

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION
www.flsb.uscourts.gov

IN RE:

Case No. 13-20853-PGH

Chapter 11

TLO, LLC,

Debtor.

_____ /

DEBTOR'S' MOTION TO COUNTINUE USE OF CASH COLLATERAL
OF TECHNOLOGY INVESTORS, INC.
THROUGH JANUARY 31, 2014

Pursuant to Section 363 of Title 11, United States Code (the "Bankruptcy Code"), and Rule 4001 of the Federal Rules of Bankruptcy Procedure, TLO, LLC, the Debtor and Debtor-in-Possession (the "Debtor"), moves the Court for the entry of an order authorizing the Debtor to continue to use the cash collateral on which Technology Investors, Inc. (the "Lender") holds a first priority lien for an additional three (3) months. In support of its motion, the Debtor states:

1. On May 9, 2013, a Voluntary Petition under Chapter 11 was filed by the Debtor [D.E. #1]. The Debtor has continued to operate its business and manage its property as a debtor in possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code. The Debtor is a Florida limited liability company based in Boca Raton and was formed in March, 2009 to provide risk management, due diligence and fraud prevention information and investigative technology products and solutions to public and private sector industries. The Debtor offers information products and services to many of the nation's investigators, collection agencies, attorneys, financial institutions, corporate security departments, insurance companies, governmental agencies and law enforcement agencies.

The Loan Transaction

2. On or about January 31, 2011, Lender agreed to provide funds to the Debtor for general operating purposes under a Revolving Promissory Note (the "Note") in the principal sum of One Hundred Twenty-Five Million Dollars (\$125,000,000).

3. To secure its obligations to the Lender under the Note, the Debtor and the Lender entered into a Security Agreement, dated as of January 31, 2011 pursuant to which the Debtor granted the Lender a lien on all of its assets including, among other things, accounts, chattel paper, cash proceeds, deposit accounts, documents, equipment, fixtures, general intangibles, inventory, software and the proceeds thereof (collectively, the "Collateral"). The security interest is perfected by the filing of a UCC-1 Financing Statement with the Florida Secured Transaction Registry on February 4, 2011 at document #201104019777.

4. As of the filing date, the Debtor is indebted to the Lender in the principal amount of \$81,740,000 and accrued and unpaid interest of approximately \$7,312,000 for a total of \$89,052,000, plus costs and fees due pursuant to applicable law (the "Indebtedness").

5. The Lender is a company owned by the Estate of Hank Asher. Mr. Asher was the Debtor's principal shareholder and founder until his untimely demise earlier this year.

6. The cash generated by the Debtor constitutes cash collateral within the meaning of § 363(a) of the Bankruptcy Code (the "Cash Collateral"). The Debtor requires the continued use of the Cash Collateral for the continued operation of its business in the ordinary course, including payment of expenses attendant thereto; and, the Debtor is willing to provide the Lender with adequate protection of its secured interest in the Cash Collateral. Without the use of the Cash Collateral, the Debtor will be forced to discontinue its business operations. The loan documents are available from undersigned counsel upon request.

7. In order (i) to adequately protect the Lender in connection with the Debtor's continued use of the Cash Collateral, and (ii) to provide the Lender with additional adequate protection in respect to any decrease in the value of its interests in the Collateral resulting from the stay imposed under §362 of the Bankruptcy Code or the use of the Collateral by the Debtor, the Debtor would offer as adequate protection of the Lender's lien, a first priority post-petition lien on all cash of the Debtor generated post-petition.

8. An immediate and critical need exists for the Debtor to be permitted continued access the Cash Collateral to continue to operate. Through this motion, the Debtor seeks an Order of this Court authorizing the Debtor's continued use cash collateral pursuant to 11 U.S.C. §§ 105 and 363, Federal Rules of Bankruptcy Procedure 4001(b)(2) and Local Rule 4001-3, since any cash collateral generated by the Debtor constitutes the cash collateral of the Lender.

9. Therefore, the Debtor seeks a hearing in accordance with Rule 4001(b)(2) of the Federal Rules of Bankruptcy Procedures (the "Bankruptcy Rules"). At the hearing, the Debtor will seek entry of an Order in order to preserve the value of its assets so as to avoid immediate and irreparable harm to the estate, subject to and within the limits imposed by the Budget attached hereto.

10. Debtor admits (which admission shall not be binding upon any creditor or stockholder of the Debtor or any Committee or other party in interest in this case) that it is truly and justly indebted to the Technology Investors, Inc. under the Pre-Petition Indebtedness, without defense, counterclaim or offset of any kind, and that as of the Petition Date, such liability to Technology Investors, Inc. was, including interest, fees and charges, in the aggregate amount of not less than \$88,000,000.00. The provisions of this paragraph constitute a stipulation by Debtor and shall become a finding by the Court (but

shall not be binding upon any creditor or stockholder of the Debtor or any Committee or other party in interest in this case).

11. Debtor further admits (which admission shall not be binding upon any creditor or stockholder of the Debtor or any Committee or other party in interest in this case) that the Pre-Petition Indebtedness is secured by valid, properly perfected, enforceable and non-avoidable liens and security interests granted by Debtor to the Technology Investors, Inc. upon and in all of the Pre-Petition Collateral, and (ii) the liens held by Technology Investors, Inc. securing the Pre-Petition Indebtedness are senior to any other security interests in the Pre-Petition Collateral. The provisions of this paragraph constitute a stipulation by the Debtor and shall become a finding of the Court (but shall not be binding upon any creditor or stockholder of the Debtor or any Committee or other party in interest in this case).

12. The Debtor filed an Emergency Motion to Use Cash Collateral [DE#14] and the Court, after hearing, entered an Order Granting the Debtor's Motion to Use Cash Collateral [DE#59] (the "Order"). The Order authorized the Debtor to continue to use Technology Investors' cash collateral and provide adequate protection through and including **July 31, 2013** pursuant to the terms and conditions of the Order and the Budget attached thereto. The Debtor filed a Motion to Continue Use of Cash Collateral Through October 31, 2013 [DE#148] and the Court, after hearing, entered an Order granting the continued use of cash collateral through **October 31, 2013** [DE#207].

13. Accordingly, it is appropriate for the Court to enter an order authorizing the continued use of Cash Collateral for an additional **three (3) months, through January 31, 2014**, by the Debtor in accordance with the terms of the attached Budget.

14. The terms of the proposed continued use of the Cash Collateral and adequate protection arrangements are fair and reasonable under the circumstances and reflect the Debtor's exercise of prudent business judgment.

15. The Debtor believes that the relief sought in this Motion is in the best interest of the Debtor, the estate and creditors and that the entry of a final Order will allow for the continued operation of the Debtor's existing business for the purposes set forth above.

16. Any Order on this Motion shall be binding on a subsequently appointed Chapter 11 or Chapter 7 Trustee in Bankruptcy.

WHEREFORE, the Debtor respectfully requests an order authorizing the continued use of the Cash Collateral through January 31, 2014 as set forth in the order in the form attached hereto and granting such other relief as this Court deems just and proper.

RESPECTFULLY SUBMITTED this 18th day of October, 2013.

FURR AND COHEN, P.A.
Attorneys for Debtor
2255 Glades Road, Suite 337W
Boca Raton, FL 33431
(561) 395-0500/(561)338-7532-fax

By /s/Alvin S. Goldstein
ALVIN S. GOLDSTEIN
Florida Bar No. 993621
agoldstein@furrcohen.com

TLO, LLC
Cash Collateral Budget
November 2013 - January 2014

	Nov-13	Dec-13	Jan-14
Beginning Cash Balance¹	\$ 19,223	\$ (1,790,015)	\$ (2,744,430)
Projected Revenue	2,419,656	2,419,656	2,564,835
Projected Cash Receipts	2,296,377	2,236,032	2,325,473
Data Expense (COGS)²	<u>1,259,233</u>	<u>1,223,733</u>	<u>1,578,983</u>
Gross Profit	1,037,144	1,012,299	746,490
Operating Expenses			
Selling			
Payroll & Payroll Taxes ³	523,570	397,783	479,093
Advertising & Marketing	15,000	10,000	10,000
Bank Fees	18,922	19,519	19,539
Credentialing Fees	60,000	40,000	30,000
Trade Shows	5,000	5,000	5,000
Travel & Entertainment	19,519	19,539	19,539
NSF/CC reversals	2,870	2,873	2,873
Other Selling Expenses	-	-	-
Total Selling	<u>644,882</u>	<u>494,714</u>	<u>566,044</u>
General & Administrative			
Payroll & Payroll Taxes ³	750,000	515,000	515,000
Bank Fees	10,000	10,000	10,000
Benefits	115,000	115,000	120,000
Computer Expense	25,000	25,000	25,000
Communication Expenses	19,000	19,000	19,000
Co-Location	75,000	75,000	75,000
Dues and Subscriptions	500	500	500
Equipment Lease	82,000	82,000	82,000
Insurance	46,000	46,000	4,500
Office Expenses	3,000	3,000	3,000
Professional Development	500	500	500
Postage & Shipping	1,500	1,500	1,500
Professional Fees ⁴	190,000	160,000	130,000
Rent Expense	90,000	90,000	90,000
Repairs, Maintenance & Cleaning	4,000	4,000	4,000
Taxes & Licenses	65,000	500	500
Travel & Entertainment	10,000	10,000	10,000
Utilities	135,000	100,000	75,000
Other General & Administrative Expenses	5,000	5,000	5,000
Total General & Administrative	<u>1,626,500</u>	<u>1,262,000</u>	<u>1,170,500</u>
Total Operating Expenses	2,271,382	1,756,714	1,736,544

TLO, LLC
Cash Collateral Budget
November 2013 - January 2014

	Nov-13	Dec-13	Jan-14
Non Operating Expenses			13,000
US Trustee Fee Expense		150,000	150,000
Bankruptcy Professionals	150,000		
Other Expense ⁵	425,000	60,000	60,000
Total Other Expenses	575,000	210,000	223,000
Net Cash Flow	(1,809,238)	(954,415)	(1,213,053)
Ending Cash Balance	\$ (1,790,015)	\$ (2,744,430)	\$ (3,957,484)

¹ Projected Cash Balance does not include the Wells Fargo Collateral Account as those funds are not available for operations.

² Quarterly data contract payments due in January. Data Costs incurred in January will be included in subsequent cash collateral budget for payment in February if confirmation has not occurred.

³ November has three pay periods. January payroll includes quarterly sales commission.

⁴ November includes cost of corporate counsel for the preparation of the stalking horse APA. Further costs in connection with the sale are anticipated in November and will be due in December. Corporate counsel is not included in the bankruptcy professionals category.

⁵ November includes security deposit and cure amounts for the restructured lease. December and January include construction costs related to the new lease. Debtor anticipates that the lease restructuring will take place pre-confirmation.

PROPOSED

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION
www.flsb.uscourts.gov

In re:

Case No. 13-20853-PGH
Chapter 11

TLO, LLC,

Debtor.

_____ /

**ORDER GRANTING DEBTOR'S MOTION TO CONTINUE USE OF
CASH COLLATERAL OF TECHNOLOGY INVESTORS, INC.
THROUGH JANUARY 31, 2014**

THIS CAUSE came before the Court for hearing on _____, 2013, in West Palm Beach, Florida upon the Debtor's Motion To Continue Use of the Cash Collateral of Technology Investors, Inc. Through January 31, 2014 [D.E. # ____] (the "Cash Collateral Motion"). Adequate notice of the hearing was given under the circumstances. The Court having reviewed the record and having heard the argument of counsel, good cause being shown, and being otherwise fully advised in the premises, does hereby

ORDER and ADJUDGE as follows:

1. The Cash Collateral Motion and the Motion to Amend are each **GRANTED** to the extent set forth herein and subject to the terms and conditions contained herein.

2. The Debtor is hereby authorized to continue to use the Cash Collateral (as defined in the Cash Collateral Motion) of Technology Investors, Inc. (the "Lender"), as set forth herein and subject to the terms and conditions contained herein.

3. The Debtor is hereby permitted to continue to use Cash Collateral, including the cash or noncash proceeds of assets that were not Cash Collateral on the Petition Date, up to the amounts shown in the Budget attached to the Cash Collateral Motion as Exhibit "A", through and including January 31, 2014.

4. Notwithstanding anything in the Cash Collateral Motion or this Order to the contrary:

5. Wells Fargo shall continue to have a valid and perfected, non-avoidable first-priority lien on the funds in Account Number *****5093 (the "TLO Collateral Account"), which constitute Cash Collateral of Wells Fargo (the "Wells Fargo Cash Collateral") (all Cash Collateral other than the Wells Fargo Cash Collateral shall be referred to as the "Technology Cash Collateral").

6. The Debtor shall continue to be required to maintain a minimum balance of \$400,000.00 in the TLO Collateral Account to secure the Debtor's obligations in connection with: (i) the Debtor's Wells One Commercial Credit Card Agreement with a maximum balance of \$200,000.00; (ii) the automated clearing house services provided by Wells Fargo to the Debtor (the "ACH Services"); and (iii) the security agreement and other documents governing the TLO Collateral Account, including the post-petition attorneys' fees and costs incurred in connection with this bankruptcy (collectively, the "Wells Fargo Obligations"). Wells Fargo is hereby

granted a valid, perfected lien on all Cash Collateral to the extent necessary to maintain the minimum balance in the TLO Collateral Account and otherwise discharge the Wells Fargo Obligations.

7. As adequate protection for the use of the Lender's Cash Collateral and for any diminution in value of Lender's pre-petition collateral (the "Pre-petition Collateral") as described in those certain pre-petition loan documents between the Lender and the Debtor, including that certain Revolving Promissory Note, dated January 1, 2011 in the original principal amount of \$125,000,000 and that certain Security Agreement, dated January 1, 2011 executed in connection therewith (the "Prepetition Loan Documents"), the Lender is hereby granted a valid, perfected first priority, lien on all cash generated post-petition from the Pre-petition Collateral and the proceeds therefrom to the same extent, validity and priority as the liens on the Pre-petition Collateral, except: (i) cash in the TLO Collateral Account; and (ii) cash necessary to replenish the TLO Collateral Account and discharge the Wells Fargo Obligations and, further, except to the extent of post-petition financing otherwise approved by this Court (the "Adequate Protection Liens"). If, notwithstanding the provision of the Adequate Protection Liens, such Adequate Protection Liens do not provide adequate protection for the diminution of the Lender's interests in the Pre-Petition Collateral, then the Lender shall have a claim allowed under Sections 507(a)(2) and 507(b) of the Bankruptcy Code to the extent of such diminution not covered by the Adequate Protection Liens (the "Section 507(b) Claim") and such Section 507(b) Claim shall be entitled to priority over every other claim allowable under such Section 507(a)(2) except any claim by Wells Fargo in connection with the Wells Fargo Obligations. Notwithstanding the foregoing, all liens and claims of Lender, including the Adequate Protection Liens and the Section 507(b) Claim, shall be subject to (a) the payment of any unpaid fees payable pursuant to

28 U.S.C. § 1930 (including, without limitation, fees under 28 U.S.C. § 1930(a)(6)), (b) the fees due to the Clerk of the Court, and (c) the Carve Out and the Fee Escrow (each as defined below).

8. Debtor admits (which admission shall not be binding upon any creditor or stockholder of the Debtor or any committee, including the Official Committee of Unsecured Creditors (the "Committee") or other party in interest in this case) that it is truly and justly indebted to Lender for the obligations set forth in the Prepetition Loan Documents (the "Pre-Petition Indebtedness"), without defense, counterclaim or offset of any kind, and that as of the Petition Date, such liability to Lender was, including interest, fees and charges, in the aggregate amount of not less than \$89,052,000.00. The provisions of this paragraph 8 constitute a stipulation by Debtor and shall become a finding by the Court (but shall not be binding upon any creditor or stockholder of the Debtor or the Committee or other party in interest in this case).

9. Debtor further admits (which admission shall not be binding upon any creditor or stockholder of the Debtor or the Committee or other party in interest in this case) that the Pre-Petition Indebtedness is secured by valid, properly perfected, enforceable and non-avoidable liens and security interests granted by Debtor to Lender upon and in all of the Pre-Petition Collateral (with the understanding that Wells Fargo has a first-priority, perfected security interest in the TLO Collateral Account, as discussed above), and (ii) the liens held by Lender securing the Pre-Petition Indebtedness are senior to any other security interests in the Pre-Petition Collateral other than Wells Fargo's first-priority, perfected security interest in the TLO Collateral Account. The provisions of this paragraph 9 constitute a stipulation by the Debtor and shall become a finding of the Court (but shall not be binding upon any creditor or stockholder of the Debtor or the Committee or other party in interest in this case).

10. Debtor may continue to use the Cash Collateral solely to pay the expenses set forth in the Budget attached to the Cash Collateral Motion through and including January 31, 2014, so long as the aggregate of all expenses for each week do not exceed the amount in the Budget by more than ten percent (10%) for any such week on a cumulative basis (the "Variance").

11. This Order shall be binding on a subsequently appointed Chapter 11 or Chapter 7 Trustee in Bankruptcy.

12. The liens and security interest granted to Lender shall be valid and perfected post-petition, effective immediately, and without the need for execution or filing of any further documents or instruments otherwise required to be filed or be executed or filed under non-bankruptcy law. Notwithstanding the foregoing, Lender may, in its sole discretion, enter into a deposit account control agreement, file such financing statements, notices of lien or similar instruments or otherwise confirm perfection of such liens and security interests without seeking modification of the automatic stay under Section 362 of the Bankruptcy Code and all such documents shall be deemed to have been filed or recorded at the time and on the date of entry of this Order.

13. The relief granted herein is without prejudice to the rights of creditors, the Committee and other parties in interest to object to or otherwise contest the extent, amount, validity and/or priority of the liens or claims of the Lender, including to assert any claims or causes of action against the Lender.

14. On or before the fifteenth (15th) day of each month, the Debtor must provide to the Lender and the Committee (through its counsel) a report comparing its budgeted versus actual receipts and expenses for the prior calendar month, which report shall include a

breakdown comparing the budgeted versus actual revenue, profits, operating and non-operating expenses, cash flow, and any other information necessary to provide a thorough understanding of the Debtor's financial performance for the reported month.

15. On the first calendar day of each month (assuming the Court has not entered an order terminating the use of Cash Collateral as of such date), the Debtor shall deposit into the attorneys' trust account of Furr & Cohen an amount equal to \$150,000, which amount represents the amount set forth in the Budget for each of the months of November and December, 2013, and January, 2014, and which amounts shall be added to the Fee Escrow (as defined in this Court's Order dated July 15, 2013 [D.E. #149]). The Fee Escrow shall be used to pay the allowed fees and expenses of those professionals for the Debtor and the Committee whose employment has been authorized by the Court excluding (i) those professionals employed as ordinary course professionals employed by the Debtor, and (ii) those professionals employed by the Debtor to pursue collection of the amounts due under the life insurance policy of Hank Asher. Notwithstanding anything herein to the contrary, the Fee Escrow (to the extent it is used to pay such fees and expenses of such professionals) shall not be subject to any liens or claims of the Lender, including the Adequate Protection Lien and the Section 507(b) Claim granted to the Lender hereunder or otherwise. The respective professional shall be entitled to be paid from the Fee Escrow pursuant to the separate Order of this Court concerning interim compensation. Notwithstanding anything herein or in any order of the Court to the contrary, no portion of the Carve Out may be used to (i) object, contest or raise any defense to, the validity, perfection, priority, extent or enforceability of any amount due to Lender or security interests asserted by Lender upon Debtor's assets, (ii) assert any claims or defenses or causes of action against the Lender or its representatives, attorneys or advisors, (iii) prevent, hinder or otherwise delay the

Lender's enforcement or realization on any of the Collateral, including Cash Collateral, or (iv) seek to modify any of the rights granted to Lender hereunder or any other Order of this Court, provided however, that an amount equal to \$10,000, in the aggregate, of the Carve Out and the Fee Escrow (as defined in this Court's Order dated July 15, 2013 [D.E. #149]) may be used to factually investigate the liens and claims asserted by the Lender, but shall not be utilized to conduct legal research regarding the same or to investigate any claims or causes of action against the Lender. If this Court revokes or otherwise alters the use of Cash Collateral at any time, the Carve Out shall nevertheless be allowed, pro rata for the respective month, through the date of the revocation or applicable alteration of the use of Cash Collateral.

16. The Debtor shall forthwith serve a copy of this Amended Order and the Cash Collateral Motion on all parties and counsel entitled to notice pursuant to Rule 4001(b) of the Federal Rules of Bankruptcy Procedure.

###

Submitted by:

Alvin S. Goldstein, Esquire
FURR & COHEN, P.A.
Attorney for Debtor
One Boca Place, Suite 337W
2255 Glades Road
Boca Raton, FL 33431
Telephone: (561) 395-0500
Facsimile: (561) 338-7532
e-mail: agoldstein@furrcohen.com

ATTORNEY GOLDSTEIN IS DIRECTED TO SERVE COPIES OF THIS ORDER ON ALL PARTIES AND COUNSEL ENTITLED TO NOTICE PURSUANT TO RULE 4001(b) OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE AND TO FILE A CERTIFICATE OF SERVICE.

H:\LIBRARY\BANKRUPTCY\TLO LLC 13-083\PLD\Cash Collateral Order thru 1-31-14.doc