

EOD APR 09 2003

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

In re: ) Chapter 7  
 )  
marchFIRST, INC., *et al.*, ) Case No. 01-24742  
 ) (Jointly Administered)  
Debtors. )  
 ) Honorable John D. Schwartz  
 ) **Hearing Date: April 17, 2003**  
 ) **Hearing Time: 10:30 a.m. C.D.T.**  
 ) **Objection Deadline: April 15, 2003**

**TRUSTEE'S APPLICATION TO AUTHORIZE EMPLOYMENT OF THE 363 GROUP, INC. AS LIQUIDATION CONSULTANTS AND FOR APPROVAL OF RETAINER**

Andrew J. Maxwell, trustee (the "Trustee") of the Chapter 7 estates of marchFIRST, Inc. and certain of its affiliates (the "Debtors"), by and through his attorneys and pursuant to §327(a) of the Bankruptcy Code, hereby moves for entry of an order authorizing the employment of The 363 Group, Inc. ("363 Group") as liquidation consultants to the Trustee and for approval of payment of a retainer. In support, Trustee states as follows:

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, and this matter is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

2. On or about April 12, 2001 (the "Petition Date"), the Debtors commenced these proceedings in the United States Bankruptcy Court for the District of Delaware (the "Delaware Court") by filing voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. Subsequently, the Debtors moved to convert their cases to cases under chapter 7, and on or about April 26, 2001, these cases were converted pursuant to § 1112 of the Bankruptcy Code.

3. On or about April 26, 2001, the United States Trustee appointed Michael Joseph as interim chapter 7 trustee (the "Delaware Trustee") pursuant to the Bankruptcy Code.

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF ILLINOIS  
APR 09 2003  
KENNETH A. GARDNER, CLERK  
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Code. The Delaware Trustee retained Young, Conaway, Stargatt & Taylor as his counsel ("Delaware Counsel") and the McShane Group as his financial advisor (the "Delaware Financial Advisor") (the Delaware Trustee, Delaware Counsel and Delaware Financial Advisor are referred to hereinafter collectively as the "Delaware Professionals").

4. By order dated July 10, 2001, the Delaware Court transferred these chapter 7 cases (the "Cases") to the United States Bankruptcy Court for the Northern District of Illinois (the "Court"). The Trustee was appointed interim chapter 7 trustee for the Cases on July 16, 2001, and thereafter became the permanent trustee.

5. As of the commencement of this case, the Debtor, and its subsidiaries and affiliates, owned certain publicly traded and non-publicly traded securities, which may include without limitation those listed on the Debtor's most recent Schedule B, numbers 12, 13 and 14 (referred to hereinafter as the "Securities").

6. Many of the Securities are issued by closely-held companies or companies whose stock is not widely held. Such Securities are as a result illiquid, and difficult to value and market. Accordingly, Trustee believes he requires the assistance of consultants skilled in marketing and liquidating securities of the type at issue in order to maximize their value for the benefit of the estate and creditors.

7. Trustee has consulted with 363 Group, and by this Application seeks authorization to employ 363 Group, as consultants to assist in liquidating the Securities in an orderly, efficient and cost-effective manner and in accordance with 11 U.S.C. § 363.

8. Trustee believes 363 Group has the requisite experience, skill and expertise to represent the Trustee effectively with respect to the liquidation of the Securities, and that 363

Engagement Letter as an exhibit thereto. As set forth in Mr. Kuipers' Declaration, the only known connection between 363 Group and any of the Debtors or any party in interest consists of the prior employment of the spouse of one of 363 Group's principals, Mr. Mark Thomann, by the Mitchell Madison Group, a subsidiary of the Debtor ("MMG"). Mr. Thomann's spouse was at one time prior to the commencement of these cases employed by MMG as a strategy consultant, but she was neither an officer nor an "insider" of MMG within the meaning of §101(31) of the Bankruptcy Code, and she holds no claim against the Debtor or the estate.

12. For the foregoing reasons and pursuant to §327(a) of the Bankruptcy Code, Trustee seeks this Court to enter the proposed Order attached hereto as Exhibit B authorizing Trustee's employment of 363 Group as liquidation consultants to the Trustee and payment of a retainer in the amount requested.

WHEREFORE, Andrew J. Maxwell, as trustee of the Debtors' Chapter 7 estates, hereby requests that this Court enter the attached order authorizing Trustee's employment of 363 Group as liquidation consultants to the Trustee and payment of a \$10,000.00 retainer, and to grant such other or further relief as may be deemed just or necessary under the circumstances.

Dated: April 9, 2003

ANDREW J. MAXWELL, as Chapter 7 Trustee of  
marchFIRST, Inc. and Its Subsidiaries

By:   
One of His Attorneys

Steven S. Potts (ARDC #6200073)  
Law Offices of Andrew J. Maxwell  
105 W. Adams Street, Suite 3200  
Chicago, Illinois 60603  
Phone: (312) 368-1138  
Facsimile: (312) 368-1080

**EXHIBIT A – ENGAGEMENT LETTER AND DECLARATION OF DAVID KUIPERS**

# The 363 Group, Inc.

March 12, 2003

Mr. Andrew J. Maxwell  
The Law Offices of Andrew J. Maxwell  
105 West Adams  
Suite 3200  
Chicago, Illinois 60603

Re: The 363 Group, Inc. ("363")  
Retention and Letter of Engagement

Dear Andy:

This letter will serve as 363's written agreement ("Agreement") to provide Andrew J. Maxwell, not individually but as Chapter 7 Bankruptcy Trustee ("Trustee") for marchFIRST, Inc. and its affiliates and subsidiaries (collectively the "Company"), the following consulting services:

- (1) Assist the Trustee in liquidating the Company's investment portfolio, including both publicly traded and non-publicly traded securities and which may include without limitation those listed on the Company's most recent Schedule B numbers 12, 13 and 14 (referred to herein as the "Securities"), in an orderly, efficient and cost-effective manner and in accordance with 11 U.S.C. § 363.
- (2) Perform such other tasks as may be mutually agreed upon by 363 and the Trustee.

The principal consultants working on this engagement will be Mark F. Thomann and David P. Kuipers, who will be responsible for managing the relationship between 363 and the Trustee. Listed below are the hourly billing rates for the 363 personnel who will be primarily responsible for this matter (travel time, if any, will be tracked separately and billed at 50% of these rates):

	<u>Rate</u>
Mark F. Thomann	\$275.00/hour
David P. Kuipers	\$250.00/hour

# The 363 Group, Inc.

March 12, 2003

Mr. Andrew J. Maxwell

At the election of 363, in lieu of any and all compensation for services rendered by 363 on an hourly basis, the Trustee agrees to pay or cause to be paid to 363 a fee ("Success Fee") upon closing and Trustee's receipt of the proceeds of sales of the Securities negotiated by 363 in the amount of 5% of the gross sale price of the Securities, or cumulative gross sale prices of any series of sales, whether expressed as cash received, the fair value of other assets received, the fair value of liabilities assumed, or as remuneration in any other form. Success Fees will be due and payable upon Trustee's receipt of the sale proceeds and 363's application to and approval of the U.S. Bankruptcy Court. Trustee shall be entitled to a credit against any and all such Success Fees in the amount of any and all hourly fees (as described above) earned by and payable to 363 under this Agreement.

In addition to compensation for services rendered either on an hourly basis or in the form of Success Fee(s) as 363 may elect, 363 shall also be entitled to reasonable out-of-pocket expenses incurred under this Agreement, including, without limitation, airfare (at coach fare, unless such travel is transcontinental or international, in which case such travel shall be in business class, if available), lodging, rental cars, meals, taxi and other ground transportation, long distance calls, delivery services, postage and photocopying, as well as other attendant costs that 363 may reasonably and necessarily incur in connection with this matter; provided, however, that any extraordinary attendant costs shall be pre-approved by the Trustee. 363 acknowledges and agrees that all compensation and reimbursement of expenses shall be subject to approval of the U.S. Bankruptcy Court after proper notice, application, and hearing.

In order to commence work under this proposed Agreement, 363 requests a retainer in the amount of \$10,000. In the event that 363's hourly fees earned for services rendered and out-of-pocket expenses incurred exceed the retainer, 363 may apply to the U.S. Bankruptcy Court for additional retainer such that the retainer remains in place for the duration of this Agreement. 363 acknowledges and agrees that it may not apply the retainer against amounts due to 363 absent approval by the U.S. Bankruptcy Court on notice to all creditors of the Company pursuant to 11 U.S.C. § 330 and Rule 2016 of the Federal Rules of Bankruptcy Procedure, or such other or different notice requirements as authorized by the U.S. Bankruptcy Court. Upon termination of this Agreement the retainer shall either be applied to outstanding amounts due 363, after approval by the U.S. Bankruptcy Court as set forth above, or returned to the Trustee. 363 agrees to cap its total hourly fees under this Agreement at \$25,000, however, such cap can be increased at a later date upon written agreement by the Trustee and subject to approval by the U.S. Bankruptcy Court.

This Agreement may be terminated for any reason by either party upon one day's written notice. Upon any such termination, 363 shall be entitled to all earned or incurred but unpaid hourly fees, Success Fees (depending on 363's election described above) and out-of-pocket expenses accrued pursuant to this Agreement through the termination date,

# The 363 Group, Inc.

March 12, 2003

Mr. Andrew J. Maxwell

plus Success Fees which may be earned, if any, during the period ending 60 days following the termination date (the "Tail Period"). Upon such termination, 363 will promptly notify the Trustee of the identity of any and all prospective purchasers that it has contacted which may result in the obligation of the Trustee for payment of Success Fees. There shall be no Tail Period if 363 terminates the Agreement. All other provisions necessary to the enforcement of the intent of this Agreement will survive the termination or expiration of this Agreement.

363 agrees to perform its services in a professional and objective manner. The Trustee understands that 363 does not guarantee the results of any reports, opinions, findings, analysis and conclusions (whether written or oral) that it may undertake or make, but only agrees that any such reports, opinions, findings, analysis and conclusions shall represent 363's professional opinion based on the data provided or compiled by the Trustee, and otherwise available to 363. 363 attempts to obtain and compile its data from reliable sources, but it cannot guarantee its accuracy or completeness. 363 does not assume responsibility for the preparation, accuracy or completeness of information provided by the Trustee. The Trustee acknowledges that it is hiring 363 to assist the Trustee as described above. 363's engagement shall not constitute an audit, review or compilation, or any other type of financial statement reporting or attest engagement that is subject to the rules of the AICPA or other such state or national professional body.

To the best of its knowledge, 363 states and represents that no principal, director, owner, officer, employee, or agent of 363 represents or holds any interest adverse to the Trustee, the Company or the Company's estate, and that 363 is a "disinterested person" within the meaning of Title 11 U.S.C. Section 101(14).

The Trustee agrees to hold 363 and its officers, employees, agents, affiliates and subcontractor(s), including their respective successors in interest, harmless from and against any and all claims, liabilities, demands and causes of action that arise from, pertain to, or are otherwise related to any service provided by 363 with respect to the above referenced matter unless resulting from 363's gross negligence, or recklessly or intentionally tortious conduct.

This letter encompasses all of the terms and conditions between the Trustee and 363 concerning this engagement. If you, as Trustee, are in agreement with the various terms and conditions of this proposal, please indicate your acceptance of this proposal through the execution of an original copy of this Agreement and returning it to 363's Chicago office. The Trustee and 363 agree and acknowledge this Agreement is subject to approval of the U.S. Bankruptcy Court.

# The 363 Group, Inc.

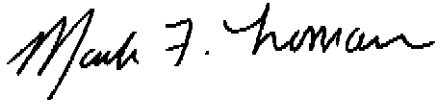
March 12, 2003

Mr. Andrew J. Maxwell

Should you have any questions, comments or concerns, or require additional clarification of information, please do not hesitate to contact me at your convenience.

Very truly yours,

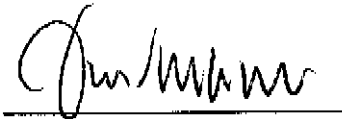
The 363 Group, Inc.



By Mark F. Thomann  
President and CEO

**ACKNOWLEDGED AND AGREED TO:**

Andrew J. Maxwell, as Chapter 7 Trustee  
for marchFIRST, Inc., and not individually



Date 3/21/03



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

In re:	)	Chapter 7
	)	
marchFIRST, INC., <i>et al.</i> ,	)	Case No. 01-24742
	)	
Debtors.	)	Jointly Administered
	)	
	)	Honorable John D. Schwartz

**DECLARATION OF DISINTERESTEDNESS  
OF THE 363 GROUP, INC. IN SUPPORT  
OF APPLICATION FOR EMPLOYMENT BY TRUSTEE**

David P. Kuipers states the following as his unsworn declaration under penalty of perjury:

1. I am a certified public accountant and a principal of The 363 Group, Inc. ("363"), which maintains offices at 227 West Monroe Street, 20th Floor, Chicago, Illinois. Among other services, 363 provides valuation and liquidation consulting services to Debtors-in-Possession and Trustees in cases under Title 11 U.S.C. (the "Bankruptcy Code"). I make this declaration on behalf of myself and 363 in support of the foregoing application by the Trustee ("Application") seeking an order pursuant to §327(a) of the Bankruptcy Code authorizing 363's employment to provide the following services to the Trustee:

(A) Assist the Trustee in liquidating the Debtor's investment portfolio, including both publicly traded and non-publicly traded securities and which may include without limitation those listed on the Debtor's most recent Schedule B numbers 12, 13 and 14 (referred to herein as the "Securities"), in an orderly, efficient and cost-effective manner and in accordance with §363 of the Bankruptcy Code; and

(B) Perform such other tasks as may be mutually agreed upon by 363 and the Trustee.

2. The proposed terms of 363's employment are set forth in the foregoing Application and the engagement letter attached thereto as an Exhibit. The proposed terms of 363's employment and compensation are consistent with employment and compensation arrangements 363 typically enters into when providing similar services, and are competitive with those entered into by similar firms when rendering comparable services.

3. I have searched 363's records for connections to the entities listed on the Exhibits A-1 through A-4 attached to this declaration, and to the best of my knowledge neither I nor any principal, employee, associate or agent of 363, insofar as I have been able to ascertain, has any connection with any of such entities, which include the above-named Debtor, its affiliates and

subsidiaries, 20 largest and other known creditors, the Debtor's directors and officers, the Trustee, the United States Trustee, or with their respective attorneys or accountants. I and other employees of 363 have discussed the matters upon which 363 is to be engaged with the Trustee, his attorneys, and other administrative personnel.

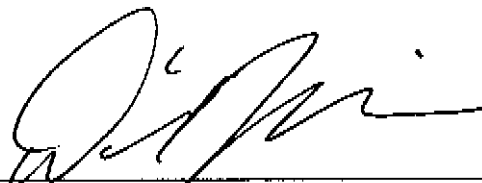
4. Neither I nor any principal, employee, associate or agent of 363, insofar as I have been able to ascertain, represents any interest adverse to that of the estate, the Trustee or the Debtor in the matters upon which 363 is to be engaged. From June 1999 through March 9, 2001, the spouse of Mark F. Thomann, a principal of 363, was employed by Mitchell Madison Group, a subsidiary of the Debtor, as a strategy consultant. Mr. Thomann's spouse was neither an officer nor an "insider" of Mitchell Madison Group within the meaning of §101(31) of the Bankruptcy Code. Mr. Thomann's spouse has no claim against the Debtor's estate.

5. Based on the foregoing, I believe 363 and I are "disinterested persons" within the meaning of §§101(14) and 327 of the Bankruptcy Code.

6. I have advised the Trustee of 363's willingness to be employed to assist the Trustee in this case as set forth in the foregoing Application and the engagement letter agreement attached thereto, with all compensation and reimbursement of expenses to be allowed and paid as may be approved by this Court upon further application.

7. Neither I nor any principal, employee, associate or agent of 363 has agreed to share any compensation 363 may earn for services to the Trustee in this case with any person or entity.

**FURTHER DECLARANT SAYETH NAUGHT.**



David P. Kuipers  
The 363 Group, Inc.  
227 W. Monroe Street, 20th Floor  
Chicago, Illinois 60606  
(312) 596-8038

**EXHIBIT A-1**

**DEBTORS AND THEIR AFFILIATES**

marchFIRST, Inc.  
marchFIRST Reseller Corporation  
Fulcrum Solutions, Inc.  
Challenger 31 L.L.C.  
marchFIRST Consulting, Inc.  
USWEB Acquisition Corporation 102  
USWEB Atlanta Corporation  
USWEB Acquisition Corporation 112  
USWEB Houston Corporation  
USWEB Acquisition Corporation 128  
MS Closure Corporation f/k/a McKinney & Silver, Inc.  
SM Closure Corp.  
Site Specific, Inc.  
marchFIRST Partners Venture Fund, LLC  
USWEB Acquisition Corporation 115  
CKS Group, Inc.  
CKS Partners, Inc.  
Donovan & Green, Inc.  
Mitchell Madison Consulting Group, Inc.  
Mitchell Madison Group (DEL), L.L.C.  
Mitchell Madison Group, G.P..

## **EXHIBIT A-2**

Microsoft Corporation  
Credit Suisse First Boston  
PNC Bank  
KBC Bank, NV  
Herman Miller Workplace  
Henriksen  
Electro Rent Corporation  
SAP America, Inc.  
Hallmark Computer Products  
KPMG, LLP  
Global Center  
IBM Credit Corporation  
Plumtree Software  
Williams Communications  
Xerox Corporation  
John Moriarty & Associates, Inc.  
PNC Leasing  
AT&T  
Korn Ferry International  
Turner Construction

**EXHIBIT A-3**

**OTHER PARTIES IN INTEREST**

Transamerica Vendor Financial Services Corporation<sup>2</sup>  
ProLogis Trust  
TIAA Realty, Inc.  
Heller Financial Services, Inc.  
American National Bank and Trust Co. of Chicago  
105 East 17th Street Associates  
Bank of America Commercial Finance Corporation  
McCook Metals  
Fleet Capital Leasing Corp.  
divinc, Inc.

**EXHIBIT B – FORM OF PROPOSED ORDER**

C. The employment of 363 Group as liquidation consultants to the Trustee is in the best interests of the Debtors' estates and creditors.

NOW THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Trustee's Application is granted in its entirety.
2. Pursuant to § 327(a) of the Bankruptcy Code, the Trustee is hereby authorized to employ 363 Group as liquidation consultants, with the services to be provided to include but not necessarily be limited to marketing and selling, subject to the provisions of Title 11 U.S.C. §363, certain publicly traded and non-publicly traded securities owned by the Debtor, including without limitation those listed on the Debtor's most recent Schedule B numbers 12, 13 and 14. Trustee is further authorized to pay 363 Group a refundable retainer in the amount of \$10,000.00; however, and notwithstanding payment of the retainer, any and all compensation or reimbursement of expenses to be allowed or paid to 363 Group pursuant to this Order shall be subject to further notice, application, and approval of this Court.
3. This Court shall retain jurisdiction over all matters arising from or related to the implementation of this Order.
4. This is a final Order, effective immediately upon its entry by the clerk.

Dated: April 17, 2003

ORDERED AND APPROVED:

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UNITED STATES BANKRUPTCY JUDGE