

EXHIBIT B

(Blackline)

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

-----X
:
In re: : Chapter 11
:
Velti Inc., *et al.*,¹ : Case No. 13-12878 (PJW)
:
:
Debtors. : (Jointly Administered)
:
: Re: Dkt. No. 127, 224, 247 & —
-----X

AGREED ORDER AUTHORIZING THE DEBTORS TO
RETAIN CRAIG BOUCHER AND DELOITTE FINANCIAL
~~ORDER GRANTING APPLICATION OF DEBTORS AND DEBTORS IN~~
~~POSSESSION PURSUANT TO SECTIONS 327(a) AND 330(a) OF THE BANKRUPTCY~~
~~CODE, BANKRUPTCY RULE 2014(a) AND LOCAL BANKRUPTCY RULE 2014-1 FOR~~
~~AN ORDER AUTHORIZING THEM TO RETAIN AND EMPLOY DELOITTE~~
~~FINANCIAL ADVISORY SERVICES LLP AS FINANCIAL ADVISOR~~
ADVISORY SERVICES LLP NUNC PRO TUNC TO THE PETITION
DATE DECEMBER 3, 2013

This matter coming before the Court upon the *Application of Debtors and Debtors in Possession Pursuant to Sections 327(a) and 330(a) of the Bankruptcy Code, Bankruptcy Rule 2014(a) and Local Bankruptcy Rule 2014-1 for an Order Authorizing Them to Retain and Employ Deloitte Financial Advisory Services LLP as Financial Advisor Nunc Pro Tunc to the Petition Date [Docket No. 127]* (the “Application”),² filed by the above-captioned debtors and debtors in possession (collectively, the “Debtors”); the Court having reviewed the Application and the Boucher Declaration and the supplemental declarations of Mr. Boucher, and having scheduled a

¹ The Debtors are the following six entities (the last four digits of their respective taxpayer identification numbers follow in parentheses): Velti Inc. (4475), Air2Web, Inc. (5572), Air2Web Interactive, Inc. (2364), Velti North America, Inc. (8900), Velti North America Holdings, Inc. (3953) and Velti US Holdings, Inc. (8299). The mailing address of each of the Debtors, solely for purposes of notices and communications, is Spear Tower, 1 Market Street Suite 1400, San Francisco, California 94105.

² Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Application.

hearing before the Court (the “Hearing”); the Court having found that (i) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, (ii) this proceeding is a core proceeding pursuant to 28 U.S.C. § 157(b), (iii) venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409, (iv) notice of this Application and the Hearing was appropriate under the circumstances and ~~(v) Deloitte FAS is a “disinterested person,” as defined in Section 101(14) of the Bankruptcy Code and as required by section 327(a) of the Bankruptcy Code in that (A) Deloitte FAS has no connection with the Debtors, their creditors, the United States Trustee, any person employed by the office of the United States Trustee or any party with an actual or potential interest in these chapter 11 cases or their respective attorneys or accountants, except as set forth in the Avila Declaration, (B) Deloitte FAS is not a creditor, equity security holder or insider of the Debtors, (C) Deloitte FAS is not and was not, within two years of the Petition Date, a director, officer or employee of the Debtors,³ and (D) Deloitte FAS neither has nor represents~~ due and proper notice of the Application having been given under the circumstances; and the Court being satisfied based on the representations made in the Application and in the Boucher Declaration that Craig Boucher and Deloitte Financial Advisory Services LLP (“Deloitte FAS”) and Deloitte Transactions and Business Analytics LLP (“DTBA” and together with Deloitte FAS, “Deloitte”) do not represent an interest adverse to the ~~interests of the estates or of any class of creditors or equity security holders by reason of any direct or indirect relationship to, connection with, or interest in, the Debtors or for any other reason; and the Court having determined that the legal and factual bases set forth in the Application, the Boucher~~

³ The Debtors and Deloitte FAS entered into an engagement letter, dated July 24, 2013 under which a Deloitte FAS principal was to act as the CRO of Velti, among other services to be provided. However, Deloitte FAS principal never acted as CRO of Velti or the other Debtors, but instead acted as CRO of PLC, a non debtor. This engagement was terminated by agreement of the parties on August 29, 2013. Since that time, Deloitte FAS has continued to provide certain financial advisory services to the Debtors.

~~Declaration, and at the Hearing, establish just cause for the relief granted herein;~~Debtors' estates with respect to the matters upon which they are to be engaged, and that its employment is necessary and would be in the best interests of the Debtors' estates, and after due deliberation and sufficient cause appearing therefor.

~~IT IS HEREBY ORDERED~~NOW, THEREFORE, THE COURT ORDERS THAT:

1. The Application is GRANTED as modified herein.

~~2. The Debtors are authorized to retain, employ and compensate Deloitte FAS as their financial advisor in these chapter 11 cases, pursuant the terms and conditions set forth in the Application and the Engagement Letter, nunc pro tunc as of the Petition Date.~~

~~3. Deloitte FAS shall file monthly, interim and final fee applications in accordance with any procedures established by the Court, sections 330 and 331 of the Bankruptcy Code, the Bankruptcy Rules and the Local Rules.—~~

~~4. Notwithstanding anything to the contrary in the Engagement Letter, the following shall apply with respect to services performed after the commencement of these Chapter 11 cases and prior to the effective date of the Debtors' Plan of Reorganization:~~

~~Indemnification:~~

~~The following provisions shall apply as a further limitation of the indemnification provisions set forth in the Engagement Letter.~~

~~Deloitte FAS shall not be entitled to indemnification, contribution or reimbursement for services other than the services provided under the Engagement Letter, unless such services and the indemnification, contribution, or reimbursement therefore are approved by the Court;~~

~~Notwithstanding anything to the contrary in the Engagement Letter, the Debtors shall have no obligation to indemnify any person, or provide contribution or reimbursement to any person, for any claim or expense to the extent that it is either (i) judicially determined (the determination having become final and no longer subject to appeal) to have arisen from that person's gross~~

~~negligence or willful misconduct; (ii) for a contractual dispute in which the Debtors allege the breach of Deloitte FAS's contractual obligations unless the Court determines that indemnification, contribution, or reimbursement would be permissible pursuant to *In re United Artists Theatre Co.*, 315 F.3d 217 (3d Cir. 2003); or (iii) settled prior to judicial determination as to the exclusions set forth in clauses (i) and (ii), but determined by this Court, after notice and a hearing, to be a claim or expense for which that person should not receive indemnity, contribution or reimbursement under the terms of the Engagement Letter as modified by this Order; and~~

~~If, before the earlier of (i) the entry of an order confirming a chapter 11 plan in these cases (that order having become final and no longer subject to appeal) and (ii) the entry of an order closing these chapter 11 cases, Deloitte FAS believes that it is entitled to payment of any amounts by the Debtors on account of the Debtors' indemnification, contribution, or reimbursement obligations under the Engagement Letter, including without limitation the advancement of defense costs, Deloitte FAS must file an application before this Court, and the Debtors may not pay any such amounts to Deloitte FAS before the entry of an order by this Court approving the payment. This paragraph is intended only to specify the period of time under which the Court shall have jurisdiction over any request for payment by Deloitte FAS for indemnification, contribution, or reimbursement, and not a provision limiting the duration of the Debtors' obligation to indemnify Deloitte FAS under the Engagement Letter.~~

~~Limitation of Liability:-~~

~~Any limitation on liability or any amounts to be contributed by Deloitte FAS set forth in the Engagement Letter shall be eliminated.~~

2. The Debtors are authorized under sections 105(a) and 363(b) of the Bankruptcy Code to engage Deloitte and Craig Boucher, formerly a director with Deloitte FAS and currently a director with DTBA, under the terms of the Engagement Letter (as modified by this Order); provided that Craig Boucher shall be engaged as the bankruptcy administrative officer of the Debtors, *nunc pro tunc* to December 3, 2013, reporting to Sally Rau and/or Mari Baker (through January 31, 2014 in their capacity as officers of the Debtors and thereafter in their capacity as the

board of directors of the Debtors) and assisted by the personnel of Deloitte FAS and DTBA who have performed and will be performing services under the Engagement Letter. Deloitte is authorized to seek payment of its fees and expenses as set forth in the Engagement Letter, in each case *nunc pro tunc* to December 3, 2013.

3. The following terms shall apply to the engagement of Deloitte, the appointment of Mr. Boucher and the payment of Deloitte's fees and expenses notwithstanding anything in the Application or the Engagement Letter to the contrary:

- (a) Deloitte and its affiliates shall not act in any other capacity (for example, and without limitation, as a financial advisor, claims agent/claims administrator, or investor/acquirer) in connection with the above-captioned cases.
- (b) In the event the Debtors seek to have Deloitte personnel assume executive officer positions other than Mr. Boucher being engaged as the Debtors' bankruptcy administrative officer, or to materially change the terms of Deloitte's engagement by either (i) modifying the functions of personnel, (ii) adding new personnel, or (iii) altering or expanding the scope of the engagement, a motion to modify the retention shall be filed. However, nothing in this paragraph shall require Deloitte to file a motion to modify the retention as a result of Deloitte changing the terms of its engagement or altering its staffing in these cases as a result of Mr. Boucher (i) becoming employed by DTBA, an affiliate of Deloitte FAS, on December 29, 2013 or (ii) serving as bankruptcy administrative officer for the Debtors rather than Deloitte FAS being engaged as a financial advisor to the Debtors, as initially contemplated in the Application.

- (c) Deloitte shall file with the Court, with copies to the United States Trustee (the “U.S. Trustee”) and the Committee of Unsecured Creditors (the “Committee”), a report of staffing on the engagement for the previous months and each month hereafter. Such report shall include the names and functions of the individuals assigned. All staffing shall be subject to review by the Court in the event an objection is filed.
- (d) No principal, employee or independent contractor of Deloitte and its affiliates shall serve as a director of any of the Debtors during the pendency of the above-captioned cases.
- (e) Deloitte shall file with the Court, and provide notice to the U.S. Trustee and the Committee, reports of compensation earned and expenses incurred on a monthly basis. Such reports shall contain summary charts which describe the services provided, identify the compensation earned by Mr. Boucher and other personnel of Deloitte providing services supporting him, and itemize the expenses incurred. Time records shall (i) be appended to the reports, (ii) contain detailed time entries describing the task(s) performed, and (iii) be organized by project category. Where personnel are providing services at an hourly rate, the time entries shall identify the time spent completing each task in 1/10 hour increments and the corresponding charge (time multiplied by hourly rate) for each task; where personnel are providing services at a “flat” rate, the time entries shall be kept in hourly increments. All compensation shall be subject to review by the Court in the event an objection is filed.

- (f) There shall be no indemnification of Deloitte or its affiliates, and Deloitte and its affiliates shall not receive any exculpation under any plan confirmed or confirmation order entered in these cases (the “Plan”).
- (g) The Debtors are permitted to indemnify and insure (under the Debtors’ D&O policy) Mr. Boucher on the same terms as provided to the Debtors’ other officers and directors under the Debtors’ corporate bylaws and applicable state law (and hereby do so).
- (h) For a period of three years after the conclusion of the engagement, neither Deloitte nor any of its affiliates shall make any investments in the Debtors or the Reorganized Debtors.
- (i) Deloitte shall disclose any and all facts that may have a bearing on whether the firm, its affiliates, and/or any individuals working on the engagement hold or represent any interest adverse to the Debtors, their creditors, or other parties in interest. The obligation to disclose identified in this subparagraph is a continuing obligation.
- (j) The fiduciary duty that may be imposed upon the bankruptcy administrative officer or any other officer of the Debtors under state or federal law shall not be altered.
- (k) Deloitte is not seeking any success fees, transaction fees or other back end fees.

~~5. Section 10 of the General Business Terms of the Engagement Letter is deemed deleted and replaced with the following: “Nothing contained in these terms shall alter in any way the duties imposed by law on Deloitte FAS in respect of the Services. It is understood and agreed~~

~~that Deloitte FAS is an independent contractor, and that Deloitte FAS will not be construed to be an agent, partner or representative of Client.”~~

~~6. To the extent that there may be any inconsistency between the terms of the Application, the Engagement Letter, and this Order, the terms of this Order shall govern.~~

~~7. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Application.~~

~~4.~~ 8. Notwithstanding the possible applicability of Notice of the Application as provided therein shall be deemed good and sufficient notice of such Application and the requirements of Rule 6004(a) of the Federal Rules of Bankruptcy Procedure and the Local Bankruptcy Rules are satisfied by such notice. Notwithstanding Rule 6004(h), 7062 or 9014 of the Federal Rules of Bankruptcy Procedure, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

5. The Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation of this Order.

~~{remainder of page intentionally left blank}~~

~~Notwithstanding anything to the contrary in the Engagement Letter, during the pendency of these chapter 11 cases, this Court shall retain exclusive jurisdiction over (i) any dispute arising out of or relating to the Engagement Letter, and (ii) all matters arising from or related to the implementation of this Order.~~

~~9.~~

Dated: _____, ~~2013~~2014
Wilmington, Delaware

The Honorable Peter J. Walsh
United States Bankruptcy Judge

Summary Report: Litéra® Change-Pro TDC 7.0.0.375 Document Comparison done on 4/7/2014 5:10:37 PM	
Style Name: DLA Piper	
Original Filename: C:\Users\ji19809\Desktop\Original Order.docx	
Modified DMS: iw://WESTDMS/EAST/74159623/3	
Changes:	
<u>Add</u>	54
Delete	43
Move From	10
<u>Move To</u>	10
<u>Table Insert</u>	0
Table Delete	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format Changes	0
Total Changes:	117