

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

|  |   |                                |
|--|---|--------------------------------|
| -----                                    | X |                                |
| In re:                                   | : | Chapter 11                     |
|  | : |                                |
| Velti Inc., <i>et al.</i> , <sup>1</sup> | : | Case No. 13-12878 (PJW)        |
|  | : |                                |
|  | : | (Jointly Administered)         |
|  | : |                                |
| Debtors.                                 | : | Re: Docket Nos. 21, 323 & ____ |
| -----                                    | X |                                |

**ORDER APPROVING APPLICATION OF THE DEBTORS 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  
EXPANDING THE SCOPE OF THE RETENTION AND EMPLOYMENT OF BMC  
GROUP, INC. TO INCLUDE CERTAIN ADMINISTRATIVE SERVICES**

This matter coming before the Court on the *Application of the Debtors 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 Expanding the Scope of the Retention and Employment of BMC Group, Inc. to Include Certain Administrative Services* (the “Expansion Application”),<sup>2</sup> filed by the above captioned debtors and debtors in possession (collectively, the “Debtors”); the Court having reviewed the Expansion Application and the Feil Declaration and having scheduled a 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) venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409, (iii) this is a core proceeding pursuant to 28 U.S.C. § 157(b), (iv)

<sup>1</sup> 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.

<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Expansion Application.

notice of the Expansion Application and the Hearing were sufficient, and (v) the Court having determined that the legal and factual bases set forth in the Expansion Application establish just cause for the relief granted herein; and the Court having determined that the relief sought in the Expansion Application is in the best interests of the Debtors and their estates; and after due deliberation and sufficient cause appearing therefore,

IT IS HEREBY ORDERED THAT:

1. The Expansion Application is GRANTED, as set forth herein.
2. BMC's retention and employment by the Debtors is expanded and supplemented to include the Administrative Services as provided in the Expansion Application and in accordance with the terms and conditions set forth in the Services Agreement; provided, however, that BMC shall provide the Debtors with a ten percent (10%) discount on all Administrative Services, but not expenses or production costs.
3. For all Administrative Services, BMC shall apply to the Court for allowance of compensation and reimbursement of out-of-pocket expenses incurred in these cases in accordance with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, the guidelines established by the US Trustee and orders of this Court.
4. Other than as explicitly set forth in this Order, the Retention Order shall be unaltered and remain in full force and effect.
5. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Order in accordance with the Application.
6. BMC shall not be entitled to indemnification, contribution or reimbursement pursuant to the Services Agreement (as defined in the Retention Order) for services other than the services provided under the Services Agreement (as defined in the Retention Order), unless such

services and the indemnification, contribution or reimbursement therefore are approved by the Court.

7. Notwithstanding anything to the contrary in the Services Agreement (as defined in the Retention Order), the Debtors shall have no obligation to indemnify BMC, or provide contribution or reimbursement to BMC, for any claim or expense that is either: (i) judicially determined (the determination having become final) to have arisen from BMC's gross negligence, willful misconduct, or fraud; (ii) for a contractual dispute in which the Debtors alleges the breach of BMC's contractual obligations if the Court determines that indemnification, contribution or reimbursement would not be permissible pursuant to *In re United Artists Theatre Co., et al.*, 315 F.3d 217 (3d Cir. 2003), or (iii) settled prior to a judicial determination under (i) or (ii), but determined by this Court, after notice and a hearing, to be a claim or expense for which BMC should not receive indemnity, contribution or reimbursement under the terms of the Services Agreement (as defined in the Retention Order) as modified by this Retention Order.

8. If, before the earlier of (i) the entry of an order confirming a chapter 11 plan in these cases (that order having become a final order no longer subject to appeal), or (ii) the entry of an order closing these cases, BMC believes that it is entitled to the payment of any amounts by the Debtors on account of the Debtors' indemnification, contribution and/or reimbursement obligations under the Services Agreement (as modified by the Retention Order and this Order), including without limitation the advancement of defense costs, BMC must file an application therefore in this Court, and the Debtors may not pay any such amounts to BMC 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 fees and expenses by BMC for indemnification, contribution or reimbursement, and not a provision limiting the

duration of the Debtors' obligation to indemnify BMC. All parties in interest shall retain the right to object to any demand by BMC for indemnification, contribution or reimbursement.


9. Notwithstanding anything to the contrary herein, nothing in this Order shall be construed to approve or authorize the limitation of liability provisions in Paragraph IX of the Services Agreement (as defined in the Retention Order).

10. BMC will make images of proofs of claim filed in the chapter 11 cases available to the public on the website BMC is maintaining for the chapter 11 cases.

11. In the event of any inconsistency between this Order, the Expansion Application and the Services Agreement, this Order shall control.

12. Notwithstanding any term in the Services Agreement to the contrary, the Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: April 10 2014  
Wilmington, Delaware

  
The Honorable Peter J. Walsh  
United States Bankruptcy Judge