

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

In re:

Velti, Inc., *et al.*

Debtors.

Chapter 11

Case No. 13-12878 (PJW)

Jointly Administered

**Hearing Date: May 29, 2014 at 9:30 a.m. (EST)**

**Objection Deadline: May 22, 2014 at 4:00 p.m. (EST)**

**MOTION OF YELLOWPAGES.COM, LLC FOR ENTRY OF ORDER DEEMING  
PROOF OF CLAIM DEEMED TIMELY FILED**

Yellowpages.com, LLC (“YP”), a creditor and party-in-interest in the above-captioned bankruptcy cases, by and through its undersigned counsel, hereby submits a motion (the “**Motion**”) for entry of an order deeming its proof of claim timely filed pursuant to Rule 9006(b) of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”). In support of the Motion, YP avers as follows:

**JURISDICTION**

1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. 157(b)(2).

**FACTS**

2. YP and Velti, Inc. (“**Velti**”) are parties to that certain Master License and Services Agreement (the “**Agreement**”) dated May 4, 2011.

3. On November 4, 2013, Velti and its debtor affiliates (collectively, the “**Debtors**”) filed with the United States Bankruptcy Court for the District of Delaware (the “**Court**”) a voluntary petition for relief under chapter 11 of the Bankruptcy Code.

4. On November 12, 2013, the Official Committee of Unsecured Creditors (the “**Committee**”) was appointed by the Office of the United States Trustee [D.I. #50].

5. Pursuant to an order dated February 7, 2014 [D.I. #270], the Court established March 17, 2014 as the date by which proofs of claim must be filed against the Debtors (the “**Bar Date**”).

6. Notices and other pleadings sent to YP regarding the Debtors’ bankruptcy were misplaced internally and, consequently, not received by the appropriate personnel.

7. YP learned of these cases only through its outside counsel after the Bar Date.

8. After immediately compiling the necessary documents and information, YP filed a proof of claim [Claim No. 189] (the “**Claim**”) against Velti’s bankruptcy estate on March 24, 2014, only seven days after the Bar Date.

9. The Claim, a copy of which is attached hereto as Exhibit A, is in an undetermined amount and based on YP’s right to indemnification from Velti in accordance with the terms of the Agreement.

10. Thereafter, upon YP’s request, the Debtors and the Committee agreed to stipulate as to the timeliness of the Claim, while preserving the rights of all parties to object to or defend the allowance of the Claim on any other grounds.

11. On April 10, 2014, the Court approved the Debtors’ proposed disclosure statement (the “**Disclosure Statement**”) and scheduled a confirmation hearing on the Debtors’ plan of liquidation under Chapter 11 of the Bankruptcy Code (the “**Plan**”) for May 29, 2014.

**LEGAL ARGUMENT AND RELIEF REQUESTED**

12. By this Motion, YP seeks entry of an order deeming the Claim timely filed pursuant to Bankruptcy Rule 9006(b), which provides, in pertinent part, as follows:

Except as provided in paragraphs (2) and (3) of this subdivision, when an act is required or allowed to be done at or within a specified period by these rules or by a notice given thereunder or by order of court, the court for cause shown may at any time in its discretion ... (2) on motion made after the expiration of the specified period permit the act be done where the failure to act was the result of excusable neglect.

Fed. R. Bankr. P. 9006(b)(1).

12. Courts may freely extend Chapter 11 bar dates established under Bankruptcy Rule 3003 or exercise their statutory authority under section 503(a) to allow untimely administrative claims under the doctrine of “excusable neglect.” *Pioneer Investment Services Company v. Brunswick Associates Limited Partnership*, 507 U.S. 380, 382-83 (1993).

13. In *Pioneer*, the Supreme Court resolved a circuit split and adopted a “more flexible” interpretation of the excusable neglect standard. *Pioneer* held that “Congress plainly contemplated that the courts would be permitted, where appropriate, to accept late filing caused by inadvertence, mistake, or carelessness, as well as by intervening circumstances beyond the party’s control.” *Id.* at 388.

14. Whether a creditor’s neglect is “excusable” is ultimately determined on the basis of equitable considerations. *Id.* at 395 (“Because Congress has provided no other guideposts for determining what sorts of neglect will be considered ‘excusable,’ we conclude that the determination is at bottom an equitable one, taking account of all the relevant circumstances surrounding the party’s omission.”).

15. The Supreme Court set forth the following four factors to determine whether neglect is excusable: (i) the danger of prejudice to the debtor; (ii) the length of the delay and its potential impact on judicial proceedings; (iii) the reason for the delay and whether it was within the reasonable control of the movant; and (iv) whether the movant acted in good faith. *Id.*

16. YP submits that its failure to file the Claim before the Bar Date constitutes excusable neglect under *Pioneer*.

17. First, deeming the Claim timely filed will not prejudice the Debtors in that the Claim was filed only seven days after the Bar Date and prior to the approval of the Disclosure Statement. *In re Garden Ridge Corp.*, 348 B.R. 642, 646 (Bankr. D. Del 2006) (finding no prejudice where claim was filed a week after bar date and a year before confirmation of reorganization plan and creditors were not required to disgorge amounts already paid out).<sup>1</sup>

18. Second, as the Claim was filed a mere week after the Bar Date, the delay is *de minimis* and will not impact judicial proceedings in that the Plan has not been confirmed and substantive claims objections have yet to be made. *Garden Ridge Corp.*, 348 B.R. at 646 (finding minimal delay and impact on judicial proceedings when claim was filed seven days after bar date, committee was in the process of bringing their claims objection, and a distribution had not yet been made).

19. Third, as to the reason for the delay, the filing of the Claim was hindered due to a clerical error internally which delayed the delivery of notices and pleadings to the appropriate personnel. Upon discovery of these notices and pleadings, YP immediately gathered the

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<sup>1</sup> See also *In re Eagle Bus Mfg.*, 62 F.3d 730, 737-39 (5<sup>th</sup> Cir. 1995); *In re Pappalardo*, 210 B.R. 634, 645 (Bankr. S.D. Fla. 1997) (In determining whether a debtor would be prejudiced by the allowance of a late filed claim, courts consider whether the debtor's ability to confirm a plan of reorganization would be negatively impacted and do not focus on the impact of allowance on other creditors).

Further, if the Agreement is rejected through operation of the Plan or otherwise, YP would be entitled to file a rejection damages claim on the same basis as the Claim. Here, as in *Garden Ridge Corp.*, there will be no conceivable prejudice to debtors or creditors by deeming YP's Claim timely filed.

relevant documents and information and filed the Claim only seven days after the Bar Date.

22. Finally, YP has acted in good faith. Indeed, upon learning of the existence of the Debtors' bankruptcies and the passing of the Bar Date, YP acted immediately by preparing and filing the Claim; shortly thereafter engaged in discussions with the Debtors seeking a stipulation from the Debtors and the Committee as to the Claim's timeliness; and filed this Motion.<sup>2</sup> *Garden Ridge Corp.*, 348 B.R. at 647 (Good faith factor weighed in favor of claimholder as no evidence existed of bad faith and it admitted its mistake and acted quickly to correct it).

### **CONCLUSION**

23. Based on the *Pioneer* standards, the Claim should be deemed timely filed under Bankruptcy Rule 9006 in that YP's failure to file it prior to the Bar Date was the result of excusable neglect.

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<sup>2</sup> Indeed, the Debtors and the Committee had agreed to stipulate as to the timeliness of the Claim and the delay of its filing resulting from excusable neglect, while preserving the rights of all parties to object to or defend the allowance of the Claim on any other grounds. However, the Office of the U.S. Trustee requested that a motion be filed.

WHEREFORE, YP respectfully requests entry of an Order in substantially the form attached to this Motion deeming the Claim timely filed pursuant to Bankruptcy Rule 9006(b) and granting such other and further relief as this Court may deem just and proper.

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Dated: May 8, 2014

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