



ORDERED in the Southern District of Florida on October 25, 2013.

**Paul G. Hyman, Chief Judge
United States Bankruptcy Court**

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 October 22, 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. #317] (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 the earlier of January 31, 2014 or the consummation of a sale of substantially all of its assets (the “Termination Date”). Upon written agreement of the Lender, the Termination Date may be extended up to two weeks without further Court Order.

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 the Termination Date 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 (i) the Termination Date occurs prior to the 31st of any calendar month encompassed by this Order, (ii) this Court revokes or (iii) 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.

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Submitted by:

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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.

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