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IT IS SO ORDERED.

Dated: January 11, 2017



Beth A. Buchanan

Beth A. Buchanan
United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF OHIO

IN RE: : Case No. 16-14347
:
RECYCLING GROUP, LTD, : Chapter 11
:
Debtor and Debtor in : Judge Beth A. Buchanan
Possession. :
:

FINAL ORDER AUTHORIZING USE OF CASH COLLATERAL AND GRANTING
ADEQUATE PROTECTION (Doc. 11)

AND NOW on this the 11th day of January, 2017, upon consideration of the Debtor's *Emergency Motion for Interim and Final Orders Authorizing the Use of Cash Collateral and Granting Adequate Protection* (the "Cash Collateral Motion") (Doc. 11), any responses thereto and arguments of counsel; and having found that (i) the Debtor has complied with all service requirements necessary under the Bankruptcy Code; (ii) Sutton Bank may have asserted a lien in

cash collateral; (iii) the Internal Revenue Service may have asserted a lien in cash collateral, (iv) the Debtor is in need of the continued use of cash collateral to preserve its assets and fund its business operations; and (v) based upon the evidence and argument of counsel at the hearing held on this matter, it is hereby:

ORDERED that this Court has jurisdiction over this matter pursuant to 28 U.S.C. §§157 and 1334. Venue of this proceeding and this motion is proper and this matter constitutes a core proceeding under 28 U.S.C. §157(b)(2)(A), (M) and (O).

ORDERED that Notice of the hearing on the Motion and on this Final Order has been provided either by electronic mail and/or first class U.S. mail as appropriate, on the U.S. Trustee, all creditors claiming a security interest in any of the Debtor's assets and on the 20 largest unsecured creditors. Under the circumstances, such notice complies with all applicable requirements.

ORDERED that good cause has been shown for the entry of this Order, which is in the best interests of the Debtor's creditors and the Estate. The terms of this Order are fair and appropriate under the circumstances.

ORDERED that the relief requested in the Cash Collateral Motion be, and it hereby is, granted in all respects except as otherwise modified herein; and it is further

ORDERED that the Debtor may use cash collateral to make payment of ordinary and necessary operating expenses and other administrative expenses in accordance with the Budget attached hereto as Exhibit A and the Debtor may exceed the amounts set forth on the attached budget by no more than 20% without approval of all secured creditors and/or approval of the Court; and it is further

ORDERED that the Bank is granted the following adequate protection for the Debtor's use of cash collateral:

- a. Reaffirmation by the Debtor of the Bank's pre-petition liens;
- b. Replacement security interests in and liens upon all collateral to the same extent and priority as existed at the date of the bankruptcy, without the need to file additional financing statements to perfect such post-petition liens and security interest unless the Bank so elects; and
- c. Monthly payments of interest only due on or before the 15th of the following month.
- d. Debtor shall also continue to provide bank with any and all financial reporting as required by the existing loan documentation.

ORDERED that the Internal Revenue Service is granted the following adequate protection for the Debtor's use of cash collateral:

- a. Reaffirmation by the Debtor of the Internal Revenue Services' pre-petition liens;
- b. Replacement security interests in and liens upon all collateral to the same extent and priority as existed at the date of the bankruptcy, without the need to file additional notice of liens to perfect such post-petition liens and security interest unless the Internal Revenue Service so elects; and

ORDERED that the Debtor shall be in default of this Order upon any of the following:

- a. If Debtor fails to make timely payments as required by this Order and shall fail to cure such a payment default within five business days upon receiving written notice from the Bank to Debtor's counsel.
- b. If Debtor fails to cure any other non-monetary provision of this Order within thirty (30) calendar days of receiving written notice from Bank to Debtor's counsel that Debtor is in default of such condition(s).
- c. A trustee is appointed under chapter 11 or chapter 7 of the Bankruptcy Code, without the consent of the Bank.
- d. This chapter 11 case is dismissed or is converted to a chapter 7 case.
- e. Insurance insuring the Collateral is allowed to lapse by Debtor.
- f. Debtor ceases operations as Debtor-in-Possession.

If an Event of Default occurs under this Final Order:

1. Within the applicable cure period after receipt by Debtor and Debtor's counsel of written notice of default, which notice shall identify the default and the amount to cure, if applicable, and be sent by both email transmission to ajstatman@statmanharris.com and to wbfecher@statmanharris.com, Debtor shall cure such condition of default (with the notice required satisfying the within requirement); however, should Debtor not timely cure the default, the Bank shall have all remedies available to it hereunder, under the documents evidencing such secured claim or under law, including, but not limited to the following and Debtor shall comply with the following, subject to further Court order:

- a. If Event of Default is failure to make payment when due, Debtor has five (5) business days from the date of notice from Bank to either provide evidence of the payment or cure the payment default. If Debtor does neither then Debtor's

right to use cash collateral terminates immediately at 12:00 am on the fifth day from the date of the Bank's notice and Bank is granted relief from the automatic stay without the need of further order.

b. If the Event of Default is a nonmonetary default, Debtor can either cure the default or provide evidence that the default did not exist within thirty (30) calendar days or request relief from the Court in which event cash collateral can continue to be used and Bank is not granted relief until further order from the Court.

c. To the extent a dispute exists between the parties regarding the default, the Debtor shall have the right to file a request with this Court for a hearing on the matter within five (5) business days of receiving written notice of a condition of default from the Bank. Said hearing shall be conducted on an emergency basis at the earliest convenience of this Court. In the event such a motion is filed, the automatic stay and the Debtor's authority to use cash collateral shall remain in effect until entry of a final order resolving such motion; and it is further

ORDERED that, in exchange for the following adequate protection, the Bank and the Internal Revenue Service shall forebear from proceeding on their rights and; and it is further

ORDERED that the Debtor agrees that the Security Documents with Sutton Bank referenced in the Motion for Use of Cash Collateral are binding upon it but the Court **ORDERS** that the creditors and/or any Committee shall be entitled to challenge the Security Documents if they choose to do so.

ORDERED that any payments due Internal Revenue Service shall be as set forth in any confirmed Plan of Reorganization.

ORDERED that any approved professional fees shall have priority of payment over the claims of Sutton Bank and the IRS in an amount not to exceed \$75,000 and that the Debtor shall deposit \$7,500 per month in the escrow account of Debtor's counsel, to be held pending approval of any such professional fees.

ORDERED that nothing contained herein shall be an admission, acknowledgement or agreement as to how much is owed by Debtor to either Sutton Bank or the Internal Revenue Service or as to the priority of liens between Sutton Bank and the Internal Revenue Service.

ORDERED that the Debtor's use of cash collateral pursuant to the terms hereof shall continue, unless earlier terminated in accordance with the terms hereof, until a plan of reorganization is confirmed by the Court.

ORDERED that this is Final Order.

Copies to:

Default List.

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EXHIBIT A

MONTHLY BUDGET – Recycling Group

Gross Sales		\$90,000
Expenses		
Payroll ¹	\$26,000	
Fuel	5,000	
Trailer Rental	3,500	
Material Purchases	15,000	
Utilities	4,000 ²	
Phone/Internet	1,000	
Disposal	1,500	
Bailing Wire	2,000	
Maintenance	5,000	
Wells Fargo Leasing	3,600	
Caterpillar Mileage	200	
Palmer Leasing	3,800	
Equipment Depot	4,000	
Total Expenses		\$74,600
Net Income		\$15,400
Adequate Protection Payments		\$ 5,630
Professional and Administrative Fees		\$10,000

¹ Including Benefits; Excluding Payroll to Michael Story

² For the months of January, February and March, 2017, an additional payment of \$2,200 per month is due Duke as a security deposit.