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UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS
(Eastern Division)

05 MAY -5 AM 9:16

COMMISSION
CLERK

In re

ESSENTIAL.COM, INC.,

Debtor

Chapter 11
Case No. 01-15339-WCH

CHARLES A. DALE III, PLAN TRUSTEE
OF ESSENTIAL.COM, INC.,

Plaintiff,

v.

TRAVELERS CASUALTY AND SURETY
COMPANY OF AMERICA, TRAVELERS
CASUALTY AND SURETY COMPANY,
FARMINGTON CASUALTY COMPANY,
TRAVELERS CASUALTY AND SURETY
COMPANY OF ILLINOIS, and TRAVELERS
CASUALTY AND SURETY COMPANY OF
CANADA,

Defendants.

Adv. Pro. No. 02-1227

CMP _____
COM _____
CTR _____
ECR _____
GCL _____
OPC _____
RCA _____
SCR _____
SGA _____
SEC 1
OTH Grant

**MOTION OF CHARLES A. DALE III, PLAN TRUSTEE, TO APPROVE
SETTLEMENT AGREEMENT PURSUANT TO
RULE 9019 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE**

Charles A. Dale III, the duly-appointed plan trustee (the "Plan Trustee") of Essential.com,
Inc. (the "Debtor"), hereby moves the Court, pursuant to Rule 9019 of the Federal Rules of
Bankruptcy Procedure (the "Bankruptcy Rules"), for an Order approving the Settlement
Agreement (the "Agreement") with Travelers Casualty And Surety Company Of America,

Travelers Casualty And Surety Company, Farmington Casualty Company, Travelers Casualty

DOCUMENT NUMBER-DATE

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And Surety Company Of Illinois, and Travelers Casualty And Surety Company Of Canada (collectively, "Travelers"), a copy of which is attached hereto as Exhibit A. As set forth in greater detail below, the parties to the Agreement have reached a proposed settlement resolving all claims, counterclaims and defenses between them, under circumstances where substantial uncertainty and expense connected with the resolution of disputes between the parties are eliminated. In support of this Motion, the Trustee respectfully represents as follows:

Jurisdiction And Venue

1. The Court has jurisdiction over this Motion pursuant to 28 U.S.C. sections 157 and 1334.
2. Venue is proper in this District pursuant to 28 U.S.C. sections 1408 and 1409.
3. This is a "core" proceeding pursuant to 28 U.S.C. section 157(b).

Background

4. On June 29, 2001 (the "Petition Date"), the Debtor filed its voluntary petition for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the District of Massachusetts. On July 18, 2001, the United States Trustee appointed an Official Committee of Unsecured Creditors (the "Committee") consisting of three of the Debtor's unsecured creditors.

5. On November 2, 2001, the Committee and the Debtor filed a Joint Plan of Liquidation (the "Plan") and Disclosure Statement in this case. The Disclosure Statement was approved by Order dated November 28, 2001, and on December 21, 2001, the Court entered an order confirming the Plan. The Effective Date under the Plan occurred on January 1, 2002. Pursuant to the terms of the Plan, Charles A. Dale III was duly appointed the Plan Trustee.

6. In August 2001, the Debtor conducted an auction pursuant to which it sold substantially all of its assets (the "Sale"). The Sale was consummated shortly thereafter. Prior to the sale of substantially all of its assets, the Debtor was engaged in the business of providing utility services, including local and long-distance telephone services and limited electrical utility services, to subscribers. Subscribers could then manage their utility services via online internet access at a central website maintained by the Debtor. Underlying telecommunications services were provided, through the Debtor, by various incumbent provider companies, such as Verizon Communications, Inc., Qwest Communications Corporation and others.

7. Subsequent to the Sale, the Debtor and the Plan Trustee jointly proposed and obtained confirmation of the Plan. Pursuant to the terms of the Plan, the Plan Trustee has continued to liquidate remaining assets, resolve litigation and claims, and has made two interim distributions to the holders of allowed claims.

8. In the course of conducting its business, and as a prerequisite to operating in certain jurisdictions, the Debtor registered with those jurisdictions' Public Utility Commissions (collectively, the "PUCs"). To ensure the Debtor's compliance with the requirements and regulations of the PUCs, the Debtor obtained the posting of bonds from Travelers payable to the appropriate PUCs (the "Bonds") in the total amount of approximately \$510,000.

9. To secure the Debtor's reimbursement obligations under the Bonds, the Debtor posted an irrevocable standby letter of credit (the "Letter of Credit") with Silicon Valley Bank (the "Bank") on March 19, 2001, in the amount of \$160,000.

10. Following the sale of substantially all of the Debtor's assets, the Debtor ceased its operations. On or about January 20, 2002, the Bank informed Travelers, in writing, that the

Letter of Credit would not be renewed. Travelers immediately thereafter drew down the Letter of Credit in its entirety, and are currently holding approximately \$160,000 as proceeds thereof.

11. Travelers has acknowledged that some or all of the Bonds have expired, thereby releasing the Debtor from any further liability. In addition, upon information and belief, no PUC has asserted claims of any kind against Travelers.

12. On June 28, 2002, the Plan Trustee filed a Complaint for turnover of the Letter of Credit funds against Travelers to initiate this Adversary Proceeding. On November 1, 2002, Travelers filed its Answer to the Complaint, denying the allegations of the Plan Trustee and opposing the turnover of the funds.

13. After extensive settlement discussions and in light of the above, the parties now desire to settle their disputes against each other and to avoid the additional time, expense and uncertainty of further litigation.

The Proposed Compromise

14. The material terms of the proposed compromise are as follows:
- a. Within ten (10) business days after the date on which the order entered by the Bankruptcy Court approving the Agreement becomes final and non-appealable, Travelers shall pay \$100,000 to the Plan Trustee in cash or certified funds (the "Settlement Payment");
 - b. Upon receipt of the Settlement Payment, the Plan Trustee shall dismiss the Adversary Proceeding with prejudice; and
 - c. The parties to the Agreement shall exchange mutual releases upon the terms and conditions set forth in the Agreement, including that the releases pertaining to the Adversary Proceeding will only become effective upon the receipt by the Plan Trustee of the Settlement Payment, and if such payments are not received, the Plan Trustee retains the right to pursue the causes of action herein.

The Settlement Agreement Is In The Best Interest Of The Estate

15. Rule 9019 of the Federal Rules of Bankruptcy Procedure provides, in pertinent part:

On motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Notice shall be given to creditors, the United States trustee, the debtor, and indentured trustees as provided in Rule 2002 and to any other entity as the court may direct.

Fed. R. Bankr. P. 9019(a). The primary purpose of a compromise or settlement is to avoid the necessity of determining sharply contested and dubious issues. See, e.g., Wil-Rud Corp. v. Lynch (In re California Associated Prods. Co.), 183 F.2d 946, 949 (9th Cir. 1950). The policy of the law generally is to encourage settlement. See Florida Trailer & Equip. Co. v. Deal, 284 F.2d 567, 571 (5th Cir. 1960).

16. Courts traditionally defer to the trustee or debtor-in-possession when examining the reasonableness of a settlement. See, e.g., Newman v. Stein, 464 F.2d 689, 693 (2d Cir.1972) (“The responsibility of the bankruptcy judge ... is not to decide the numerous questions of law and fact raised ... but rather to canvass the issues and see whether the settlement ‘fall[s] below the lowest point in the range of reasonableness.’”); In re Media Cent., Inc., 190 B.R. 316 (E.D. Tenn. 1994) (court presumed trustee had subjected settlement to his independent review and analysis where trustee recommended approval of proposed compromise and settlement); see also 9 LAWRENCE P. KING, COLLIER ON BANKRUPTCY ¶ 9019.03[1] (15th ed.1993) (to minimize litigation and expedite the administration of a bankruptcy estate, “[c]ompromises are favored in bankruptcy.”).

17. Courts have recognized four criteria that a bankruptcy court should consider in striking the balance between “the value of the claim that is being compromised against the value

to the estate of the acceptance of the compromise proposal ... (1) the probability of success in litigation; (2) the likely difficulties in collection; (3) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; and (4) the paramount interest of the creditors. See, e.g., Myers v. Martin (In re Martin), 91 F.3d 389, 393 (3d Cir. 1996) (citing Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson, 390 U.S. 414, 424-25 (1968)).

18. Here, consideration of these four factors clearly supports approval of the

Agreement:

- a. Probability of success in litigation—Although there is a reasonable probability of success with respect to the Plan Trustee’s claims for turnover, there are many unresolved issues in connection with the PUCs’ failure to provide releases, jurisdictional issues in connection with each administrative agency, and other aspects which render the eventual outcome uncertain.
- b. Likely difficulties in collection—Although the Plan Trustee does not anticipate great difficulty in collection of any award pursuant to the Complaint, it is important to note that Travelers has asserted a right to set off its litigation costs against the proceeds of the Letter of Credit. In the event that the Plan Trustee litigates this matter to a successful conclusion, the Letter of Credit will in all likelihood be substantially reduced.
- c. Complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it—The complexity and expense of litigation is significant. There are multiple foreign administrative and quasi-governmental agencies involved, including the PUCs. Extensive discovery would be necessary to determine the factual issues associated with PUC’s bond, together with an examination of the services provided and claims possessed in connection with the over 70,000 customers maintained by the Debtor.
- d. Paramount interest of creditors—The Plan Trustee has already distributed a dividend to the holders of allowed general unsecured claims in the amount of 90% of those claims. The Plan Trustee estimates that the resolution of this matter on the terms set forth in the Agreement will allow him to distribute a significant additional dividend on behalf of those claims. Litigation of this dispute to a conclusion, on the other hand, would substantially reduce the amount recoverable from Travelers as a

consequence of its legal fees, and the amount available to unsecured creditors as a consequence of the Plan Trustee's own legal fees. Even a complete victory by the Plan Trustee could conceivably reduce the available distribution from the current projection—to say nothing of the risk and uncertainty of proceeding to trial.

19. Through the proposed resolution of this dispute, the Plan Trustee will avoid the significant expense and uncertainty of litigating the claims asserted in the Adversary Proceeding, and any further proceedings which may result therefrom, to a conclusion. Given the uncertainty of the outcome of the estate's claims against Travelers, the proposed compromise is clearly in the best interest of the Debtor, the estate and its creditors.

WHEREFORE, for all of the foregoing reasons, the Plan Trustee respectfully requests that the Court enter an order: (i) approving the Agreement; and (ii) granting such other and further relief as just and necessary.

Respectfully submitted,

CHARLES A. DALE III, Plan Trustee
of Essential.com, Inc.,

By his attorneys,

/s/ Alex F. Mattera

Alex F. Mattera, BBO No. 641760

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Dated: May 1, 2006

EXHIBIT A

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS
(Eastern Division)

In re

ESSENTIAL.COM, INC.,

Debtor

Chapter 11
Case No. 01-15339-WCH

CHARLES A. DALE III, PLAN TRUSTEE
OF ESSENTIAL.COM, INC.,

Plaintiff,

v.

TRAVELERS CASUALTY AND SURETY
COMPANY OF AMERICA, TRAVELERS
CASUALTY AND SURETY COMPANY,
FARMINGTON CASUALTY COMPANY,
TRAVELERS CASUALTY AND SURETY
COMPANY OF ILLINOIS, and TRAVELERS
CASUALTY AND SURETY COMPANY OF
CANADA,

Defendants.

Adv. Pro. No. 02-1227

SETTLEMENT AGREEMENT

This Settlement Agreement (the "Agreement") is entered into this 1st day of May, 2006, by Charles A. Dale III, the duly-appointed plan trustee (the "Plan Trustee") for Essential.com, Inc. (the "Debtor"), and Travelers Casualty And Surety Company Of America, Travelers Casualty And Surety Company, Farmington Casualty Company, Travelers Casualty And Surety Company Of Illinois, and Travelers Casualty And Surety Company Of Canada (collectively, "Travelers") (together with the Plan Trustee, the "Parties"), with respect to any and all claims

that could be asserted by the Plan Trustee against Travelers arising from or related to the above-referenced bankruptcy proceeding (the "Bankruptcy"), including without limitation, turnover actions. The Agreement resolves all of the outstanding issues between the Parties. The Parties stipulate and agree as follows:

Recitals

WHEREAS, on June 29, 2001 (the "Petition Date"), the Debtor filed its voluntary petition for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the District of Massachusetts (the "Bankruptcy Court");

WHEREAS, on July 18, 2001, the United States Trustee appointed an Official Committee of Unsecured Creditors (the "Committee") consisting of three of the Debtor's unsecured creditors;

WHEREAS, on November 2, 2001, the Committee and the Debtor filed a Joint Plan of Liquidation (the "Plan") and Disclosure Statement in this case;

WHEREAS, the Disclosure Statement was approved by Order dated November 28, 2001, and on December 21, 2001, the Court entered an order confirming the Plan;

WHEREAS, the Effective Date under the Plan occurred on January 1, 2002;

WHEREAS, pursuant to the terms of the Plan, Charles A. Dale III was duly appointed the Plan Trustee and assigned all rights, claims and interests of the Debtor;

WHEREAS, in August 2001, the Debtor conducted an auction pursuant to which it sold substantially all of its assets (the "Sale");

WHEREAS, the Sale was consummated shortly thereafter;

WHEREAS, prior to the sale of substantially all of its assets, the Debtor was engaged in the business of providing utility services, including local and long-distance telephone services and limited electrical utility services, to subscribers. Subscribers could then manage their utility services via online internet access at a central website maintained by the Debtor. Underlying telecommunications services were provided, through the Debtor, by various incumbent provider companies, such as Verizon Communications, Inc., Qwest Communications Corporation and others;

WHEREAS, subsequent to the Sale, the Debtor and the Plan Trustee jointly proposed and obtained confirmation of the Plan;

WHEREAS, pursuant to the terms of the Plan, the Plan Trustee has continued to liquidate remaining assets, resolve litigation and claims, and has made two interim distributions to the holders of allowed claims;

WHEREAS, in the course of conducting its business, and as a prerequisite to operating in certain jurisdictions, the Debtor registered with those jurisdictions' Public Utility Commissions (collectively, the "PUCs");

WHEREAS, to ensure the Debtor's compliance with the requirements and regulations of the PUCs, the Debtor obtained certain surety bonds from Travelers payable in accordance with the terms thereof to the appropriate PUCs (collectively, the "Bonds") in the total aggregate amount of approximately \$510,000;

WHEREAS, to secure the Debtor's reimbursement obligations under the Bonds, the Debtor posted an irrevocable standby letter of credit (the "Letter of Credit") with Silicon Valley Bank (the "Bank") on March 19, 2001, in the amount of \$160,000;

WHEREAS, following the sale of substantially all of the Debtor's assets, the Debtor ceased its operations;

WHEREAS, on or about January 20, 2002, the Bank informed Travelers, in writing, that the Letter of Credit would not be renewed;

WHEREAS, Travelers thereafter drew down the Letter of Credit in its entirety, and are currently holding the proceeds thereof net of certain fees and costs;

WHEREAS, Travelers acknowledges that some or all of the Bonds have expired. In addition, upon information and belief, no PUC has asserted claims of any kind against Travelers;

WHEREAS, on June 28, 2002, the Plan Trustee filed a Complaint against Travelers to initiate this adversary proceeding (the "Adversary Proceeding") for turnover of the proceeds of the Letter of Credit;

WHEREAS, on November 1, 2002, Travelers filed its Answer to the Complaint, denying the allegations of the Plan Trustee and opposing the turnover of the funds; and

WHEREAS, after extensive settlement discussions and in light of the above, the parties now desire to settle their disputes against each other and to avoid the additional time, expense and uncertainty of further litigation.

Stipulation

NOW THEREFORE, the Parties hereby agree and stipulate as follows:

1. In full and final satisfaction of the Adversary Proceeding, including the claims asserted or that could be asserted by the Debtor and/or the Plan Trustee against Travelers, Travelers shall deliver one hundred thousand dollars (\$100,000) in cash by wire transfer or certified funds (the "Settlement Payment") to the Plan Trustee within ten (10) business days after

the date on which an order entered by the Bankruptcy Court approving this Agreement becomes final and non-appealable.

2. Upon the receipt by the Plan Trustee of the Settlement Payment, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Plan Trustee (on behalf of himself and the Debtor) and Travelers release and forever discharge one another, their agents, representatives of any kind, servants, attorneys, employees, officers, shareholders, directors, administrators, predecessors-in-interest, successors and their heirs and assigns, from all claims, debts, demands, obligations, actions, causes of action, suits, accounts, promises, doings, omissions, covenants, contracts, agreements, damages and liabilities whatsoever, known and unknown, of every name and nature, in law and in equity, direct or indirect, known or unknown, discovered or undiscovered, which the Parties now have or may have, or which the Parties ever had, from the beginning of time to this date arising out of, by reason of, and/or relating in any way to this Adversary Proceeding (including the claims asserted or that could be asserted by the Plan Trustee or the Debtor against Travelers), the Bankruptcy, the Bonds, the Letter of Credit and the remaining proceeds of the Letter of Credit, which from and after approval of the Agreement shall be the property of Travelers; provided, however, none of the Parties intend to settle, release, waive or compromise their respective rights, claims and obligations granted under this Agreement.

3. This Agreement constitutes the complete and exclusive agreement of the Parties with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements and understandings, oral or written, between the Parties with respect to such subject matter.

4. This Agreement is subject to Bankruptcy Court approval of this settlement, pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure (the "Approval"). If the Bankruptcy Court denies Approval or if the Approval is reversed by a higher court, this Agreement shall be null and void as if the Parties had never entered into it, and the Parties shall resume litigation of the Adversary Proceeding without prejudice. This Agreement shall be binding upon and inure to the benefit of the Parties, and their agents, servants, attorneys, administrators, successors and their heirs and assigns. Upon payment of the Settlement Payment after Approval of this Agreement, the Parties shall promptly execute and file a stipulation dismissing the Complaint with prejudice and without costs.

5. The Parties represent and warrant that (i) they have read and understand the terms of this Agreement, (ii) they have been represented by counsel with respect to this Agreement and all matters covered by and relating to it, which counsel has authority to execute this Agreement on their behalf, and (iii) the Parties to this Agreement have entered into this Agreement for reasons of their own and not based upon representations of any other Party hereto. This Agreement shall not be construed against any of the Parties, but shall be given a reasonable interpretation.

6. Each of the Parties shall pay its own respective costs and attorneys' fees incurred with respect to the Adversary Proceeding and this Agreement.

7. By this Agreement, each of the Parties submits to the jurisdiction of the Bankruptcy Court for any action to enforce or interpret this Agreement.

8. This Agreement shall be governed by and construed in accordance with the substantive law of the Commonwealth of Massachusetts, and shall have the force and effect of an

instrument executed and delivered under seal under the law of the Commonwealth of Massachusetts.

9. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and all such counterparts together shall constitute one and the same instrument.

This Agreement may be executed by facsimile.

CHARLES A. DALE III, Plan Trustee
of Essential.com, Inc., Plaintiff,

By his attorneys,

/s/ Alex F. Mattera

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FARMINGTON CASUALTY COMPANY,
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COMPANY OF ILLINOIS, and
TRAVELERS CASUALTY AND SURETY
COMPANY OF CANADA, Defendants,

By their attorneys,

/s/ Jonathan B. Alter

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