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1 THOMAS A. WILLOUGHBY, State Bar No. 137597
 2 PAUL J. PASCUZZI, State Bar No. 148810
 3 FELDERSTEIN FITZGERALD
 4 WILLOUGHBY & PASCUZZI LLP
 5 400 Capitol Mall, Suite 1750
 6 Sacramento, CA 95814
 7 Telephone: (916) 329-7400
 8 Facsimile: (916) 329-7435
 9 twilloughby@ffwplaw.com
 10 ppascuzzi@ffwplaw.com

11 Proposed Attorneys for the Chapter 11 Trustee,
 12 W. Donald Gieseke

13 UNITED STATES BANKRUPTCY COURT
 14 EASTERN DISTRICT OF CALIFORNIA
 15 SACRAMENTO DIVISION

16 In re:
 17 ECS REFINING, INC.,
 18 Debtor.

CASE NO.: 18-22453-D-11
 Chapter 11

DCN: FWP-1

Date: May 9, 2018 [Per OST]
 Time: 10:15 a.m.
 Courtroom: 34
 501 I. Street, 6th Floor,
 Sacramento, CA

**EMERGENCY MOTION FOR AN INTERIM ORDER (1) AUTHORIZING THE
 USE OF CASH COLLATERAL PURSUANT TO 11 U.S.C. § 363; (2)
 SCHEDULING A FINAL HEARING; AND (3) GRANTING RELATED RELIEF**

19 W. Donald Gieseke, the duly-appointed and acting Chapter 11 Trustee (the “Trustee”) in
 20 the ECS Refining, Inc. (the “Debtor”) case (the “Bankruptcy Case”), hereby files this Motion for
 21 an Order Authorizing Interim Use of Cash Collateral and Granting Adequate Protection and
 22 Replacement Liens; Scheduling a Final Hearing for Final Use of Cash Collateral (the “Motion”)
 23 and in support of this Motion, respectfully represents

24 1. On April 24, 2018 (the “Petition Date”), the Debtor filed a voluntary petition for
 25 relief under Chapter 11, Title 11 of the United States Code (“Bankruptcy Code”), in the United
 26 States Bankruptcy Court for the Eastern District of California (“Court”). Pursuant to §§ 1107(a)
 27 and 1108 of the Bankruptcy Code, the Debtor is managing its assets and properties as debtor-in-
 28 possession.

1 2. On May 2, 2018, the Court Entered its Order Granting Emergency Ex Parte
2 Motion On Stipulation For Immediate Appointment of Chapter 11 Trustee (docket no. 91).

3 3. On May 7, 2018, the Trustee was informed by the office of the United States
4 Trustee that he had been selected to serve as the Chapter 11 Trustee in the Bankruptcy Case.

5 4. On May 8, 2018, the Court entered an order appointing the Trustee (Docket no.
6 99).

7 5. Based on the pleadings filed by the Debtor:

8 The Debtor, an electronics recycling company, was founded in 1980 by Jim
9 Taggart and Ken Taggart as a processor of post-manufacturing scrap and residues
10 for original equipment manufacturers in Silicon Valley. As the electronics industry
11 enjoyed rapid growth and manufacturing operations were outsourced to other parts
12 of the world, the Debtor adapted by shifting its focus to processing post-consumer
13 electronics. Through organic growth and strategic acquisitions, the Debtor
14 developed new competences in end-of-life value recovery to become a vertically
15 integrated electronics recycler. The recent widespread use of electronics in the
16 private sector has created a demand for sophisticated services that go above and
17 beyond traditional shred-and-separate commodity recovery. The Debtor has
18 developed value-add and remarketing solutions that allow businesses to maximize
19 the value of their electronics while protecting their brand and data.

20 Today, the Debtor provides recycling and asset disposition solutions ranging from
21 e-waste shredding to information technology and industrial asset resale. The
22 Debtor is a leader in innovative electronics recycling, offering both end-of-life and
23 asset management services to a variety of markets, by utilizing state-of-the-art
24 technology and over 37 years of experience to provide the most comprehensive,
25 responsible solutions in the industry, maximizing value recovery and ensuring data
26 security while safeguarding the future of the planet. The Debtor's three tenets are
27 security, sustainability, and value recovery.

28 The Debtor's corporate headquarters are located in Santa Clara, California.

 Additionally, the Debtor has facilities in Santa Fe Springs and Stockton,
California; Medford and Portland, Oregon; Mesquite, Texas; Columbus, Ohio; and
Rogers, Arkansas. **The Debtor currently has approximately 341 employees**
("Employees"). The Employees include approximately: (i) 325 full-time
employees; (ii) 0 part-time employees; and (iii) 16 contract employees.

See Debtor's Emergency *Ex Parte* Motion for approval of DIP Financing and use of Cash

Collateral, Docket No. 12, pgs 6-7 (**emphasis added**) (the "Debtor's DIP Financing Motion")

REQUEST FOR RELIEF

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12. The Trustee requests the Court to:

a. Authorize the emergency use of the cash collateral Summit Bridge effective immediately , through May 23, 2018 (the “Cash Collateral Period”) pursuant to the Proposed Cash Collateral Use Terms described above;

b. Grant SummitBridge a replacement lien on any and all post-petition assets of the Debtor of the same kind and character and to the same extent, validity and priority as SummitBridge’s pre-petition liens (the “Replacement Liens”) to the extent of any decrease in the value of the secured interests of SummitBridge which may result from the Trustee’s use of cash collateral;

c. Grant the adequate protection as is described in more detail in the Agreed Interim Order Re use of Cash Collateral and Providing Adequate Protection including:

i. The granting of an allowed super priority administrative claim pursuant to Section 507(b) of the Bankruptcy Code; and

ii. Providing that the Secured Lender’s liens continue in the proceeds and profits of the pre-petition collateral pursuant to section 552(b) of the Bankruptcy Code;

d. Authorize the Trustee to transfer all the Debtor’s funds in the pre-petition BOS Account to the post-petition DIP/Trustee Wells Account,

e. Provide in the Agreed Interim Order Re use of Cash Collateral and Providing Adequate Protection approving this Motion that SummitBridge shall not be required to take any further steps to perfect the replacement liens granted through the Motion;

f. Provide in the Agreed Interim Order that nothing in the Order shall preclude or have any *res judicata* or collateral estoppel effect on either the Trustee or SummitBridge (the “Parties”) except to the limited amount required respecting the specific authorization to use cash collateral and the granting of the requested replacement liens, and the Parties preserve any and all other rights and claims, including but not limited to the rights of:

(a) the Trustee to dispute the validity of SummitBridge’s lien and claim; (b) the Trustee to file

1 any type of affirmative recovery action or claim against SummitBridge, and/or any related party
2 (including a marshaling claim); (c) the Trustee's right to seek to surcharge SummitBridge's
3 liens, and/or (d) SummitBridge to assert claims in the Bankruptcy Case and/or third parties who
4 may also be liable for its asserted claims;

5 g. To treat the hearing as a request to approve interim use of cash collateral,
6 to approve interim use to the extent necessary to avoid immediate and irreparable harm to the
7 bankruptcy estate, and to set a final hearing on the use of cash collateral shortly thereafter;

8 h. Grant such further relief as is just and appropriate in the circumstances of
9 this Motion.

10 **JURISDICTION**

11 13. This Court has jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 157
12 and 1334, 11 U.S.C. §§ 361 and 363, and Federal Rule of Bankruptcy Procedure 4001. This is a
13 core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper before this Court pursuant to
14 28 U.S.C. §§ 1408 and 1409.

15 **ARGUMENT**

16 14. Bankruptcy Code section 363(c)(2) provides that a debtor in possession may not
17 use, sell, or lease cash collateral unless "(A) each entity that has an interest in such cash collateral
18 consents; or (B) the court, after notice and a hearing, authorizes such use, sale, or lease in
19 accordance with the provisions of this section." 11 U.S.C. §363(c)(2). Federal Rule of
20 Bankruptcy Procedure 4001(b)(2) permits the Court to authorize the interim use of cash collateral
21 "as is necessary to avoid immediate and irreparable harm to the estate pending a final hearing."
22 Fed. R. Bankr. P. 4001(b)(2).

23 15. Based on the evidence submitted by the Debtor in support of the Debtor's DIP
24 Financing Motion SummitBridge asserts a security interest in the Debtor's property, which may
25 include the Debtor's cash collateral.

26 16. In this case, SummitBridge consents to the immediate use of cash collateral by the
27 Trustee on the terms set forth herein, including the granting of a replacement lien.

28 17. By this Motion, the Trustee seeks formal authority to use SummitBridge's cash

1 collateral as outlined above to pay necessary expenses to avoid immediate and irreparable harm.
2 The Trustee must pay such expenses to pay employees, taxes, insurance and out of pocket
3 administrative expenses necessary to maintain the going concern value of the Debtor's business.
4 See All documents filed in support of Debtor's DIP Financing Motion, on file herein, and
5 incorporated herein by this reference.

6 18. Pursuant to Bankruptcy Code section 361, adequate protection can be in the form
7 of the Replacement Liens to the same extent, validity, and priority as SummitBridge's Pre-
8 Petition Liens on the Debtor's post-petition assets and can include the other adequate protection
9 sought by Summit Bridge in the Agreed Interim Order Re use of Cash Collateral and Providing
10 Adequate Protection.

11 19. At present, the Trustee seeks to preserve the value of the Business as a going
12 concern while he evaluates any potential reorganization or sale options in the Bankruptcy Case.
13 Granting this Motion will enable the Trustee to preserve such value for the benefit of all creditors.
14 Declaration of Donald Gieseke in support of Motion, filed concurrently herewith.

15 20. Pursuant to Bankruptcy Local Rule 4001-1(c)(3), the Proposed Cash Collateral
16 Terms do not contain any provision listed in Local Rule 4001-1(c)(3)(A)-(L).

17 WHEREFORE, the Trustee requests the Court to enter an emergency order granting the
18 relief requested in the Motion.

19 Dated: May 8, 2018

20 FELDERSTEIN FITZGERALD
21 WILLOUGHBY & PASCUZZI LLP

22 By: /s/ Thomas A. Willoughby
23 Thomas A. Willoughby
24 Proposed Attorneys for the
25 Chapter 11 Trustee,
26 W. Donald Gieseke
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