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PROPOSED ATTORNEYS
FOR DEBTOR-IN-POSSESSION

**THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

In re

PREMIUM COMMERCIAL
PLUMBING, INC.

Debtors.

Case No. 17-32426

Chapter 11

MOTION FOR INTERIM AND FINAL AUTHORITY TO USE CASH COLLATERAL

Premium Commercial Plumbing, Inc. (“Debtor”) files this Motion for Interim and Final Authority to Use Cash Collateral (“Motion”) and in support thereof respectfully states as follows:

I. JURISDICTION

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter constitutes a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (M) and (O). Venue of the Bankruptcy Cases in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409.
2. This Motion is made pursuant to §§ 105, 361 and 363 of the United States Bankruptcy Code (“Bankruptcy Code”) and Rule 4001 of the Federal Rules of Bankruptcy Procedure.

II. GENERAL BACKGROUND

3. On June 22, 2017, Debtor filed its voluntary petition for relief under Title 11, Chapter 11 of the United States Bankruptcy Code (“Petition Date”).

4. Debtor is the debtor in possession at this time pursuant to Bankruptcy Code Sections 1107 and 1108 and is operating its businesses and managing its property and assets.

5. To date no official committee of unsecured creditors has been appointed.

6. Debtor’s business consists generally of plumbing and electrical services rendered to third parties.

7. Debtor makes payroll payments weekly, and the next payroll is due on Friday, June 30, 2017. However, so that payroll is paid timely on June 30, 2017, Debtor must fund the payroll amount by Wednesday, June 28, 2017.

A. Creditors Who May Claim Interest in Cash Collateral

8. Upon information and belief, the following creditors potentially assert a security interest in, among other things, the accounts receivable and/or cash of the Debtor:

- (a) Commercial Credit Group, Inc. (“Commercial Credit”) filed a UCC-1 financing statement on July 7, 2015 that purports to assert a lien against, among other things, all accounts, accounts receivable, chattel paper, contract rights, securities, deposit accounts, and investment property. Commercial Credit’s address is 227 West Trade Street, Suite 1450, Charlotte, North Carolina 28202. The in-house counsel for Commercial Credit is Robert Qulia, and his email is rqulia@commercialcreditgroup.com.
- (b) Internal Revenue Service (“IRS”) filed notices of federal tax liens on October 18, 2016; November 16, 2016; February 16, 2017; and June 13, 2017 that purport to assert a lien on all property and rights to property belonging to Debtor. The revenue officer for Debtor’s case is David M. Dodgen. Mr. Dodgen’s telephone number is 903-291-2233 and fax number is 877-701-8504. Mr. Leo Carey with the IRS is handling the bankruptcy matters for this account, and his email is Leo.V.Carey@irs.gov.
- (c) Nextwave Enterprises, LLC (“Nextwave”) filed a UCC-1 financing statement on May 12, 2014 that purports to assert a lien against, among other things, all

accounts of Debtor arising from payments made by Debtor's customers by credit or charge cards and all proceeds thereof as well as all chattels and personal property contained on premises of Debtor. Nextwave's address is 5757 Blue Lagoon Drive, Miami, Florida 33126.

(collectively, the "Alleged Secured Creditors.").

9. On information provided by the IRS to Debtor's counsel prior to filing this Motion, the IRS asserts a total claim in the approximate amount of \$1,500,000.00

10. On information and belief, Commercial Credit has a total claim in the approximate amount of \$14,678.99. However, prior to filing this Motion, Commercial Credit filed its claim in the amount of \$21,424.70

11. On information and belief, Nextwave has been paid in full and has no claim against Debtor. Debtor's counsel has not been able to confirm this fact with Nextwave as of the filing of this Motion.

B. Creditors and Past Creditors Who Have Also Filed UCC-1 Financing Statements

12. The American National Bank of Texas ("American National") also filed a UCC-1 financing statement on April 2, 2013 that purports to assert a lien against all inventory, chattel paper, accounts, general intangibles, and Equipment. American National's address is P.O. Box 40, Terrell, Texas 75160. However, on information and belief, American National has been paid in full and has no claim against Debtor. American National confirmed this belief with counsel for Debtor prior to filing this Motion.

13. Other entities have also filed UCC-1 financing statements against Debtor, but only as to specific equipment of Debtor. Those entities are GE Capital Commercial, Inc.; General Electric Credit Corporation of Tennessee, and Wells Fargo Bank, N.A. (collectively, the "Equipment Alleged Secured Creditors"). The UCC-1 financing statements filed by the Equipment Alleged Secured Creditors do not cover accounts or other cash collateral.

III. REQUEST FOR INTERIM ORDER FOR AUTHORITY TO USE CASH COLLATERAL

14. Pursuant to Bankruptcy Rule 4001(b)(2), Debtor respectfully requests entry of an interim order authorizing use of claimed or alleged cash collateral of the Alleged Secured Creditors.

15. Section 363(c) of the Bankruptcy Code prohibits the debtor's use of a secured creditor's "cash collateral" unless that creditor consents, or the Court, after appropriate notice and hearing, authorizes such use. 11 U.S.C. § 363(c). Debtor does not, at this juncture, admit or deny that any of its property constitutes the cash collateral of the Alleged Secured Creditors pursuant to Section 363(a) of the Code. Nonetheless, and without waiving the right to seek another characterization from the Court regarding its property, and in particular, the accounts receivable and cash, Debtor would demonstrate to this Court that to continue the proper operation and management of Debtor's business operations and its property, and to enable the Debtor to effectuate a viable plan of reorganization, it is necessary that Debtor be authorized to utilize the cash and accounts receivable associated with its operations, in a manner substantially consistent with Debtor's normal course of conduct, in order to meet the day to day operations of Debtor's business and consistent with the 2-week budget attached hereto as **Exhibit "A."**

16. If Debtor is not allowed to use the pre-petition accounts receivable and other cash associated with its operations substantially as it did pre-bankruptcy, immediate and irreparable harm will occur to Debtor's business in that Debtor will have no operating funds. In such event, Debtor's business would be immediately shut down and Debtor's business operations would have to be discontinued and its estate immediately liquidated.

17. Debtor offers the following to the Alleged Secured Creditors regarding the provision of adequate protection for any post-petition diminution in value of the Alleged Secured

Creditors' alleged pre-petition collateral, if any, caused by the Debtor's continued use of any accounts receivable, cash, or other property claimed by the Alleged Secured Creditors as cash collateral:

- (a) granting a replacement lien and security interest in Debtor's accounts receivable and cash (including all such receivables collected post-petition), to the extent the use of cash collateral results in a decrease in the value of the Alleged Secured Creditors' interest in such property as of the Petition Date and to the same extent, validity, priority, and value as existed as of the Petition Date, to secure the payment of any decrease in value of cash collateral resulting from the Debtor's use of such cash collateral;
- (b) continuing to pay insurance premiums to insure all inventory and other property constituting the Alleged Secured Creditors' collateral;
- (c) furnishing to the Alleged Secured Creditors copies of all monthly operating reports;

18. Debtor would respectfully show that, under the circumstances, the foregoing adequately protects the interests claimed by the Alleged Secured Creditors in the cash and accounts receivable generated from the business operations of the Debtor prior to the Petition Date, and that Debtor therefore should be authorized to use such putative cash collateral as described herein.

IV. REQUEST FOR ENTRY OF FINAL CASH COLLATERAL ORDER

19. Bankruptcy Rule 4001(b)(2) authorizes the Court to also enter a final order authorizing the use of cash collateral during the pendency of this Chapter 11 case.

20. Attached hereto as Exhibit "A" is a monthly budget outlining the categories of expenses which Debtor must pay to operate as Debtor-in-Possession. Debtor requires the use of cash collateral to fund its post-petition operations and to preserve property of its estate.

21. Debtor's reorganization efforts require the continued use of cash collateral in order to avoid immediate and irreparable harm to Debtor's estate which will occur if this Motion is not granted and the use of cash collateral requested herein not approved.

22. The Debtor has contacted or has attempted to contact representatives of the Alleged Secured Creditors by telephone and is seeking consent to use cash collateral. Debtor will work collaboratively to attempt to reach agreement on the use of cash collateral.

For the foregoing reasons, Debtor respectfully requests that the Court enter an order authorizing it to use the claimed cash collateral pursuant to the terms of the monthly budget attached hereto as Exhibit "A" and for such further and other relief to which it may show itself justly entitled.

Dated: June 23, 2017

Respectfully submitted,

ORENSTEIN LAW GROUP, P.C.

/s/ Rosa R. Orenstein

Rosa R. Orenstein

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Nathan M. Nichols

State Bar No. 24060336

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Certificate of Conference

On June 22, 2017, I contacted or attempted to contact the Alleged Secured Creditors. I first discussed the Motion with David Dodgen who is the Revenue Officer handling Debtor's account with the IRS. I subsequently spoke with Leo Carey with the IRS and Mr. Dodgen on a conference call. Mr. Carey confirmed that he does not oppose Debtor's use of cash collateral.

I also spoke with counsel for Commercial Credit, Rob Qulia, on June 22, 2017, and then received a follow-up email from Mr. Qulia on June 23, 2017. Per Mr. Qulia's email, Commercial Credit Group Inc. has no objection to use of cash collateral for post-petition expenses incurred in the ordinary course of business, provided Commercial Credit receives a post-petition lien against the same types of property, and to the same extent and priority, as it had pre-petition.

I attempted to contact Nextwave and left a message for its in-house counsel. As of the filing of this Motion, I have not received a return communication. I will continue efforts to confer with counsel.

As stated in the Motion, I spoke with a representative of The American National Bank of Texas who confirmed Debtor's belief that Debtor has no debt owed to American National by Debtor.

/s/ Nathan M. Nichols
Nathan M. Nichols

Certificate of Service

I hereby certify that the foregoing was served on the Alleged Secured Creditors by U.S. Mail, email, and/or fax (if available) on June 23, 2017.

Internal Revenue Service
c/o Leo Carey
Leo.V.Carey@irs.gov
c/o David M. Dodgen
877-701-8504 (fax)

Commercial Credit Group, Inc.
Robert Qulia
rqulia@commercialcreditgroup.com

Nextwave Enterprises, LLC
5757 Blue Lagoon Drive
Miami, Florida 33126

/s/ Nathan M. Nichols
Nathan M. Nichols

EXHIBIT A

(to be supplemented)