



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

A handwritten signature in black ink that reads "Paul G. Hyman".

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

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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA  
WEST PALM BEACH DIVISION  
[www.flsb.uscourts.gov](http://www.flsb.uscourts.gov)

In re: Case No. 13-20853-PGH  
Chapter 11  
TLO, LLC,  
Debtor.

**ORDER GRANTING DEBTOR'S EMERGENCY MOTION FOR ORDER  
AUTHORIZING POST-PETITION FINANCING**

THIS CAUSE came before the Court for hearing on October 22, 2013 at 11:00 a.m., in West Palm Beach, Florida for hearing upon the Debtor-in-Possession's, TLO, LLC (the "Debtor") Third Emergency Motion For the Entry of an Order Authorizing Post-Petition Financing [D.E. #318] (the "Motion"). The Motion seeks approval of additional post-petition financing (the "Third DIP Loan") from the Debtor's current co-Chief Executive Officers, Eliza Desiree Asher and Caroline Asher Yoost, the daughters of the deceased founder of the Debtor, Hank Asher. Ms. Asher and Ms. Yoost or their Irrevocable Trusts (the "Principals") have each agreed to loan an additional \$500,000 (up to a maximum of \$1,000,000 in the aggregate) to the

Debtor immediately, upon the same terms as the DIP Loan [D.E. #15] and the Second DIP Loan [D.E. #163]. Technology Investors, Inc., the Debtor's secured lender (the "Lender"), has agreed to subordinate its liens against the Debtor's assets, to the extent valid and enforceable, to the liens granted to the Principals to secure the Third DIP Loan as described herein. The liens of the Principals granted hereunder shall be senior to the any liens of the Lender in the Debtor's assets.

The Court, having considered the Motion, the record made by the Debtor at the hearing, having heard argument of counsel and being fully advised in the premises, good cause having been shown and proper notice having been given, it is

ORDERED AND ADJUDGED as follows:

1. *Jurisdiction.* This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157(b) and 1334. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

2. *Notice.* The notice given by Debtor of the Motion and the hearing has been given pursuant to Bankruptcy Rules 4001 (b) and 4001 (c) to creditors identified on the Debtor's list of twenty (20) largest unsecured creditors, all entities which may have an interest in cash collateral, counsel for Lender, counsel for the United States Trustee by U.S. Mail or Notice of Electronic Filing.

3. *Findings regarding the financing.*

(a) The Debtor has an immediate need to obtain financing through and in an amount up to the Third DIP Loan to permit, among other things, the orderly continuation of the operation of its business, to maintain business relationships with vendors, suppliers and customers, to make payroll, to make capital expenditures and to satisfy other working capital and operational needs, all in accordance with the Budget referred to in Section 4(a) below. The access of the Debtor to sufficient working capital and liquidity through the Third DIP Loan is

vital to the preservation and maintenance of the going concern value of the Debtor and to a successful reorganization of the Debtor.

(b) The Debtor asserts that it was unable to obtain financing on more favorable terms from sources other than the Principals in the form of the Third DIP Loan, and was unable to obtain adequate unsecured credit available under §503(b)(1) of the Bankruptcy Code as an administrative expense.

(c) Based upon the record presented to the Court by the Debtor, it appears that the terms of the Third DIP Loan are fair and reasonable, reflect the Debtor's exercise of prudent business judgment consistent with its fiduciary duty and constitute reasonably equivalent value and fair consideration.

(d) The Third DIP Loan has been negotiated in good faith and at arms length between the Principals and the Debtor, and all of the Debtor's obligations and indebtedness arising under, in respect of, or connection with the Third DIP Loan, including without limitation, all extension of credit thereunder, shall have been deemed to have been extended by the Principals in good faith, as the term is used in §364(e) of the Bankruptcy Code and in express reliance upon the protections offered by §364(e) of the Bankruptcy Code and shall be entitled to the full protection of §364(e) of the Bankruptcy Code in the event this Order or any provision hereof is vacated, reversed or modified, on appeal or otherwise.

(e) The Debtor has requested the entry of this Order pursuant to Bankruptcy Rules 4001(b) and 4001(c). Absent the granting of the relief provided by this Order, the Debtor's estate will be immediately and irreparably harmed. Consummation of the Third DIP Loan in accordance with this Order and the loan documents (the "Third DIP Loan Documents") executed in conjunction herewith is in the best interest of the Debtor's estate.

4. *Authorization of the Third DIP Loan and related documents.*

(a) The Debtor is hereby authorized to enter into the Third DIP Loan and execute and deliver the Third DIP Loan Documents. The Debtor shall use the proceeds of the Third DIP Loan for all purposes permitted under the Third DIP Loan Documents, including, without limitation, for working capital, provided that all such expenditures of the Third DIP Loan proceeds shall be in accordance with that certain budget attached to Debtor's Motion To Continue Use of Cash Collateral of Technology Investors, Inc. Through January 31, 2014 [D.E. #317].

(b) The Debtor is further authorized to pay all reasonable fees that may be reasonably required or necessary for the Debtor's performance of its obligations under the Third DIP Loan, provided that at least five (5) business days prior written notice thereof is provided to the Official Committee of Unsecured Creditors (the "Committee") appointed in this chapter 11 case. In the event that the Committee objects to any such fees, then the Debtor shall not be authorized to pay such fees without the approval of this Court upon notice and a hearing.

(c) The execution and delivery of the Third DIP Loan Documents implementing the Third DIP Loan shall constitute valid and binding obligations of the Debtor, enforceable against the Debtor in accordance with the terms of the Third DIP Loan Documents and this Order. No obligation, payment, transfer or grant of security under the Third DIP Loan Documents or this Order shall be stayed, restrained, voidable or recoverable under the Bankruptcy Code or under any applicable law (including, without limitation §502(d) of the Bankruptcy Code), or subject to any defense, reduction, setoff, recoupment, or counterclaim.

(d) *Superpriority claims.*

Pursuant to §364(c)(1) of the Bankruptcy Code and except as otherwise provided in this Order, all obligations due to the Principals under the Third DIP Loan, the Third DIP Loan Documents and this Order shall constitute allowed claims and expenses against the Debtor with priority over any and all administrative expenses, diminution claims, (including all adequate protection obligations, and all other claims against the Debtor, now existing or hereafter arising, of any kind whatsoever, including, without limitation, all administrative expenses of the kind specified in §§503(b) and 507(b) of the Bankruptcy Code and over any and all administrative expenses or other claims arising under §§105, 326, 328, 330, 331, 503(b), 506(c), 507(a), 507(b), 726, 1113 and 1114 of the Bankruptcy Code (the “Superpriority Claims”), which allowed claims shall be payable from and have recourse to all pre- and post-petition property of the Debtor and all proceeds thereof, provided however, that the Superpriority Claim shall not attach to any avoidance actions under chapter 5 of the Bankruptcy Code or any recoveries therefrom. Notwithstanding the foregoing, the Superpriority Claim shall not have priority over the Debtor’s continuing obligations to Wells Fargo in connection with: (i) any automated clearing house services provided by Wells Fargo to the Debtor; (ii) the Wells One Commercial Credit Card Agreement with a maximum limit of \$200,000; or (iii) the agreements governing any of the Debtor’s accounts at Wells Fargo, including, but not limited to, Account Number \*\*\*\*\*5093 (commonly known as the “TLO, LLC Collateral Account”) (collectively, the foregoing obligations of the Debtor to Wells Fargo are referred to as the “Wells Fargo Obligations”).

5. Liens and security interests. As security for all obligations due to the Principals under the Third DIP Loan, the Third DIP Loan Documents and this Order, perfected upon the date of this Order and without the necessity of the execution by the Debtor or recordation or

filing of mortgages, security agreements, control agreements, pledge agreements, financing statements or similar documents, the following security interests and liens are hereby granted to the Principals:

(a) Pursuant to §364(c)(2) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully perfected first priority senior security interest in and lien upon all pre- and post-petition property of the Debtor, whether existing on the petition date or thereafter acquired, that is not subject to valid, perfected and non-avoidable liens,<sup>1</sup> including without limitation:

(i) all accounts (including the Debtor's right, title and interest in that certain life insurance Policy No. L8725267-A issued by Pruco Life Insurance Company [a Prudential Financial company], as insurer, in the amount of \$40,000,000 on the life of Hank Asher, as the insured (the "Asher Policy")), including all credit enhancements therefor;

(ii) all contract rights, including, without limitation, all rights of the Borrower as either lessor or lessee under any lease or rental agreement of real or personal property, including, without limitation, each lease;

(iii) all chattel paper;

(iv) all documents;

(v) all instruments;

(vi) all supporting obligations and letter-of-credit rights;

(vii) all general intangibles (including, without limitation, payment intangibles, intercompany accounts, software and the Borrower's right, title, interest, claim in chose in action in and against the insurer regarding the Asher Policy);

(viii) all inventory and other goods;

(ix) all equipment and fixtures;

(x) all investment property;

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<sup>1</sup> Wells Fargo holds a valid, perfected and non-avoidable lien on the TLO, LLC Collateral Account as security for the Wells Fargo Obligations.

- (xi) all money, cash, cash equivalents, securities, and other property of any kind;
- (xii) the operating accounts and all other deposit accounts and all other credits and balances with and other claims against any financial institution;
- (xiii) all notes, and all documents of title;
- (xiv) all books, records, and other property related to or referring to any of the foregoing, including, without limitation, books, records, account ledgers, data processing records, computer software and other property, and general intangibles at any time evidencing or relating to any of the foregoing;
- (xv) all commercial tort claims;
- (xvi) all other personal property of the Debtor, excluding any avoidance actions under Chapter 5 of the Bankruptcy Code and recoveries therefrom; and
- (xviii) all accessions to, substitutions for, and replacements, products, and proceeds of any of the foregoing, including, but not limited to, proceeds of any insurance policies (including the Asher Policy), claims against third parties, and condemnation or requisition payments with respect to all or any of the foregoing.

(b) Pursuant to §364(c)(3) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully perfected security interest and lien upon all pre- and post-petition property of the Debtor that is subject to valid, perfected, enforceable and non-avoidable pre-petition liens (other than the property described in clause (a) of this paragraph 6), and the proceeds thereof, whether now existing or hereafter acquired, that is subject to valid, perfected and unavoidable liens in existence prior to the petition date or to valid and unavoidable liens in existence immediately prior to the petition date that are perfected subsequent to the petition date as permitted by §546(b) of the Bankruptcy Code; provided: the Principals shall not be granted a post-petition security interest and lien on the TLO, LLC Collateral Account.

(c) All of the property, including proceeds, subject to the security interests and liens provided to the Principals described in (a) and (b) above is hereafter referred to as the “Collateral”.

6. *Cash collateral.* All proceeds of any of the Collateral shall constitute cash collateral within the meaning of §363(a) of the Bankruptcy Code (“Cash Collateral”).

7. *Default by Debtor.* If any event of default occurs under the Third DIP Loan or the Third DIP Loan Documents or the Debtor violates any material provision of this Order, then the Principals shall provide notice thereof to the Debtor and the Committee, together with the opportunity to cure any such default within ten (10) business days thereafter. In the event such default is not cured as set forth above, then (i) the Principals shall have no further obligation to provide any additional financing under the Third DIP Loan, the Third DIP Loan Documents or this Order, (ii) the Principals shall have the right to file a motion with the Court seeking to terminate the Debtor’s authorization to use Cash Collateral, subject in all events to the right of the Debtor to object thereto and to seek the use of such Cash Collateral over the objection of the Principals, and the Debtor shall have the right to continue to use such Cash Collateral until the motion is ruled upon by the Court, (iii) the Principals shall, with three (3) business days prior notice to the Committee and the Debtor, charge interest at the default rate as set forth in the Third DIP Loan Documents, and (iv) the Principals shall be entitled to seek relief from the automatic stay of 11 U.S.C. §362, upon motion and hearing, for purposes of pursuing any and all remedies with respect to the Collateral pursuant to the Uniform Commercial Code, the Third DIP Loan Documents or this Order. The Debtor and the Committee reserve any and all rights to contest such request for relief from the automatic stay. In pursuing such rights and remedies, the Principals shall not be subject to the equitable doctrine of marshaling or any similar doctrine



with respect to the Collateral provided to them under the Third DIP Loan or this Order, provided however, that the Principals shall first look to the Life Insurance Proceeds before pursuing any other assets of the Debtor.

8. *Perfection of security interest and liens.*

(a) The Principals are hereby authorized, but not required, to obtain, file or record financing statements, trademark filings, patent filings, copyright filings, mortgages, notice of lien, landlord waivers, bailee waivers, warehouseman waivers, other waivers or consents, or similar instruments in any jurisdiction or take any other action in order to validate and perfect the liens and security interests granted to them hereunder. Whether or not the Principals, in their sole discretion, chose to file such financial statements, trademark filings, patent filings, copyright filings, mortgages, notices of lien or similar instruments or otherwise confirm perfection of the liens and security interests granted to them hereunder, such liens and security interests shall be deemed valid, perfected, allowed, enforceable, non-avoidable and not subject to challenge dispute or subordination, at any time and on the date of the entry of this Order. To the extent necessary, the automatic stay of 11 U.S.C. §362 is hereby modified to permit any and all filings or recordations by the Principals which are permitted pursuant to this Order.

(b) A certified copy of this Order may, in the discretion of the Principals, be filed with or recorded in filing or recording offices in addition to or in lieu of such financing statements, mortgages, notices of lien or similar instruments, and all filing offices are hereby authorized to accept such certified copy of this Order for filing and recording.

9. *Preservation of rights granted under this Order.*

(a) Except as otherwise provided in this order, no claim or lien having a priority superior to or pari passu with the consensual priming lien granted to the Principals by

this Order, under the Third DIP Loan or under the Third DIP Loan Documents shall be granted or allowed while any obligations are due to the Principals with respect to the Third DIP Loan, and all liens and security interests granted to the Principals shall not be (i) subject to junior to any lien or security interest that is avoided or preserved for the benefit of the Debtor's estate under §551 of the Bankruptcy Code or (ii) subordinated to or made pari passu with any lien or security interest, whether under §364(d) of the Bankruptcy Code or otherwise.

(b) Unless all obligations due to the Principals under the Third DIP Loan, the Third DIP Loan Documents and this Order have been paid in full, the Debtor shall not seek, and it shall constitute an event of default and a termination of the right to use Cash Collateral if the Debtor seeks, or if there is entered (i) any modifications or extensions of this Order without the prior written consent of the Principals and no such consent shall be employed by any other action, inaction or acquiescence of the Principals, or (ii) an order dismissing or converting this case. If an order dismissing this case under §1112 of the Bankruptcy Code or otherwise is at any time entered, such order shall provide (in accordance with §§101 and 349 of the Bankruptcy Code), that (i) the Superpriority Claims, security interests and liens granted to the Principals pursuant to this Order, the Third DIP Loan and the Third DIP Loan Documents shall continue in full force and effect and shall maintain their priorities in accordance with this Order until all obligations due to the Principals shall have been paid and satisfied in full and (iii) this Court shall retain jurisdiction, notwithstanding such dismissal, for purposes of enforcing the claims, liens and security interests referred to in (i) above.

(c) If any or all of the provisions of this Order are hereafter reversed, modified, vacated or stayed, such reversal, modification, vacation or stay shall not effect (i) the validity of any obligations due to the Principals pursuant to the Third DIP Loan, the Third DIP

Loan Documents or this Order or (ii) the validity or enforceability of any lien, security interest or priority authorized or created by this Order, the Third DIP Loan or the Third DIP Loan Documents. Notwithstanding any such reversal, modification, vacation or stay, any obligation due to the Principals under the Third DIP Loan, the Third DIP Loan Documents or this Order prior to actual written notice of the effective date of any reversal, modification, vacation or stay, shall be governed in all respects by the original provisions of this Order, the Third DIP Loan and the DIP Loan Documents and the Principals shall be entitled to all rights, remedies, privileges and benefits granted in §364(e) of the Bankruptcy Code, this Order, the Third DIP Loan and the Third DIP Loan Documents with respect to all obligations due to the Principals.

(d) All of the Superpriority Claims and expenses provided to the Principals pursuant to this Order, the Third DIP Loan and the Third DIP Loan Documents shall survive, and not be modified, impaired or discharged by the entry of an order converting this case to a case under chapter 7, or dismissing this case. The terms and provisions of this Order, the Third DIP Loan and the Third DIP Loan Documents shall continue in this case or in any superseding chapter 7 case under the Bankruptcy Code and all security interests, liens, Superpriority Claims and expenses, and all other rights and remedies of the Principals shall continue in full force and effect until all such obligations have been paid in full.

(e) To the extent the Debtor repays the Principals with the Life Insurance Proceeds, then the Lender, to the extent it has a valid, enforceable, perfected and non-avoidable lien on the Life Insurance Proceeds, shall subrogate to the Principals liens granted herein to the extent of the Life Insurance Proceeds used to satisfy the Third DIP Loan.

10. *Limitation on use of financing proceeds and collateral.* Notwithstanding anything herein or any order by this Court to the contrary, no proceeds of the Third DIP Loan or the

Collateral provided to the Principals hereunder and no Cash Collateral of the Principals may be used to (i) object, contest or raise any defense to, the validity, perfection, priority, extent or enforceability of any amount due to the Principals liens or security interests granted under this Order, the Third DIP Loan or the Third DIP Loan Documents, (ii) assert any claims or defenses or causes of action against the Principals or their representatives, attorneys or advisors, (iii) prevent, hinder or otherwise delay the Principals enforcement or realization on any of the Collateral, including Cash Collateral of the Principals, (iv) seek to modify any of the rights granted to the Principals hereunder, under the Third DIP Loan or under the Third DIP Loan Documents, or (v) pay any amount on account of any claims arising prior to the petition date unless such payments are permitted and approved by order of this Court or pursuant to the Third DIP Loan.

11. *Order governs.* In the event of any inconsistency between the provisions of this Order, the Third DIP Loan or the Third DIP Loan Documents, the provisions of this Order shall govern.

12. *Binding effect, successors and assigns.* The provisions of this Order, the Third DIP Loan, and the Third DIP Loan Documents, including all findings herein, shall be binding upon all parties in interest in this case, including, without limitation, the Committee and the Debtor and its respective successors and assigns including any chapter 7 or chapter 11 trustee hereinafter appointed or elected for the estate of the Debtor and shall inure to the benefit of the Principals and their respective successors and assigns, provided, however, that the Principals shall have no obligation to extend any financing or any chapter 11 or chapter 7 trustee or similar responsible person appointed for the estate of the Debtor.

13. If and to the extent the Debtor seeks additional financing, then the Debtor shall file a separate motion with the Court.

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Submitted by:

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Attorney Alvin S. Goldstein is directed to serve a copy of this Order on all interested parties and file a Certificate of Service with the Court.

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