NewsRoom

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UST calls bonuses for Quirky execs 'unjustified'

Kelsey Butler

Idea factory Quirky Inc. will have to convince a New York judge that it should be able to pay out bonuses to its key employees that have been called unjustified by a bankruptcy watchdog.

Judge Martin Glenn of the U.S. Bankruptcy Court for the Southern District of New York in Manhattan will preside over the Oct. 23 hearing.

Glenn will consider the debtor's proposed incentive and retention plans, as well as an Oct. 14 objection to the payouts from U.S. Trustee William K. Harrington.

In an Oct. 2 motion, the New York startup, which sourced ideas for new products from an online community and subsequently manufactured them, sought approval to hand out up to $1.58 million to four executives under a key employee incentive plan, or KEIP. Under the proposed plan $1.31 million would be available as a sale incentive and up to $270,000 would be payable as a wind-down incentive, court papers said.

Additionally, Quirky requested permission to pay out $650,000 to 42 employees under a key employee retention plan, or KERP.

"Filing for bankruptcy creates special challenges for companies regarding morale, retention, and productivity," the company said in its motion. "It demoralizes employees and frequently causes them to search for new employment. These complications are particularly acute for debtors who seek to engage in broad sale processes, as a demoralized and reduced workforce can complicate the logistics of preparing for and effectuating a sale process, which in turn decreases the amount that can be earned in any sale to the detriment of the estate and interested parties."

Quirky, which has already secured a $15 million offer for its Wink Inc. subsidiary from Flextronics International USA Inc., said the payout programs are particularly important in its case.

"The assets of Wink, which are being marketed as a going concern and will undoubtedly be a primary driver of value to these estates, are the technology of Wink and the people behind that technology," the company said. "Wink is a pioneer in the developing arena of connected home applications and it is the people of Wink who are actually innovating and responsible for product development and evolution."

Wink, founded in 2013, has developed a platform that allows users to control household appliances via their mobile devices through partnerships with companies such as General Electric Co. (GE), Honeywell International Inc. (HON) and Nest Labs Inc., among others.

Meanwhile, Quirky, which is in the process of marketing its own assets, said that many of its employees are crucial to providing potential bidders with due diligence materials so they can properly evaluate Quirky's assets.

In his objection, Harrington said Quirky has failed to provide enough information about each of the program participants' job descriptions, or enough proof that they aren't company insiders.

The trustee said that the debtor has not established that the KEIP and KERP are "justified by the facts and circumstances of this case."

The bankruptcy watchdog also said that the incentive program "does not contain difficult metrics."

Glenn on Oct. 9 signed an order approving bid procedures for the Wink assets, with Flextronics serving as stalking horse.

Competing offers of at least $15.8 million are due by Oct. 29. If there is at least one alternate offer, an auction would take place on Nov. 2. Minimum increments would be announced at auction.

A sale hearing would take place on Nov. 6.

Flextronics would be entitled to a $450,000 breakup fee and expense reimbursement up to a $200,000 cap if it is not the ultimate buyer.

Quirky on Oct. 1 filed a motion requesting approval of bid procedures for its own assets.

On the block is intellectual property tied to produced items, the Quirky.com platform, the company's Powered by Quirky initiative and miscellaneous intellectual property.

Quirky has yet to secure an offer for those assets. Glenn will on Oct. 23 also consider proposed bid procedures for the Quirky assets.

The company filed its petition on Sept. 22 due to a number of operational challenges and increased overhead expenses.

Starting in July, court papers show, Quirky began shopping Wink's assets with the aid of investment banker Centerview Partners LLC, which led to the Flextronics deal.

The company has $10 million to $50 million in assets and $50 million to $100 million in liabilities.

Debtor counsel Jeffrey L. Cohen at Cooley LLP couldn't be reached for comment Tuesday.

Klestadt Winters Jureller Southard & Stevens LLP is also debtor counsel.

FTI Consulting Inc. (FCN) is Quirky's financial adviser. Hilco Streambank LLC is investment banker for the Quirky assets.

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