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DISTRIBUTION CENTER

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF MASSACHUSETTS

In re)
)
 ESSENTIAL.COM, INC.)
)
 Debtor.)

Chapter 11
Case No. 01-15339-WCH

**OBJECTION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS
TO THE REQUESTS OF JOHN DUFFY AND CHRIS KALLAHER FOR
PAYMENT OF ADMINISTRATIVE PRIORITY EXPENSE**

Preliminary Statement

The Official Committee of Unsecured Creditors of Essential.com Inc. (the "Committee") hereby objects to the Requests of John Duffy and Chris Kallaher for payment of alleged administrative expenses (collectively, the "Requests"). As further set forth below, the claims asserted by Messieurs Duffy and Kallaher arise under a pre-petition Executive Incentive Plan which remained executory as of the Petition Date. The Debtor has not assumed the Executive Incentive Plan in accordance with section 365 of the Bankruptcy Code. In fact, the Committee expects the Debtor will reject that contract under a joint plan of liquidation to be filed in the next few weeks. Moreover, the claims asserted by Duffy and Kallaher do not arise from a transaction with the Debtor in its capacity as a debtor-in-possession, nor are their claims supported by post-petition consideration as required under the First Circuit's decision in Mammoth Mart. Because the alleged administrative claims asserted by Messieurs Duffy and Kallaher arise under a p

petition executory contract, and because such claims do not satisfy the strictures of Bankruptcy Code Section 503(b) as interpreted in the First Circuit, their Requests must be denied. In further support of this objection, the Committee respectfully submits the following:

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Background

1. On June 29, 2001 (the "Petition Date") Essential.com Inc (the "Debtor") filed a voluntary petition for relief under Chapter 11 of the United States Bankruptcy Code (the "Bankruptcy Code"). Prior to the Petition Date, the Debtor approved a Special Incentive Plan for certain executives, a copy of which is attached to each Request as Exhibit A (the "Executive Incentive Plan"). The stated purpose of the Executive Incentive Plan was "to provide a special incentive to selected executives of Essential.com Inc. or any wholly owned subsidiary to remain employed with the Corporation in the event of an acquisition of the Corporation in order to assist the Board of Directors in securing the maximum value for shareholders by having Executives present the Corporation to prospective buyers as part of their due diligence process. John Duffy and Chris Kallaher were vested in the Executive Incentive Plan on its Effective Date (i.e. December 13, 2000).

2. On August 9, 2001, the Court entered an Order approving a private sale of substantially all of the Debtors' assets to United Systems Access, Inc. The sale was consummated on August 10, 2001. Upon information and belief, John Duffy and Chris Kallaher ceased working for the Debtor shortly after the sale and were paid full salary and benefits until their respective departure dates.

3. In a separate effort to accomplish the very same result being sought by Kallaher and Duffy, the Debtor previously filed a motion for authority to implement a retention bonus program. The Committee objected to that motion and, after a hearing on notice to all interested parties, the Court denied the motion.

**Claims Arising Under the Executive Incentive Plan Will
Constitute General Unsecured Claims Upon Rejection of that Agreement**

4. The Requests completely disregard the fact that the Executive Incentive Plan represented an executory contract as of the Petition Date. Unless the Executive Incentive Plan is assumed by the Debtor, claims arising thereunder will represent pre-petition general unsecured claims upon rejection. See 11 U.S.C. Section 365(g).

**The Alleged Administrative Priority Claims Do Not
Satisfy the Requirements of Section 503(b)(1)**

5. Section 503(b) of the Bankruptcy Code provides, in relevant part, that:

[T]here shall be allowed administrative expenses, ..., including (1) the actual necessary costs and expenses of preserving the estate, including wages, salaries or commissions for services rendered after the commencement of the case ...

6. In the First Circuit:

An expense is administrative only if it arises out of a transaction between the creditor and the bankrupt's trustee or debtor-in-possession and only to the extent that the consideration supporting the claimant's right to payment was both supplied to and beneficial to the debtor-in-possession in the operation of the business. A debt is not entitled to priority simply because the right to payment arises after the debtor-in-possession has begun managing the estate.

Cramer v. Mammoth Mart (In re Mammoth Mart, Inc.), 536 F.2d 950 (1st Cir. 1976).

7. In several cases, subsequent to the First Circuit's Mammoth Mart decision, courts have uniformly determined that severance and incentive related payments arising under pre-petition contracts are not entitled to administrative priority simply because the payment arises post-petition. See In re Commercial Financial Services, Inc., 246 F.3d 1291 (10th Cir. 2001), and FBI Distribution Corp. f/k/a Filene's Basement, Inc. (Chapter 11 Case Nos. 99-16984 through 99-16985-WCH) (unpublished decision with respect to claim of Kathleen Mason dated August 14, 2001). Here, there is no question that the claims asserted by Kallaher and Duffy do

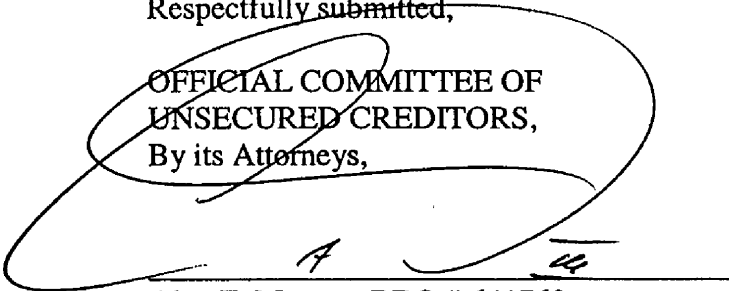
not arise out of transactions with the Debtor, in its capacity as debtor-in-possession. Further, the consideration supporting those claims was provided to the Debtor prior to the Petition Date. Indeed, Messieurs Duffy and Kallaher were expressly vested in the Executive Incentive Plan as of its Effective Date, December 2000.

8. Given that each claimant was paid his normal wage during the post-petition period, no bonus could arguably satisfy the actual and necessary requirement of section 503(b) as interpreted in Mammoth Mart. On the contrary, each claimant has been paid fair value for his post-petition services.

WHEREFORE, the Committee respectfully requests that the Court enter an Order denying the Requests of John Duffy and Chris Kallaher for payment of Chapter 11 Administrative Expenses.

Respectfully submitted,

OFFICIAL COMMITTEE OF
UNSECURED CREDITORS,
By its Attorneys,



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