

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA  
WEST PALM BEACH DIVISION  
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IN RE:

CASE NO. 04-35435-BKC-SHF

eCom eCom.com, Inc.

CHAPTER 11

Debtor.  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the *Joint Objection To (A) Claims Based On Ownership Of Common Stock And (B) Certain Other Claims [Court Paper # 231]* was served via U.S. mail upon all parties listed on the attached Service List on this 2<sup>nd</sup> day of February, 2007.

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**IN THE UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA  
WEST PALM BEACH DIVISION**

**In re:**

**eCOM eCOM.COM, INC.  
Debtor.**

**Chapter 11**

**Case No. 04-35435-BKC-SHF**

**JOINT OBJECTION TO (A) CLAIMS BASED ON OWNERSHIP OF  
COMMON STOCK AND (B) CERTAIN OTHER CLAIMS**

**IMPORTANT NOTICE TO CREDITORS:  
THIS IS AN OBJECTION TO YOUR CLAIM**

This objection seeks either to disallow or reduce the amount or change the priority status of the claim filed by you or on your behalf. Please read this objection carefully to identify which claim is objected to and what disposition of your claim is recommended.

If you disagree with the objection or the recommended treatment, you must file a written response **WITHIN THIRTY (30) DAYS** from the date of service stated in this objection, explaining why your claim should be allowed as presently filed, and you must mail a copy to the undersigned attorney **OR YOUR CLAIM MAY BE DISPOSED OF IN ACCORDANCE WITH THE RECOMMENDATION IN THIS OBJECTION.**

If your entire claim is objected to and this is a Chapter 11 case, you will not have the right to vote to accept or reject any proposed plan of reorganization until the objection is resolved, unless you request an Order pursuant to Bankruptcy Rule 3018(a) temporarily allowing your claim for voting purposes.

Any written response must be filed with the Clerk of the United States Bankruptcy Court, 51 S.W. First Avenue, Miami, FL 33131, and must contain the case name and case number.

**COME NOW** the Debtor, eComeCom.com, Inc. ("Debtor") and American Capital Holdings, Inc. ("ACH"), by and through their respective undersigned counsel, and file their Joint Objection to Certain Claims, and state as follows:

**BACKGROUND**

1. On November 29, 2004, an involuntary petition was filed against the Debtor under Chapter 11 of the Title 11 of the United States Code (the "Code"). Thereafter, on May 16, 2005, this Court entered an order for relief under Chapter 11 of the Code.

2. The Debtor continues in the possession of its assets and in the management of its business as a debtor-in-possession pursuant to the authority of sections 1107 and 1108 of the Code. No trustee or committee of unsecured creditors has been appointed in these proceedings. The common stock of the Debtor is publicly traded under the symbol ECEC. PK.

3. On August 18, 2006 and August 25, 2006, respectively, the Debtor and ACH filed their Joint Plan of Reorganization (“Plan”) and Disclosure Statement for Joint Plan of Reorganization (“Disclosure Statement”) with the Court.

4. Thereafter, the Debtor and ACH filed their Joint Amended Plan of Reorganization (“Amended Plan”) and Amended Disclosure Statement for Joint Plan of Reorganization (“Amended Disclosure Statement”). On December 28, 2006, the Court entered an order approving the Amended Disclosure Statement, scheduling a hearing to consider confirmation of the Amended Plan and various related deadlines.

5. The deadline to object to claims is January 31, 2007.

#### **OBJECTIONS TO CLAIMS BASED ON OWNERSHIP OF COMMON STOCK**

6. The Debtor and ACH object to the following claims, all of which have been filed against the Debtor, but appear to be based solely upon each claimant’s ownership of common stock of the Debtor (collectively, the “Common Stock Claims”):

Karen Matles	-	Claim No. 2
Ying Xiu Li & Kai Ming Liu	-	Claim No. 3
Richard Hill	-	Claim No. 5
Patricia A. Finch-Junk	-	Claim No. 6
John F. Zieglschmid	-	Claim No. 7
Julieta Santos	-	Claim No. 8
William Wheatly, Jr.	-	Claim No. 10

Robert Wheatley - Claim No. 12

Eli Ickovic - Claim No. 13

7. Although some of the Common Stock Claims state dollar amounts, it appears from inspection that the sole basis for each of the Common Stock Claims is the claimant's ownership of common stock in the Debtor.

8. Ownership of common stock of a debtor, by itself, does not give rise to a prepetition "claim," as that term is defined in section 101(5) of the Code. That definition provides that a "claim" means a "right to payment - . . . ." Ownership of publicly traded common stock does not give rise to a "right to payment," and hence cannot be a "claim." Carrier v. Jobs.com Inc., 393 F.3d 508, 523-524 (5<sup>th</sup> Cir. 2004) (stock ownership does not give rise to a claim under 11 U.S.C. § 101(5)).

9. Hence, the Common Stock Claims should be disallowed.

10. **Notwithstanding anything herein to the contrary, the objections to the Common Stock Claims are without prejudice to the rights that the claimants may have in the event they own common stock of the Debtor. To the extent the claimants own common stock in the Debtor, as of the shareholder record date established by the Court, the objections contained herein are not intended to prejudice or otherwise affect the treatment to which the claimants may be entitled in accordance with Section 4.04 of the Amended Plan.**

### **OBJECTIONS TO OTHER CLAIMS**

#### **Objection to Claim of Quentin Partners**

11. The Debtor and ACH object to Claim No. 14 filed by Quentin Partners in the amount of \$34,403.02, on grounds that Claim No. 14 was paid pre-petition.

12. Because Claim No. 14 was settled and paid pre-petition, Quentin Partners cannot assert a pre-petition claim against the Debtor and, therefore, Claim No. 14 should be stricken and disallowed in its entirety.

**Objection to Claim of Kelly Services**

13. The Debtor and ACH object to Claim No. 4 filed by Kelly Services in the amount of \$3,193.08. Claim No. 4 is a claim against ACH and not the Debtor, and has been paid in full by Mr. Richard Turner on behalf of ACH.

14. Accordingly, Kelly Services has no pre-petition claim against the Debtor and, therefore, Claim No. 4 should be stricken and disallowed in its entirety.

**Objection to Claim of Palm Beach County Tax Collector**

15. The Debtor and ACH object to Claim No. 9 filed by the Palm Beach County Tax Collector. Claim No. 9 was was paid by the Debtor. Accordingly, Claim No. 9 should be stricken and disallowed in its entirety to the extent not otherwise withdrawn.

**Objection to Claim of Panaia**

16. The Debtor and ACH object to Claim No. 17 filed by Barbara Panaia ("Panaia"), widow of the Debtor's late CEO, David Panaia, in the amount of \$395,640, as a precautionary measure. The Debtor, ACH and Panaia have resolved Claim No. 17 in accordance with the terms and conditions of a stipulation entered by the parties and more fully described in the Amended Disclosure Statement. The settlement between the parties remains subject to the approval of this Court, and a motion under Rule 9019, Fed.R.Bankr.P. will be filed shortly. Accordingly, the Debtor and ACH object to Claim No. 17 as a precautionary measure only, and to the extent that the stipulation between the parties is not approved by the Court, the Debtor and ACH hereby reserve all rights to amend this objection to Claim No. 17.

**WHEREFORE**, the Debtor and ACH respectfully request that this Court sustain the instant Objections, and enter an order disallowing (a) each of the claims described herein, except as otherwise requested with respect to Claim No. 17, and (b) disallowing each of the Common Stock Claims, without prejudice, however, to the right of any person asserting a Common Stock Claim to receive the treatment afforded to holders of Allowed Class 4 Equity Interests, as of the Record Date established by the Court, in the event the Amended Plan is confirmed by the Court, as well as granting any other further relief that the Court may deem just and proper.

Dated: January 31, 2007

/s/ Michael D. Seese

Michael D. Seese

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