of gross proceeds it demanded is "outrageous" and justifies the appointment of a trustee. No case authority was offered to support this assertion, of course. The simple truth is that the demand simply could not be met as it would have left no funds whatsoever to pay the salary of even one employee at TPL. As Mr. Hannah explains in his accompanying declaration, the demand by the OCC, representative of the general unsecured creditors in this case, for 20% of gross proceeds of every settlement, disregards (1) the fact that the proceeds are the cash collateral of two secured creditors and, (2) the rights of contingency counsel to their fees and costs before any funds are paid to TPL. When the 20% of gross demanded is subtracted from the $4 million in settlement proceeds which the OCC disregarded per the Settlement Procedures, and adequate protection and contingency fees and costs are then calculated and subtracted from the remaining proceeds, TPL is left with an inability to pay its own employees and expenses and the authorized payments. With operational costs authorized at roughly $300,000 per month (including patent prosecution and maintenance), TPL could have been left with no choice but to cease operating and, in so doing, greatly decrease the value of its Portfolios other than MMP.

D. Appointment Of A Trustee Is Not In The Best Interests Of The Estate Under Bankruptcy Code Section 1104(a)(2).

47. The OCC quoted but did not argue for (or cite a case regarding) appointment of a trustee under Bankruptcy Code section 1104(a)(2). TPL's research reveals the factors a court should evaluate when considering appointment of a trustee under section 1104(a)(2): \

> Section 1104(a)(2), contrary to subsection (a)(1) where appointment of a trustee is mandatory upon specific finding of cause, "envisions a flexible standard .... giv[ing] discretion to appoint a trustee 'when to do so would serve the parties' and estate's interests.' " *Marvel Entm't Grp., Inc.*, 140 F.3d 463, 474 (3d Cir. 1989)

> (citation omitted); *1031 Tax Group*, 374 B.R. at 91 (stating that "§ 1104(a)(2) reflects 'the practical reality that a trustee is needed.' " (quoting *In re V. Savino Oil & Heating Co.*, 99 B.R. 518, 527 n.11 (Bankr.E.D.N.Y. 1989))). Under § 1104(a)(2), the court utilizes a cost/benefit analysis and general principles of equity to determine whether appointment of trustee is in the best interests of the estate and all the constituents involved. 11 U.S.C. § 1104(a)(2); *see* 7 *Collier on Bankruptcy* ¶ 1104.02[3][d][ii] (summarizing the cost/benefit analysis under § 1104(a)(2)). In balancing these anticipated benefits and accompanying costs, the following factors are given consideration: "(1) the trustworthiness of the debtor; (2) the debtor's past and present performance and prospects for rehabilitation; (3) whether the business community and creditors of the estate have confidence in the debtor; and (4) whether the benefits outweigh the costs." *LHC*, 2013 WL 3760109, at *9 (citation omitted); *see Sundale*, 400 B.R. at 909 ("Loss of confidence, or extreme acrimony[ ] ... constitute elements relevant to the decision of whether it is in the best interests of creditors and others under section 1104(a)(2) to appoint a trustee." (citations omitted)).

In re Bergeron, __ WL __, 2013 WL 5874571 at *9 (Bkrtcy.E.D.N.C., 2013).

48. TPL suggests that the Court apply the factors as follows: first, inasmuch as TPL has not violated the Settlement Procedures Order, and no other challenge to TPL's trustworthiness has been brought, the Court should find that factor one runs against appointing a trustee. Since TPL has operating according to both income and expense projections over the course of this case and plans are about to be solicited that will, upon confirmation, be subject to proof of feasibility under Bankruptcy Code section 1129(a)(11), this issue is better left to proof at the anticipated confirmation trial, factor two runs against appointing a trustee or is neutral. Third, TPL expects once it files this Opposition that numerous creditors and professionals will join and oppose appointment of a trustee only weeks before plans can go out to vote, so this factor is likely to run against appointing a trustee as well. Finally, it is impossible to say that the benefits of a trustee's appointment outweighs the costs; the OCC neglected to address the point, and the Court should find that factor four runs against appointing a trustee. As TPL suggested above, the damage that a trustee could do to the business and Portfolios in the weeks up to voting and confirmation more likely outweigh any potential benefit.

III. CONCLUSION

49. TPL has performed well in the case to date. It has generated settlements, paid its secured creditors and professionals as ordered by the Court, and managed to get to the point of soliciting a plan. Creditors will shortly have a choice: do they prefer what the OCC offers in its plan, including removal of TPL management, or does TPL's proposal to turn over the MMP Portfolio proceeds to the OCC to collect and manage as they fit until paid, along with a share of TPL's remaining Portfolios? Only voting will allow the Court and parties to know. Inasmuch as TPL has not violated any court orders, and the cash from all settlements is exactly where it should be, there is no reason to appoint a trustee, replace management, and disrupt TPL's business operations and risk further the estate's prospects for 2014 income.

Dated: January 9, 2014

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TPL/plead/SettlementProcedures/Statement of Position RE App & Interpretation of Court Order