

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

In re

CEP HOLDINGS, LLC, *et al.*,

Debtors.

Case No. 06-51848

Chapter 11

Honorable Marilyn Shea-Stonum

Hearing Date: 10/24/06 at 9:30 a.m.

Related to Docket Entry No. 8

**REPLY BY INDEPENDENT CONTRACTORS TO OMNIBUS RESPONSE  
OF THE UNOFFICIAL COMMITTEE OF UNSECURED CREDITORS OF CEP  
HOLDINGS, LLC, ET AL. TO CERTAIN FIRST DAY MOTIONS**

Fabnet Associates, Inc. ("Fabnet"), Norris Sales Associates, Inc. ("Norris"), and C.H. Raches, Inc. ("Raches" and collectively with Fabnet and Norris the "Independent Contractors") by their undersigned attorneys hereby reply to the Omnibus Response of the Unofficial Committee of Unsecured Creditors of CEP Holdings, LLC, *et al.* to Certain First Day Motions and hereby request entry of a final order authorizing and directing the debtors to pay prepetition Independent Contractor compensation as requested in the debtors' first day motions.

1. At the time of the commencement of these bankruptcy cases the debtors employed the Independent Contractors to perform essential employee functions on a more cost-effective basis. The debtors employed the Independent Contractors through direct contractual arrangements those businesses.

2. The Independent Contractors provided critical sales services to the debtors in connection with the day-to-day operation of their businesses.

3. The Independent Contractors had, prior to the commencement of these bankruptcy cases, acquired substantial knowledge regarding the debtors' infrastructure, business systems and particularized needs.

4. In their first day motions, the debtors advised the Court that the replacement of any of them would be difficult and could be accomplished only after a significant retraining - all at increased cost to the debtors. Further, the debtors advised the Court that the payment of amounts owing to the Independent Contractors is essential to the success of the debtors continuing operations and their ability to maximize the value of their assets (emphasis added).

5. In their first day motions the debtors advised the Court that they believe that many of the Independent Contractors would cease providing services to the debtors to the direct detriment of the debtors' businesses, if they were not paid amounts owing to them as of the Petition Date.

6. An interim first order has been entered authorizing the debtors to pay an aggregate of \$140,000 to the Independent Contractors on account of amounts owing at the petition date. A final hearing regarding the debtors' request to pay the balance of approximately \$350,000 owing to Independent Contractors at the Petitioned Date is scheduled for Tuesday, October 24, 2006.

7. While the Independent Contractors have continued to provide important support to the debtors on a post petition basis, they cannot continue to do so without payment of the remaining sums owed to them at the Petitioned Date. A summary of post petition activities of the Independent Contractors as of October 2, 2006 is attached hereto as Exhibit A.

8. In addition to the grounds identified by the debtors in their first day motions for the granting of the relief requested, the Independent Contractors also assert that the relief

previously requested by the debtors should be granted as it is a less expensive way for the debtors to obtain the necessary post-petition support than the assumption of the executory contracts that the debtors have with the Independent Contractors.

9. Because the debtors are attempting to sell their businesses, assumption of the executory contracts with the Independent Contractors would be premature at this time. However, the debtors have continued, and should continue, to utilize the services of the Independent Contractors to maximize the value of their assets. Therefore, the granting of the relief requested by the debtors is the most equitable and least expensive way for the debtors to obtain the necessary services of the Independent Contractors during the pendency of these cases.

10. Moreover, it is noted that all of the debtors' internal sales staff have been paid in full for prepetition services by virtue of an earlier order of this Court. And, those internal sales personnel are the subject of a pending motion by the debtors seeking authority to pay bonuses.<sup>1</sup>

11. Bankruptcy is a court of equity. Here equity demands that the Independent Contractors be forthwith paid the amounts due them for prepetition services and be timely paid under the contract terms for services post-petition unless and until a particular executory contract is rejected.

Wherefore, the Independent Contractors respectfully request that the Court enter an authorizing and directing the debtors to pay to the Independent Contractors all sums due the Independent Contractors under the executory contracts that they have with them -whether due prepetition or post petition - until such time, if any, as the debtors shall reject the applicable executory contract(s).

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<sup>1</sup> Joseph Mallak, the chief executive officer of each of the debtors, personally urged the Independent Contractors to continue providing essential sales services and support activities to the debtors in advance of the bankruptcy proceeding. Mr. Mallak assured the Independent Contractors that the debtors would protect payment of their commissions even in the event of a bankruptcy filing.

Respectfully submitted,

/s/ Darrell A. Clay

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Inc.

**CERTIFICATE OF SERVICE**

I hereby certify that on this 20th day of October, 2006, a copy of the foregoing Reply by Independent Contractors to Omnibus Response of the Unofficial Committee of Unsecured Creditors of CEP Holdings, LLC, et al. to Certain First Day Motions was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ Darrell A. Clay

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Norris Sales Associates, Inc., C.H. Raches,  
Inc.