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11
 12 **UNITED STATES BANKRUPTCY COURT**
 13 **EASTERN DISTRICT OF CALIFORNIA**
 14 **SACRAMENTO DIVISION**

15 In Re:
 16 ECS REFINING, INC.,
 17 Debtor.

Case No. _____
 Chapter 11
 DC No. MBR-001
 MBR-002
 MBR-003
 MBR-004
 MBR-005
 MBR-006
 MBR-007
 MBR-008

**OMNIBUS DECLARATION OF JACK
 ROCKWOOD IN SUPPORT OF
 DEBTOR'S FIRST DAY MOTIONS**

Hearing Information

Date:
 Time:
 Place: Department _ – Ctrm
 501 I Street, _ Floor
 Sacramento, CA 95814
 Judge: Hon.

1 Application for admission *pro hac vice* is pending.
 2 Application for admission *pro hac vice* is pending.

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1 I, Jack Rockwood, declare as follows:

2 1. I am over the age of 18 and am competent to make this Declaration.

3 2. I am the President and an authorized representative of ECS Refining, Inc.,
4 debtor and debtor-in-possession ("Debtor") in the above-captioned Chapter 11 bankruptcy
5 proceeding ("Case").

6 3. I am familiar with the Debtor's business and financial affairs. I submit this
7 Declaration on personal knowledge of the Debtor in connection with its voluntary petition
8 for relief under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. §§ 101 et seq.
9 (the "Bankruptcy Code"), filed on April 24, 2018 (the "Petition Date").

10 4. This Declaration is submitted in support of the factual allegations contained
11 in the following Motions (collectively, the "First Day Motions"), filed contemporaneously
12 with this Declaration:

- 13 • Emergency *Ex Parte* Motion for Order (1) Authorizing Debtor to Obtain
14 Post-Petition Financing Pursuant to 11 U.S.C. § 364; (2) Granting Liens and
15 Superpriority Claims Pursuant to § 364; (3) Authorizing the Use of Post-
16 Petition Cash Collateral Pursuant to 11 U.S.C. § 363; (4) Scheduling a Final
17 Hearing; and (5) Granting Related Relief ("DIP Financing Motion")
- 18 • Emergency Motion to Approve Adequate Assurance to Utility Providers
19 ("Utilities Motion")
- 20 • Emergency *Ex Parte* Motion for Order Authorizing Payment of Pre-Petition
21 Wage, Benefit and Reimbursement and Certain Other Employee-Related
22 Obligation Claims and Directing Banks to Honor Pre-Petition Wage Checks
23 ("Wage Motion")
- 24 • Motion for Order Setting a Claims Bar Date ("Bar Date Motion")
- 25 • Motion to Establish Notice and Service Procedures ("Notice and Service
26 Motion")
- 27 • Application to Employ Snell & Wilmer L.L.P. as Debtor's Counsel
28 ("Application to Employ Snell & Wilmer")

- 1 • Application to Employ MCA Financial Group, Ltd. as Financial Advisor
- 2 (“Application to Employ MCA”)
- 3 • Motion for Order Establishing Procedures for Interim Compensation of
- 4 Debtor’s Counsel (“Compensation Procedures Motion”)

5 **II. BACKGROUND OF THE DEBTOR**

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

11 **A. History and Purpose of the Debtor**

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

24 Today, the Debtor provides recycling and asset disposition solutions ranging from
25 e-waste shredding to information technology and industrial asset resale. The Debtor is a
26 leader in innovative electronics recycling, offering both end-of-life and asset management
27 services to a variety of markets, by utilizing state-of-the-art technology and over 37 years
28 of experience to provide the most comprehensive, responsible solutions in the industry,

1 maximizing value recovery and ensuring data security while safeguarding the future of the
2 planet. The Debtor's three tenets are security, sustainability, and value recovery.

3 The Debtor's corporate headquarters are located in Santa Clara, California.
4 Additionally, the Debtor has facilities in Santa Fe Springs and Stockton, California;
5 Medford and Portland, Oregon; Mesquite, Texas; Columbus, Ohio; and Rogers, Arkansas.
6 The Debtor currently has approximately 341 employees ("Employees"). The Employees
7 include approximately: (i) 325 full-time employees; (ii) 0 part-time employees; and (iii)
8 16 contract employees.

9 **B. The Debtor's Business Lines**

10 The Debtor primarily operates 3 business lines: the SB 20 program, the end of life
11 program, and the AMS Program, all of which are described below.

12 1. **SB 20**

13 In accordance with the California's Covered Electronic Waste ("CEW") recycling
14 payment specifications under Titles 14 and 27 of the California Code of Regulations, the
15 Debtor, as a certified recycler, recycles both cathode ray tube ("CRT") and non-CRT (flat
16 panel) displays. The Debtor can only claim with the California Department of Resources
17 Recycling and Recovery ("CalRecycle") pounds of CRT and non-CRT which were
18 cancelled during a reporting month. For cancelled pounds to be claimable, supporting
19 documentation including all of the following must be provided: collection logs; source
20 anonymous logs; proof of designation documentation; transfer receipts/weight tickets;
21 cancellation records / processing log; bills of lading; and end-use destination.

22 The requirement of this documentation indicates that revenue is not earned (the
23 Debtor does not qualify to be paid the legislated rate of \$0.49/pound) until material has
24 been processed or cancelled, logs have been collected, and a sufficient amount of
25 correlating glass has been shipped to the Department of Toxic Substance Control's
26 ("DTSC") approved glass outlets. Because of these requirements, the Debtor's CEW
27 revenue matches the CEW claim on a monthly basis, with rare exception. Should any of
28 the aforementioned supporting documentation not meet the state of California's standards,

1 the claim relating to the pounds of cancelled CRT and non-CRT (flat panel) would be
2 rejected by the state, and the Debtor would not receive revenue for those pounds from the
3 state. This occurs in less than 1% of pounds claimed, and when it does, the Debtor bills
4 the collectors and handlers who provided those pounds back at the full lost claim rate of
5 \$0.49/pound to recover the lost revenue. CalRecycle pays the Debtor within 90 days of a
6 claim being submitted and is bound by state legislation to pay \$0.49/pound for approved
7 cancelled pounds.

8 2. **EOL**

9 The end of life program is collection and recycling of electronic products that
10 require processing and recycling because of age, security, or disposal reasons. The Debtor
11 typically charges for these services.

12 3. **AMS**

13 a. **AMS Downstream Sales Revenue** - AMS generates downstream
14 sales revenue by selling refurbished electronics to various customers. Sales
15 representatives make inventory types and resale values available to interested parties and
16 arrange a sale, which is documented with a sales order. When material is shipped, title
17 transfers and a sales invoice are posted. AMS downstream sales are all completed cash in
18 advance, so payment must occur prior to shipment.

19 b. **AMS Upstream Sales Revenue** - AMS generates upstream sales
20 revenue by selling arranged items based on a contract or statement of work. Material
21 prices and fees are agreed upon by both parties, and are set as either fair market value
22 (“FMV”) or revenue-share agreements. With FMV contracts, AMS is purchasing material
23 at FMV and recognizing service and destruction revenue when the service is performed.
24 With revenue share agreements, AMS earns no revenue until the material is refurbished
25 and resold, at which time AMS recognizes fee and service revenue as well as cost of
26 goods sold for the material. As AMS is charging fees but paying for material, many of
27 these net transactions result in a payable, rather than a receivable. If a receivable is
28 generated, AMS collects within sixty (60) days, or offsets the receivable against payables.

1 **C. The Debtor's Agreements**

2 1. **The Debtor's Leases**

3 a. **Headquarters Lease** – The Debtor entered into that certain Air
4 Commercial Real Estate Association Standard Industrial/Commercial Single-Tenant
5 Lease-Net on or about October 31, 2016 with Forsyth-Bolin Property Management, LLC,
6 a California limited liability company for 24,000 square feet of property located at 705
7 Reed Street, Santa Clara, California (“Headquarters Lease”). The Headquarters Lease
8 term is for two (2) years, and is due to expire on October 31, 2018. The base rent is
9 \$22,000.00 per month. The Debtor also entered into that certain Air Commercial Real
10 Estate Association Standard Industrial/Commercial Single-Tenant Lease-Gross on or
11 about December 28, 2008 with David Fontana and Dorothy Smith, for 4,151 square feet
12 of office space located at 735 Reed Street, Santa Clara, California (as amended, “Second
13 Santa Clara Lease”). The Second Santa Clara Lease is due to expire on October 31, 2021.
14 The rent is currently \$9,785.00 per month, and is set to increase to \$10,079.00 per month
15 on November 1, 2018.

16 b. **Warehouse Leases** – The Debtor has leased warehouse/industrial
17 space in California, Oregon, Texas, Ohio, and Arkansas.

18 1) 2222 South Sinclair Avenue, Stockton, California. The Debtor entered
19 into that certain Industrial/Commercial Single-Tenant Lease [Net Net
20 Net] with Sinclair Partners, LLC, a California limited liability company,
21 on or about March 1, 2011 for 262,000 square feet of warehouse space
22 (as amended, “Stockton Lease”). The Stockton Lease term is twenty
23 (20) years, and is due to expire on February 28, 2031. The Debtor has
24 the option to terminate the lease as of March 1, 2021 by paying a
25 \$1,500,000 termination fee. The base rent is \$90,000.00 per month, and
26 is increased by no less than a 3.25% cost of living adjustment each year.

27 2) 12420 Bell Ranch Drive, Santa Fe Springs, California. The Debtor
28 entered into that certain Lease Agreement with Prologis, L.P. on or about

- 1 July 15, 2016, for 9,519 square feet of warehouse space (“Santa Fe
2 Springs Lease”). The Santa Fe Springs Lease term is three (3) years.
3 Base rent is currently \$6,863.20 per month, and is set to increase on
4 August 1, 2018 to \$7,069.10 per month.
- 5 3) 6823/6829 N.E. 59th Place, Portland, Oregon. The Debtor entered into
6 that certain Sublease with Diamond Line Delivery Service, Inc., an Idaho
7 corporation, on or about December 1, 2017, for a 46-door portion of a
8 61-door truck terminal situated on approximately 4.7 acres (“Portland
9 Sublease”). The Portland Sublease term is 13 months. The rent is
10 \$3,500 per month.
- 11 4) 407 Boardman Street, Medford, Oregon. The Debtor entered into a
12 lease extension of that certain lease with Cliff Krause on or about
13 January 1, 2018 (“Medford Lease”). The Medford Lease term is three
14 (3) years. Rent is currently \$2,890.00 per month.
- 15 5) 1515 Big Town Blvd., Mesquite, Texas. The Debtor entered into that
16 certain Industrial/Commercial Single-Tenant Lease with ECS Big Town,
17 LLC, a Texas limited liability company, on or about January 12, 2012
18 for approximately 216,000 square feet of industrial space (as amended,
19 “Texas Lease”). The Texas Lease term is ten (10) years and six (6)
20 months, and is due to expire on July 1, 2022. The base rent is currently
21 \$51,322.83 per month, and is due to increase to \$52,605.90 per month on
22 August 1, 2018.
- 23 6) 711 Distribution Drive, Columbus, Ohio. The Debtor entered into that
24 certain Lease Agreement with Distribution Drive Partners LLC, an Ohio
25 limited liability company, on or about January 31, 2018 for 26,000
26 square feet of industrial space (“Ohio Lease”). The Ohio Lease term is
27 six (6) months, and is due to expire on July 31, 2018. The rent is
28 \$10,725.00 per month.

1 7) 1315 North 13th Street, Rogers, Arkansas. The Debtor entered into that
 2 certain Sublease Agreement and Guaranty with Ozark Liquidation
 3 Services, LLC, an Arkansas limited liability company, on or about July
 4 8, 2016, for 31,963 square feet of warehouse space located at 1 315
 5 North 13th Street, Rogers, Arkansas (as amended, “Arkansas Sublease”).
 6 The Arkansas Sublease term is two (2) years, and rent is \$10,228.16 per
 7 month.

8 **c. Truck Leases** – The Debtor entered into that certain Vehicle Lease
 9 Service Agreement on or about May 4, 2015 with Penske Truck Leasing Co., L.P. for
 10 approximately 3 trucks (as amended, the “Penske Lease”). Additionally, the Debtor
 11 entered into that certain Truck Lease & Service Agreement on or about May 5, 2015 with
 12 Ryder Truck Rental, Inc. d/b/a Ryder Transportation Services for approximately 6 trucks
 13 (“Ryder Lease,” with the Penske Lease, the “Truck Leases”).

14 **D. The Debtor’s Assets**

15 1. **Machinery & Equipment.** The bulk of the Debtor’s assets are
 16 certain machinery and equipment used in the operation of its business (“Equipment”). As
 17 of February 2018, the Equipment’s gross liquidation value is approximately \$3 to \$4.5
 18 million.

19 2. **Intellectual Property.** The Debtor is the owner of that certain patent
 20 no. 8,668,540 registered on March 11, 2014 (“Patent”), and those certain trademarks no.
 21 85-120,008 and 85-092,939, registered on August 31, 2010 and July 26, 2010,
 22 respectively (“Trademarks,” together with the Patent, the “IP”). The IP’s value is
 23 approximately \$19,720.92.

24 3. **Securities.** The Debtor owns 100% of the equity interest in
 25 Regenesys Glass Processing, LLC, a California limited liability company (“Regenesys”).
 26 The value of the Debtor’s ownership interest in Regenesys is approximately \$0.

27 4. **Other Assets.** In addition to the Equipment, IP, securities,
 28 substantial good will and other general intangibles, as of the Petition Date, the Debtor had

1 approximately: (i) \$9,838,316.99, at book value, of property and equipment; (ii)
2 \$811,638.75, at book value, of leased property-tenant improvements-net; (iii)
3 \$495,547.95, at book value of physical inventory; (iv) \$7,129,561.34 at book value, in
4 receivables, prepaid expenses, and other current assets; and (v) \$0 in cash.

5 **E. The Debtor's Liabilities**

6 The Debtor's total liabilities stood at approximately \$32,888,318.41 as of the
7 Petition Date, of which approximately \$25,927,581.91 is secured debt and approximately
8 \$6,960,736.50 is unsecured debt. Details regarding the Debtor's principal creditors are as
9 follows:

10 **1. The Debtor's Secured Creditor**

11 **a. SummitBridge National Investments V LLC**— on or about
12 February 6, 2012, the Debtor entered into that certain Credit Agreement (as amended, the
13 "SummitBridge Loan Agreement") with Bank of America, N.A. ("BofA"), whereby BofA
14 made to the Debtor (i) that certain revolving loan in the maximum principal commitment
15 amount of \$15,000,000; and (ii) that certain acquisition term loan in the maximum
16 principal commitment amount of \$35,000,000 (collectively, the "SummitBridge Loans").
17 Thereafter, BofA assigned the SummitBridge Loans to SummitBridge National
18 Investments V LLC ("SummitBridge"). The SummitBridge Loans are guaranteed by
19 Regenesys. The SummitBridge Loans are secured by a blanket lien on the Debtor's
20 personal property, as well as the IP and the Debtor's 100% equity interest in Regenesys.
21 On or about June 21, 2017, the Debtor and Regenesys entered into that certain
22 Forbearance Agreement with SummitBridge, whereby the Debtor acknowledged events of
23 default under the SummitBridge Loans, including the maturity of the loans, and pursuant
24 to which SummitBridge agreed to forbear from exercising its rights and remedies under
25 the loan documents through December 31, 2017. Since that time, the Debtor and
26 SummitBridge engaged in negotiations to resolve the default under the SummitBridge
27 Loan Agreement. However, a resolution was not reached.

F. Management of the Debtor

The Debtor is governed by a Board of Directors, which elects officers to manage the Debtor. The following table lists Debtor’s officers/management personnel:

Name	Position
Jim Taggart	Chief Executive Officer
Jack Rockwood	President
Ken Taggart	Executive Vice President
Jeff Bell	VP of Operations
Michael Keltner	Controller

G. Purpose Behind the Case Filing & Strategy for Reorganization

In or around January 2016, prior to BofA selling the SummitBridge Loans to SummitBridge, BofA revoked the Debtor’s ability to draw from its revolving credit line. The Debtor relied on those funds for working capital, as accounts receivable³ are not consistent enough to provide cash flow necessary for operations on a daily basis. As a result, the Debtor could not perform under the Forbearance Agreement with SummitBridge, which expired on or about December 31, 2017. Thereafter, SummitBridge threatened to move for the appointment of a receiver over the Debtor to liquidate the Debtor’s assets. The Debtor filed the Case in order to stay SummitBridge’s collection efforts, and obtain time to attempt to reorganize its liabilities and maintain its business as a going concern. The Debtor intends to operate by utilizing the proceeds of the DIP Loan and post-petition receivables.

III. STATEMENTS IN SUPPORT OF FIRST DAY MOTIONS

A. DIP Financing Motion

1. The Debtor seeks an Interim and Final Order (1) authorizing it to obtain post-petition financing, (2) granting liens and superpriority claims to Butch and

³ The Debtor pays some of its customers for the electronics it recycles, and then resells the materials once recycled for a profit. However, by the time it sells the processed materials, the Debtor will have paid for and received additional recyclables from that same customer. As a result, the Debtor’s accounts receivable and accounts payable are in a constant state of flux.

1 Sundance, LLC (the “Lender”), and (3) authorizing its use of post-petition cash
2 collateral.

3 2. Without substantial post-petition financing, the Debtor will be forced to
4 immediately cease business operations and engage in a fire sale of its assets without the
5 ability to maximize their value through its planned reorganization.

6 3. The proposed DIP Loan, as set forth in the DIP Financing Motion and the
7 DIP Loan Documents attached thereto, will afford the Debtor the ability to maintain the
8 going-concern value of its business and will provide the Debtor with the time necessary
9 to pursue an orderly reorganization.

10 4. The Debtor believes that obtaining the DIP Loan from the Lender is
11 critically important and is in the best interest of the Debtor’s estate, its creditors, and
12 other parties-in-interest.

13 5. To date, the best (and only current) post-petition financing commitment
14 that has been provided to the Debtor is the one offered by the Lender.

15 6. During the last several months, the Debtor’s principals diligently sought
16 financing from both traditional and non-traditional lenders.

17 7. While one traditional lender was initially interested in providing a debt
18 facility to the Debtor, it subsequently declined to provide a debt facility, in part, due to
19 the small amount of the total facility.

20 8. Thus, despite their efforts, the Debtor’s principals were unable to locate a
21 traditional or non-traditional lender that would extend a loan to the Debtor on equal or
22 more favorable terms than those provided by the Lender under the DIP Loan Documents.

23 9. The Lender offered to provide the Debtor with post-petition financing but
24 solely on the terms and conditions outlined in the DIP Loan Documents.

25 10. Accordingly, the Debtor agreed to provide the Lender with, among other
26 customary protections set forth in the DIP Loan Documents:

- 27 a. The DIP Superpriority Claims, as defined in the DIP Financing
28 Motion; and

1 b. The DIP Lien, as defined in the DIP Financing Motion; and

2 c. The DIP Chapter 5 Lien, as defined in the DIP Financing Motion.

3 11. The Debtor believes that the terms of the DIP Loan from the Lender are
4 fair, reasonable, and adequate.

5 12. The proposed DIP Loan has a contract rate of interest of eight percent (8%)
6 and a default rate of interest of twelve percent (12%) and the Lender is not charging
7 origination points or fees associated with the DIP Loan.

8 13. The Debtor believes that the aforementioned terms, as more fully set forth
9 in the DIP Loan Documents, justify, and are fair in light of, the DIP Superpriority
10 Claims, the DIP Lien, the DIP Chapter 5 Lien, and other protections set forth in the DIP
11 Loan Documents.

12 14. The DIP Loan offers the Debtor its best, and likely only, opportunity to
13 maintain and preserve the value of its assets while pursuing its plan of reorganization,
14 which will benefit all creditors and parties-in-interest.

15 15. The Debtor further believes that the DIP Loan is fair, reasonable, and
16 adequate because the Lender has consented to the Debtor's use of post-petition cash
17 collateral.

18 16. The Debtor requires the DIP Loan and the ability to use the Lender's post-
19 petition cash collateral in order to pay its post-petition operating expenses, which include,
20 but are not limited to payroll, insurance, utilities, rent, ordinary and necessary repair and
21 maintenance obligations, and to fund the expenses of this Case, including but not limited
22 the Debtor's professional fees, all as set forth in the budget attached to the DIP Financing
23 Motion as Exhibit "C", as may be amended from time to time (the "Budget").

24 17. The Debtor's inability to pay the aforementioned expenses would cause
25 immediate and irreparable harm to its estate.

26 18. Indeed, the Debtor's inability to pay its operating expenses, including
27 utilities, insurance, rent, payroll, and other ordinary and necessary repair and
28 maintenance obligations, as set forth in the Budget would result in the immediate or near

1 immediate shutdown of its business and the decimation of its value (going concern or
2 otherwise), thus harming the estate, creditors, and other parties-in-interest.

3 19. The Debtor anticipates that it will require approximately \$2.3 million in the
4 next 15 days, as set forth in the Budget, in order to pay the above-mentioned expenses.

5 20. The Debtor anticipates that it will take a minimum of three weeks to collect
6 any of its receivables generated post-petition as the Debtor ramps up its post-petition
7 operations.

8 21. Since the Debtor will not utilize any of its pre-petition account receivables,
9 the Debtor anticipates that it will incur approximately \$440,000 in expenses from the
10 Petition Date through the close of business on Friday, April, 27, 2018, an additional
11 approximately \$695,000 for the week of Monday, April 30, 2018 through Friday May 4,
12 2018, and an additional approximately \$1.15 million for the week of Monday, May 7,
13 2018 through Friday, May 11, 2018.

14 22. The Debtor thus requires funding from the DIP Loan in order to cover the
15 aforementioned expenses.

16 23. The Debtor further seeks a waiver of any applicable stay and asks that the
17 terms of the Interim Order, as defined in the DIP Financing Motion, become effective
18 immediately in order to prevent immediate and irreparable harm to the Debtor's estate.

19 24. Additionally, the Debtor submits that SummitBridge may have a security
20 interest in the Debtor's pre-petition assets, including cash collateral.

21 25. The Debtor does not seek to use any pre-petition cash collateral that
22 SummitBridge alleges to have a security interest in.

23 26. The Debtor intends to deposit all pre-petition cash collateral against which
24 SummitBridge asserts a security interest into a segregated account pending agreement of
25 the parties or a determination by the Court.

26 27. As part of the DIP Lien, the Debtor does grant a junior lien to the Lender
27 on all pre-petition assets that SummitBridge asserts a security interest in.
28

1 **B. Utilities Motion**

2 28. In the ordinary course of its business, the Debtor receives water/sewage,
3 electricity, gas, internet, telephone, and other services (collectively, the “Utilities”) from
4 various utility providers (“Utility Providers”). The Utility Providers are as follows:

- 5 a. PG&E - Stockton
- 6 (1) Average Monthly Bill: \$ 41,239.00
- 7 (2) Deposit: \$40,000.00
- 8 b. PG&E – Santa Clara
- 9 (1) Average Monthly Bill: \$818.00
- 10 (2) Deposit: None
- 11 c. Pacific Power
- 12 (1) Average Monthly Bill: \$334.00
- 13 (2) Deposit: None
- 14 d. City of Santa Clara
- 15 (1) Average Monthly Bill: \$6,338.28
- 16 (2) Deposit: None
- 17 e. City of Stockton
- 18 (1) Average Monthly Bill: \$408.00
- 19 (2) Deposit: None
- 20 f. Republic Services – California
- 21 (1) Average Monthly Bill: \$251.00
- 22 (2) Deposit: None
- 23 g. Republic Services - Texas
- 24 (1) Average Monthly Bill: \$324.38
- 25 (2) Deposit: None
- 26 h. Republic Services – Columbus
- 27
- 28

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- 1 (1) Average Monthly Bill: \$409.46
- 2 (2) Deposit: None
- 3 i. Southern California Edison
- 4 (1) Average Monthly Bill: \$409.46
- 5 (2) Deposit: None
- 6 j. AT&T – STK Alarm Line
- 7 (1) Average Monthly Bill: \$340.52
- 8 (2) Deposit: None
- 9 k. Charter / Spectrum Bus
- 10 (1) Average Monthly Bill: \$140.00
- 11 (2) Deposit: None
- 12 l. Atmos Energy
- 13 (1) Average Monthly Bill: \$250.00
- 14 (2) Deposit: \$250.00
- 15 m. AT&T
- 16 (1) Average Monthly Bill: \$469.59
- 17 (2) Deposit: None
- 18 n. TelePacific Communications TPX
- 19 (1) Average Monthly Bill: \$10,400.00
- 20 (2) Deposit: None
- 21 o. AT&T – Alarm Line
- 22 (1) Average Monthly Bill: \$374.00
- 23 (2) Deposit: None
- 24 p. AT&T Mobility
- 25 (1) Average Monthly Bill: \$1,335.00
- 26 (2) Deposit: None
- 27 q. Avista
- 28

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- 1 (1) Average Monthly Bill: \$46.00
- 2 (2) Deposit: None
- 3 r. California Water Service Co.
- 4 (1) Average Monthly Bill: \$728.00
- 5 (2) Deposit: None
- 6 s. City of Dallas
- 7 (1) Average Monthly Bill: \$1,004.00
- 8 (2) Deposit: None
- 9 t. City of Medford
- 10 (1) Average Monthly Bill: \$74.00
- 11 (2) Deposit: None
- 12 u. City of Mesquite, Texas
- 13 (1) Average Monthly Bill: \$633.00
- 14 (2) Deposit: \$950.00
- 15 v. Green Mountain Energy
- 16 (1) Average Monthly Bill: \$10,104.00
- 17 (2) Deposit: None
- 18 w. American Electric Power
- 19 (1) Average Monthly Bill: \$20.55
- 20 (2) Deposit: None
- 21 x. Medford Water Commission
- 22 (1) Average Monthly Bill: \$13.00
- 23 (2) Deposit: None
- 24 y. Serv – Wel Recycling
- 25 (1) Average Monthly Bill: \$409.46
- 26 (2) Deposit: None
- 27 29. In the 12 months preceding the Petition Date, the Debtor paid, on average,
- 28 \$76,872.70 per month for Utilities.

1 30. The Debtor pays each Utility Provider directly, after receiving an invoice for
2 the prior month's services.

3 31. Pre-petition, the Debtor was current on all payments to its Utility Providers.

4 32. Additionally, the Debtor has deposits with some of the Utility Providers, in
5 the total amount of \$41,200.00 (the "Deposits").

6 33. The Utilities are essential to the Debtor's ongoing operations.

7 34. Any interruption in service of the Utilities would severely negatively affect
8 the Debtor's business and jeopardize its going concern value, and, ultimately, creditor
9 recovery in this Case.

10 35. Therefore, it is critical that the Utilities continue uninterrupted.

11 **C. Wage Motion**

12 36. As of the Petition Date, the Debtor did not owe any wages but owes
13 accrued and unpaid bonuses and/or commissions, including vacation, severance, and sick
14 leave obligations (collectively, the "Wage Claims") to Employees.⁴

15 37. The aggregate amount of accrued and unpaid payroll owing as of the
16 Petition Date is estimated to be \$0.00.

17 38. In addition, certain employees who were paid on April 24, 2018 may have
18 failed to cash their checks before the bankruptcy filing, although this amount should be
19 small, as most employees are paid by direct deposit to their accounts through a third-
20 party payroll service.

21 39. In connection with the payment of wages and other compensation, the
22 Debtor is required under applicable law to withhold from employee payroll checks
23 certain obligations of the Employees, including, without limitation, federal, state, and
24 local income taxes, Social Security, Medicare, and unemployment taxes.

25 ⁴ Equity holders Jim Taggart and Ken Taggart serve as Chief Executive Officer and
26 Executive Vice President of the Debtor, respectively. Accordingly, they receive a salary
27 from the Debtor and are included in the group of Employees owed Wage Claims. As with
28 the Debtor's other Employees, if the Wage Motion is granted, Jim and Ken Taggart will
receive payment on account of their pre-petition Wage Claims only up to the statutory cap
amount.

1 40. In the ordinary course of business, the Debtor may also withhold from
2 payroll checks: (i) Employee contributions to 401(k) or other retirement plans; (ii)
3 employee contributions to medical, dental, insurance, disability, or similar plans, and (iii)
4 other contributions or obligations of the Employees as directed by the Employees or
5 pursuant to applicable law.

6 41. In addition, the Debtor makes payments for the employer's portion of
7 payroll taxes and other obligations as required by applicable law.

8 42. The Debtor was current on all such obligations as of the Petition Date.

9 43. In the ordinary course of the Debtor's business, as is customary with most
10 large companies, the Debtor established various benefit plans, programs, and policies for
11 its Employees (collectively, the "Benefit Obligations").

12 44. The Benefit Obligations may include, but are not necessarily limited to,
13 obligations with respect to the following: (a) medical, dental, vision, and similar plans or
14 benefits; (b) life insurance, accidental death and dismemberment, short-term disability,
15 and similar plans or benefits; and (c) other miscellaneous benefits.

16 45. The Debtor believes that as of the Petition Date, there will not be any
17 Benefit Obligations which have accrued and remain unpaid for the pre-petition period.

18 46. In addition to the foregoing, the Debtor has workers' compensation
19 insurance with Zenith Insurance Company ("Zenith"). The Debtor's workers'
20 compensation policy is effective through November 1, 2018. The Debtor pays a fixed
21 monthly premium of \$165,728.00. The Debtor has a prior year policy through Hartford
22 Insurance for workers' compensation insurance that still has open claims that are variable
23 amounts determined by the dollar amount of claims made during any applicable period.
24 The monthly variable amount paid by the Debtor since the end of the Hartford policy in
25 January 2018 was \$31,034.16.

26 47. The Debtor's payment obligations to the workers' compensation insurer are
27 secured by a cash deposit of \$202,565.00. This amount includes the down payment plus
28 taxes and fees.

1 48. In the ordinary course of their duties on behalf of the Debtor, various
2 Employees may from time to time incur certain expenses for which they are customarily
3 reimbursed by the Debtor.

4 49. In other cases, such expenses are charged directly to the Debtor, although
5 the Employee could be obligated on the expense if it is not paid by the Debtor.

6 50. The Debtor currently maintains a bank account with the Bank of Stockton
7 that is used to make payments to vendors and is also used to fund payroll (which is
8 processed by ADP). This payroll account, Account No. *****1215027671 (the "Payroll
9 Account") with the Bank of Stockton for the payment of Employee wages and other
10 obligations, as well as the processing of other vendor payments and payment obligations
11 of the Debtor.

12 **D. Bar Date Motion**

13 51. The Debtor anticipates that there may be as many as 200 potential
14 claimants in this Case, which raises the likelihood of a time-consuming claims
15 reconciliation process.

16 52. The Debtor would like to exit Chapter 11 as soon as possible as part of an
17 efficient financial reorganization and wishes to begin the claims analysis and
18 reconciliation process as soon as possible.

19 53. Accordingly, the Debtor wants to establish procedures to minimize any
20 confusion on the part of creditors and, hopefully, to achieve a resulting claims process
21 that is as efficient as possible.

22 54. In order to maintain momentum and avoid delay in this Case, the Debtor
23 wishes to set a claims bar date, as detailed in the Bar Date Motion, and to begin the
24 notice process as soon as practicable.

25 **E. Notice and Service Motion**

26 55. Currently, the master mailing list in this case has over 100 addresses.

27 56. Each notice would thus be quite costly to the Debtor in terms of time and
28 money.

1 57. The result of denying the Notice and Service Motion would be a substantial
2 expense to the estate to the detriment of creditors.

3 **F. Application to Employ Snell & Wilmer**

4 58. The Debtor seeks to employ Snell & Wilmer L.L.P. (“Snell & Wilmer” or
5 “Debtor’s Counsel”) as counsel in this Case.

6 59. The Debtor selected Snell & Wilmer because the firm has considerable
7 experience in Chapter 11 cases and is well qualified to represent the Debtor as counsel in
8 this Case.

9 60. The Debtor believes that it would be most efficient and in the best interests
10 of its estate that Snell & Wilmer be retained as counsel to perform the legal services that
11 will be necessary during the pendency of this Case. The necessary professional services
12 to be rendered by Snell & Wilmer include, without limitation, the following:

- 13 a. Render legal advice with respect to the powers and duties of the
14 Debtor, which continues to manage its property as debtor-in-
15 possession;
- 16 b. Take all necessary action to protect and preserve the estate of the
17 Debtor, including the prosecution of actions on the Debtor’s behalf,
18 the defense of any actions commenced against the Debtor,
19 negotiations concerning all litigation in which the Debtor is or
20 becomes involved, and the evaluation of and objection to claims filed
21 against the estate;
- 22 c. Negotiate and prepare on the Debtor’s behalf a plan or plans of
23 reorganization, disclosure statements, and all related agreements
24 and/or documents and take any necessary action on behalf of the
25 Debtor to obtain confirmation of such plan(s);
- 26 d. Prepare, on behalf of the Debtor, all necessary applications, motions,
27 answers, orders, reports, and papers in connection with the
28 administration of the estate herein, and appear on behalf of the

1 Debtor at all Court hearings in connection with the Debtor's
2 Bankruptcy Case;

3 e. Render legal advice and perform all other legal services in
4 connection with the foregoing and in connection with this
5 Bankruptcy Case; and

6 f. Perform any other services or representation that may be necessary in
7 the conduct of this case.

8 61. The Debtor seeks Court approval to retain Snell & Wilmer at the expense
9 of Debtor's estate to provide the legal services described above that will be required to
10 represent Debtor in this Case.

11 62. Except as disclosed in the Affidavit of Michael B. Reynolds, filed
12 contemporaneously with this Declaration and the Application to Employ Snell & Wilmer,
13 to the best of the Debtor's knowledge, information, and belief, Snell & Wilmer does not
14 have any connection with the Debtor, creditors of the Debtor's estate, any other parties-
15 in-interest or their respective attorneys and accountants, the United States Trustee, or any
16 person employed by the Office of the United States Trustee.

17 63. To the best of the Debtor's knowledge, Snell & Wilmer is not a creditor,
18 equity security holder, or insider of the Debtor.

19 64. To the best of the Debtor's knowledge, no employee of Snell & Wilmer is,
20 or was during the two years before the filing of the petition in this Case, a director,
21 officer, or employee of the Debtor.

22 65. No previous application for the relief sought in the Application to Employ
23 Snell & Wilmer has been made by the Debtor to this or any other Court.

24 **G. Application to Employ MCA**

25 66. The Debtor seeks to employ MCA Financial Group, Ltd. ("MCA") as its
26 financial advisor in this Case.

27 67. The Debtor selected MCA as its financial advisor because MCA and its
28 professionals have extensive experience in bankruptcy and other related proceedings and

1 thus are well qualified to serve as the Debtor's financial advisor in this Case.

2 68. The Debtor believes that it would be most efficient and in the best interests
3 of its estate that MCA be retained as its financial advisor during the pendency of this
4 Case. The professional services to be rendered by MCA include, without limitation, the
5 following:

- 6 a. Advise the Debtor in connection with, and assist in the preparation
7 of, bankruptcy schedules and statements of financial affairs, monthly
8 operating reports, and other financial reporting requirements;
- 9 b. Advise the Debtor in connection with, and assist in the preparation
10 of, financial projections;
- 11 c. Advise the Debtor in connection with cash collateral and financing
12 issues;
- 13 d. Perform financial analysis of the Debtor's business and operations;
- 14 e. Perform valuation and feasibility analysis;
- 15 f. Advise the Debtor in connection with business and financial
16 restructuring of the company, and in the formulation, negotiation, and
17 confirmation of a Chapter 11 plan of reorganization
- 18 g. Provide expert witness and litigation support services in relation to
19 cash collateral, financing, valuation, feasibility, and plan
20 confirmation issues; and
- 21 h. Provide other financial and business consulting services to the Debtor
22 as needed.

23 69. The Debtor seeks Court approval to retain MCA at the expense of Debtor's
24 estate to provide the services described above.

25 70. Except as disclosed in the Affidavit of Morris C. Aaron, filed
26 contemporaneously with this Declaration and the Application to Employ MCA, to the
27 best of the Debtor's knowledge, information, and belief, MCA does not have any
28 connection with the Debtor, creditors of the Debtor's estate, any other parties-in-interest

1 or their respective attorneys and accountants, the United States Trustee, or any person
2 employed by the Office of the United States Trustee.

3 71. To the best of the Debtor's knowledge, MCA is not a creditor, equity
4 security holder, or insider of the Debtor.

5 72. To the best of the Debtor's knowledge, no employee of MCA is, or was
6 during the two years before the filing of the petition in this Case, a director, officer, or
7 employee of the Debtor.

8 73. No previous application for the relief sought in the Application to Employ
9 MCA has been made by the Debtor to this or any other Court.

10 **H. Compensation Procedures Motion**

11 74. The Debtor seeks entry of an order establishing an orderly, regular process
12 and payment of compensation and reimbursement without formal application of Debtor's
13 Counsel.

14 75. The "Fee Procedures" that the Debtor requests are as follows:

- 15 a. Each month, Debtor's Counsel shall provide the Debtor, the United
16 States Trustee for the Eastern District of California, and the lead
17 counsel for any committee, if one is appointed (collectively, the
18 "Recipients"), with monthly billing statements detailing the services
19 rendered and expenses incurred for the preceding month (the
20 "Monthly Billing Statements").
- 21 b. The Recipients shall have 10 days from the date of receipt of each
22 Monthly Billing Statement to object in writing to all or part of
23 Debtor's Counsel's requested fees and expenses (the "Objection").
- 24 c. The Debtor shall promptly pay 80% of any portion of the fees and
25 100% of any portion of the expenses that are not disputed by one of
26 the Recipients.
- 27 d. If a Recipient submits an Objection to any part or the entirety of a
28 Monthly Billing Statement, Debtor's Counsel and the objecting

Snell & Wilmer
LLP
LAW OFFICES
600 Anton Blvd, Suite 1400
Costa Mesa, California 92626-7689

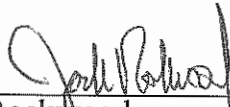
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Recipient shall have 10 days from the date of the Objection to attempt to reach an agreement regarding the correct payment to be made (the "Settlement Period").

- e. If Debtor's Counsel and the objecting Recipient are unable to reach an agreement during the Settlement Period, Debtor's Counsel, at Debtor's Counsel's option, shall either (1) file a request for payment with the Court, or (2) forego payment of the disputed amount until the next hearing on an "Interim Application", as defined below, at which time the Court will consider and dispose of the Objection.
- f. If Debtor's Counsel and the objecting Recipient are able to reach an agreement during the Settlement Period, Debtor's Counsel shall provide the other Recipients with an explanation of the resolution, and the Debtor shall promptly pay any remaining amounts owed with respect to previously disputed fees and expenses, up to 80% of the undisputed fees and 100% of the undisputed expenses.
- g. Debtor's Counsel shall submit applications for interim compensation and reimbursement of expenses every 120 days or more often if the Court so orders (the "Interim Applications").
- h. At the conclusion of the Case, Debtor's Counsel shall submit a final application to Court for allowance of compensation and reimbursement of expenses (the "Final Application").

76. The Debtor believes that the above described Fee Procedures are fair, equitable, and in the best interests of its estate, creditors, and other parties-in-interest.

DATED this 24th day of April, 2018.

/s/ 

Jack Rockwood