

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

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In re : Chapter 11
:
ADVANTA CORP., *et al.*, : Case No. 09-13931 (KJC)
:
Debtors.¹ : (Jointly Administered)
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-----X **Re: Docket No. 467**

**SUPPLEMENTAL DECLARATION OF WILLIAM A. ROSOFF IN
SUPPORT OF THE DEBTORS' REPLY TO ACTING UNITED STATES
TRUSTEE'S OBJECTION TO MOTION FOR AUTHORITY TO IMPLEMENT
POSTPETITION SEVERANCE PLAN AND OTHER RELATED RELIEF**

I, William A. Rosoff, being fully sworn, hereby declare that the following is true to the best of my knowledge, information, and belief:

1. I am President and Vice Chairman of the Board of Directors of Advanta Corp. ("*Advanta*").
2. Unless otherwise stated, all facts set forth in this supplemental declaration (the "*Supplemental Declaration*") are based upon my personal knowledge, my discussions with other members of Advanta's and the Debtors' senior management, my review of relevant documents, information provided to me by employees and consultants working under my supervision, or my opinion based upon experience, knowledge, and information concerning the operations of the Debtors generally. I am authorized to submit this Supplemental Declaration on

¹ The Debtors in these jointly administered chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are Advanta Corp. (2070), Advanta Investment Corp. (5627), Advanta Business Services Holding Corp. (4047), Advanta Business Services Corp. (3786), Advanta Shared Services Corp. (7074), Advanta Service Corp. (5625), Advanta Advertising Inc. (0186), Advantennis Corp. (2355), Advanta Mortgage Holding Company (5221), Advanta Auto Finance Corporation (6077), Advanta Mortgage Corp. USA (2654), Advanta Finance Corp. (8991), Advanta Ventures Inc. (5127), BizEquity Corp. (8960), Ideablob Corp. (0726), Advanta Credit Card Receivables Corp. (7955), Great Expectations International Inc. (0440), Great Expectations Franchise Corp. (3326), and Great Expectations Management Corp. (3328).

behalf of the Debtors. If called upon to testify, I would testify competently to the facts set forth in this Supplemental Declaration.

3. I make this Supplemental Declaration in support of the *Debtors' Reply to Acting United States Trustee's Objection to Motion for Authority to Implement Postpetition Severance Plan and Other Related Relief* (the "**Reply**") [Docket No. 467], filed on May 5, 2010. I incorporate by reference my *Declaration In Support of the Debtors' Motion for Authority to Implement Postpetition Severance Plan and Other Related Relief* [Docket No. 357], filed on March 25, 2010, as if fully set forth herein. The bases for my support are set forth below.

Negotiation of the Postpetition Severance Plan and Incentive Bonus

4. The Postpetition Severance Plan² and Incentive Bonus were heavily negotiated with the Creditors' Committee, and the Motion has the support of this key constituency. The Creditors' Committee has been very active and vigilant in these chapter 11 cases. Under my supervision, the Debtors have worked together with the Creditors' Committee on all major issues in the case and have spent a significant amount of time analyzing and negotiating the amounts proposed under the Postpetition Severance Plan, the Incentive Bonus, and other relief requested in the Motion. In fact, the Debtors waited over a month to file the Motion in order to ensure that the Creditors' Committee, which has a fiduciary duty to all creditors, and is comprised of members representing all major creditor constituencies, including both indenture trustees, was comfortable with the relief sought in the Motion. The Creditors' Committee supports the relief sought in the Motion, including the severance payments to the insider Eligible Employees.

5. Moreover, with regard to the Incentive Bonus, the well-developed performance targets were selected by the Debtors and the Creditors' Committee, in consultation

² Capitalized terms not defined herein have the meaning as ascribed to such terms in the Reply.

with their respective financial advisors, as being appropriate for the circumstances of the Debtors' chapter 11 cases, and were approved by the Compensation Committee of Advanta's Board of Directors.

The Debtors' Employees are Necessary to the Liquidation Process

6. The Debtors' employees are critical to the successful wind-down of the Debtors' businesses. A myriad of complex regulatory, tax, and operational issues in these cases require employees' full attention and dedicated efforts. Employee attrition or demoralization will seriously jeopardize creditor recoveries. The delay in implementing the Postpetition Severance Plan has already had a demoralizing and highly detrimental effect on employee morale. Thus, I believe that the relief requested in the Motion is essential to restore morale and maximize creditors' recoveries.

7. The Debtors' employees have continued to work diligently since the Commencement Date and have remained with the Debtors based on their belief that the Debtors would continue to pay certain benefits, such as severance, even if the Debtors determined a reorganization was not feasible. Now that the Debtors have announced they are liquidating, their employees are keenly aware that they will inevitably lose their jobs. At the same time, the Debtors' employees have expended, and will continue to put forth, substantial time and effort during the wind-down process. I believe that alleviating employees' growing uncertainty over their future will ensure their continued loyalty and support through the resolution of these chapter 11 cases, and allow the Debtors' estates to realize the highest overall value possible for the pool of assets available for distribution to creditors.

8. The Debtors rely on their employees, whose efforts have been, and continue to be, critical, to facilitate the liquidation and wind-down process that will allow the

Debtors and their estates to realize the highest value possible for the pool of assets to be distributed to creditors on the effective date of a chapter 11 plan. It is precisely in the liquidation context, where employees experience an expanded workload and employee turnover is a significant risk, that the Debtors must continue to honor their commitment to their employees to provide severance benefits. I believe that the potential loss of their workforce would be devastating to the wind-down of the Debtors' businesses.

9. Since the Debtors are liquidating, their employees know their employment with the Debtors will inevitably end. In this environment, employees are concerned about their job security and severance benefits. I believe that without the reassurance that all terminated employees will receive severance payments, morale and loyalty among employees will suffer, and employees may perform their duties at less-than optimal levels, or seek other employment. The Debtors have already lost several key employees, and remaining employees are likely to find jobs elsewhere, even in today's distressed market. In fact, on May 3, 2010, one Eligible Employee provided two weeks' notice of her voluntary resignation. The Debtors can ill afford employee turnover at this stage of their chapter 11 cases. Creditor recoveries will suffer significantly if the Debtors are not able to maintain in good morale their existing workforce.

10. Furthermore, it is difficult to retain, much less recruit, employees because the Debtors are operating their businesses in chapter 11 and are winding down their affairs. Without the Eligible Employees, the Debtors' restructuring professionals would be required to devote substantial time and resources to familiarize themselves with the Debtors' businesses and to replicate to the extent possible the knowledge and skill possessed by such employees. I believe that this would entail a substantial and unnecessary expenditure of time and money and, in any event, is impractical.

11. The Debtors have reduced their workforce significantly in the time leading up to the chapter 11 cases and postpetition. At the Commencement Date, the Debtors employed 45 employees. The Debtors currently employ 32 employees.³ The remaining employees are handling financial and operational demands stemming from the chapter 11 cases, such as providing information to the Debtors' professionals, responding to creditor inquiries, complying with reporting requirements, and formulating a wind-down business plan and a chapter 11 plan. The severance amounts proposed under the Postpetition Severance Plan take into account remaining employees' increased duties attendant to the resolution of these chapter 11 cases and their going-forward utility to the wind-down process.

12. The Debtors' wind-down involves resolution of complex regulatory matters, separation of their business operations from certain non-debtors, and formulation of a complicated chapter 11 plan. For example, the Debtors' employees have been and will continue to be necessary to completing the following tasks in these chapter 11 cases:

- analyzing and litigating claims, once filed;
- structuring plan issues related to accounting and taxes;
- litigation of tax matters;
- transitioning servicing and collection of portfolio of small business credit card receivables from Advanta Bank Corp. ("**ABC**") to third party servicers;
- effectuating the physical and operational separation of ABC, which is currently under FDIC receivership, from the Debtors, including, without limitation, separating information technology functions and relocating the Debtors' records;

³ As mentioned above, one employee has voluntarily resigned and will no longer be employed by the Debtors as of May 17, 2010. As a result, 31 employees will remain with the Debtors. In addition, one Former Employee who is currently employed by the Debtors is now expected to be terminated after the effective date of the Postpetition Severance Plan. Thus, severance obligations for this employee will be incurred pursuant to the Postpetition Severance Plan in an amount determined by the Debtors upon consultation with the Creditors' Committee. This amount will likely be commensurate with the employee's entitlement to severance pay under the Prepetition Severance Plan.

- relocation of the Debtors' facilities, including exiting existing facilities, locating a new, smaller facility, and reestablishing operations in such facility;
- retaining appraisers and other professionals in connection with the sale of personal property and a substantial art collection, and overseeing such sale processes;
- negotiating and facilitating the sale of two insurance companies;
- dissolution of non-debtor subsidiaries (other than ABC);
- maintaining records of holders of Investment Notes and RediReserve Certificates (the "*Noteholders*") and monitoring transfers of such interests during these chapter 11 cases;⁴
- facilitation of the wind-down of employee plans and programs including the Employee Stock Ownership Plan, 401(k), Employee Stock Purchase Plan, COBRA, and other group plans;
- preparation of the Debtors' Monthly Operating Reports, Schedules and Statements of Financial Affairs;
- preparation of state tax returns; and
- overseeing ongoing document production in connection with matters not stayed by the bankruptcy filings.

13. The remaining employees have the essential background knowledge and skill sets to assist with the wind-down of the Debtors' operations and recovery of assets to repay their creditors. Attached hereto as **Schedule A** (which is filed under seal) is a detailed description of the services provided by each of the remaining 28 Eligible Employees during the chapter 11 cases. For example, as mentioned above, a major task for existing employees will be to analyze and potentially litigate proofs of claim filed by the bar date. This analysis will require information technology access, and significant legal and financial analysis. Also, the transfer of servicing for the credit card receivables portfolio from ABC to third parties is a significant

⁴ Advanta is the paying agent for the Investment Notes and RediReserve Certificates. As paying agent, Advanta is responsible for keeping books and records of Noteholders, and tracking transfers of Noteholders' interests during the bankruptcy cases. As of the Commencement Date, there were approximately 3,845 Noteholders, as indicated in the First Day Declaration. The Investment Notes and RediReserve Certificates continue to be traded during the Debtors' chapter 11 cases.

undertaking that will require historical knowledge of the servicing arrangements between ABC and Advanta. The book value of the portfolio is approximately \$30 million, as reported in the Debtors' Monthly Operating Report filed on April 30, 2010, and includes approximately 7,700 credit card accounts. The portfolio constitutes Advanta's second largest asset; significant value could be lost if the transition of servicing for the portfolio does not proceed smoothly. In addition, Advanta is in the process of separating its facilities and operations from ABC. Certain Eligible Employees are familiar with the shared services arrangement between the two entities, and how critical shared data is stored, and will be instrumental in achieving a physical and operational separation of the two entities with minimal disruption to Advanta's business or loss of assets. Finally, certain wholly-owned non-debtor subsidiaries will need to be liquidated as part of the resolution of these chapter 11 cases. This will require the efforts of employees who are familiar with these subsidiaries and with such liquidation processes. It is important that the Debtors handle the dissolution of these subsidiaries correctly to avoid triggering potentially significant liabilities against the Debtors. I believe that these examples adequately demonstrate that the Eligible Employees' experience, skills, and institutional knowledge are irreplaceable and essential to maximizing creditor recoveries.

14. The Postpetition Severance Plan is designed, not only to honor the commitments made to employees prior to the Commencement Date, but also to motivate Eligible Employees to continue providing invaluable services to the Debtors. These twin goals will ensure Eligible Employees continue to render superior services for the benefit of the Debtors and their estates and work towards a speedy and efficient resolution of these chapter 11 cases. To lose any of the Debtors' remaining employees at this point in these chapter 11 cases would result in the Debtors incurring unnecessary expenses and delays. The severance payments described in

the Motion will ensure that those employees having the knowledge and skills to effectively manage and monetize the Debtors' assets diligently perform their duties through the wind-down of these cases, for the benefit of the Debtors' estates and creditors. The Debtors have determined that the benefits to be realized from the implementation of the Postpetition Severance Plan justify the investment.

15. I believe that the Postpetition Severance Plan is consistent with the Debtors' prepetition business practices, is essential to increase employees' morale and, along with the Incentive Bonus, is necessary to motivate employees to continue to work hard in adverse circumstances to maximize the value of the Debtors' assets, even in the face of their eventual job eliminations.

16. I also believe that the Interim Severance Payments should be honored. Honoring payments promised to Former Employees will bolster employee morale among existing employees and will ensure that they continue to support the Debtors in the wind-down process.

Debtors' Review of Proposed Payments Pursuant to the Postpetition Severance Plan to Ensure Compliance with Section 503(c) of the Bankruptcy Code

17. Prior to filing the Motion, the Debtors reviewed the Postpetition Severance Plan to ensure that any payments that might be made to insiders of the Debtors would comply with the requirements set forth in section 503(c)(2) of the Bankruptcy Code. This review was conducted by certain employees and professionals under my supervision.

18. Here, the Postpetition Severance Plan and Interim Severance Payments that the Debtors seek to ratify cover almost entirely non-insiders. There are four Eligible Employees and four Former Employees whom the Debtors have identified as statutory insiders pursuant to their schedules, and 42 Eligible Employees and Former Employees who are non-

insiders.⁵ **Schedules A and B** hereto (filed under seal) identify each insider Eligible Employee and Former Employee. Of the 50 employees who have or will receive severance pay since the Commencement Date, 24 are not even nominally managers, directors, vice presidents, or officers of the Debtors. All but two of the employees who are nominally managers, directors, vice presidents, or officers are not persons “in control” of the Debtors such that they set overall corporate policy or otherwise perform executive management duties.

19. We came to this conclusion after reviewing the job responsibilities of each of the Eligible Employees and Former Employees to determine whether, notwithstanding their title of officer, manager, or director, such employee plays a management role in the Debtors’ businesses. For each Eligible Employee and Former Employee, we considered the following factors: their job duties, their reporting structure, how important decisions are made within that employee’s department, and the level of discretionary authority accorded to each employee. We have determined that no Eligible Employee or Former Employee who is not a statutory insider plays a management role or is a person in control of the Debtors’ businesses.

20. Although some non-insider employees may hold officer titles,⁶ I do not believe that this is indicative of a management role in the Debtors’ business. We have historically accorded officer titles to a significant number of non-management, professional employees. In January 2009, Advanta employed 812 people in debtor and non-debtor entities. At that time, 67 employees held an officer title of Vice President or above. As of November 6, 2009, Advanta employed 168 persons in debtor and non-debtor entities, and 30 employees held

⁵ This excludes the non-insider Eligible Employee that provided notice of her resignation on May 3, 2010.

⁶ An officer title (*i.e.*, Senior Vice President, Vice President, Secretary, Treasurer, Assistant Secretary, and Assistant Treasurer) is designated by action of the respective Debtor’s Board of Directors, and the Debtors believe that such process for designating an officer is standard within the Debtors’ industry.

an officer title of Vice President or above. In addition, officer titles are common amongst companies similar to the Debtors in the banking industry. There is a certain amount of “title inflation” within the financial services industry, attributable to an industry-wide desire to remain marketable, competitive, and to attract talented employees.⁷

21. I believe that the Eligible Employees and Former Employees have provided valuable postpetition services to enable the Debtors’ estates to recover value for their creditors and play an important role in the wind-down of the Debtors’ businesses. However, only two insider Eligible Employees, Philip Browne, Advanta’s Chief Financial Officer, and Jay Dubow, Advanta’s Senior Vice President, Chief Administrative Officer and General Counsel, in addition to Dennis Alter and I, have the level of strategic responsibility, or the ability to influence decisions made by the Debtors’ management. No other Eligible Employees or Former Employees exercise control over the Debtors, influence general corporate policy, direct overall strategy, make tactical decisions on behalf of the Debtors, or perform executive functions. In addition, no other Eligible Employees or Former Employees have the ability to make any final decisions regarding hiring or termination of employees, compensation, or entry into any contracts or leases without my approval or the approval of one or more of Dennis Alter, Philip Browne, and/or Jay Dubow. Finally, no other Eligible Employees or Former Employees made or will make any decisions regarding the amount, scope, or other terms of the Postpetition Severance Plan. Attached hereto as **Schedules A** and **B** (filed under seal) are detailed descriptions of each Eligible Employees’ and Former Employees’ job responsibilities.

22. As a result, I believe that the Debtors have properly calculated the mean anticipated severance pay to non-management employees for the calendar year 2010 to equal

⁷ In the Debtors’ case, most rank and file employees are professional workers, and many may have management titles notwithstanding that “management” encompasses just the four insiders identified in paragraph 21 herein.

approximately \$39,800, and the payment limitation to insiders under section 503(c)(2)(B) as approximately \$398,000.⁸ **Schedule C** (filed under seal) sets forth the Former Employees and Eligible Employees who have received or will receive (subject to Court approval) severance pay during the 2010 calendar year and the amounts of severance paid or proposed to be paid to each of these employees in order to demonstrate the calculation of the mean projected severance pay to non-management employees and the statutory cap to insiders. Proposed severance payments to each insider Eligible Employee under the Postpetition Severance Plan and the Interim Severance Payments to Insider Employees fall under this cap.

The Incentive Bonus

23. The Compensation Committee has deemed it desirable and in the Debtors' best interests to pay an Incentive Bonus to one insider Eligible Employee, who is identified in **Schedule D** hereto (filed under seal), for his role in achieving a successful resolution of these chapter 11 cases, in addition to payments under the Postpetition Severance Plan. The Incentive Bonus is not a "pay to stay" bonus – that is, the Incentive Bonus is not intended to persuade the insider Eligible Employee to continue to work for the Debtors. Rather, the Incentive Bonus is designed to ensure that the insider Eligible Employee makes a continued effort to maximize the proceeds that will become available for distribution to creditors. The Incentive Bonus is based on asset recovery amounts set forth on **Schedule D** and has been designed to motivate a critical

⁸ The mean anticipated severance pay was calculated by (i) adding (a) all amounts of Interim Severance Payments paid or to be paid in 2010 to non-insider Former Employees and (b) all proposed severance amounts to be paid under the Postpetition Severance Plan to non-insider Eligible Employees, and then (ii) dividing that amount by the number of non-insider Former Employees and Eligible Employees who have or will have been paid severance in 2010. The number cited in the Reply is slightly higher than the number in the Motion because the Debtors have (i) included one non-insider Eligible Employee who, at the time of the Motion, was employed by a non-debtor affiliate, but is now a debtor employee, (ii) excluded three Former Employees who only received severance pay in the 2009 calendar year, and (iii) excluded the Eligible Employee who provided two weeks' notice of her resignation on May 3, 2010. The additional non-insider Eligible Employee was included in the total number of employees who may be covered under the Postpetition Severance Plan, but was excluded from the mean severance calculation referenced in the Motion.

employee to maximize the value of the Debtors' assets that will be liquidated, thereby increasing the pool of assets available for distribution to creditors. The Incentive Bonus achieves this goal by conditioning the amount of payment on the proceeds that will become available for distribution to the Debtors' creditors on the effective date of a chapter 11 plan, using a calculation agreed upon with the Creditors' Committee. The performance targets are reasonable, realistic, and yet, at the same time, require effort to achieve. I believe that such monetary incentive based on asset recovery is an appropriate gauge of success in the context of the wind-down of the Debtors' businesses.

24. I believe the Incentive Bonus is modest in the context of these cases. The performance metrics for the Incentive Bonus were developed in consultation with the Debtors' financial advisers and the Creditors' Committee and its financial advisers. The Incentive Bonus contemplates payments ranging from \$50,000 up to \$200,000, depending on the proceeds available for distribution to creditors on the effective date of a plan. This ranges from approximately .02% to .07% of the total liabilities of the Debtors.⁹ I believe that the Debtors' modification of the performance targets so that the insider Eligible Employee will not receive any Incentive Bonus payment unless the proceeds available for distribution to creditors exceeds the threshold amount identified in **Schedule D**, attached hereto under seal, further shows that the Incentive bonus is not retentive in nature. I think that this performance requirement adequately demonstrates that the payments under the Incentive Bonus are in no way guaranteed.

25. If the Court approves the Incentive Bonus, the efforts of the insider Eligible Employee will directly impact the proceeds available for distribution to creditors on the effective date of a plan. The employee plays an important role in negotiations of asset sales that

⁹ Based on the Debtors' total consolidated liabilities as of December 31, 2009, including \$2.8 million of postpetition liabilities and excluding \$2.4 million related to uncashed checks paid to Noteholders for prepetition redemptions and interest.

will generate proceeds for the Debtors' estates. In addition, this insider Eligible Employee will interface with the FDIC, as receiver for ABC, on several critical issues. First, this employee is critical to the analysis of any claims the FDIC asserts on behalf of ABC. Second, the employee also plays a critical role in negotiations with the FDIC that will preserve the value of the credit card receivables that constitute one of the Debtors' most important assets. Third, this employee is critical to trying to recover claims against, and assets from, ABC. Moreover, this employee plays a lead role in formulating the Debtors' liquidation strategy, and in executing such strategy. Notably, the Debtors' chapter 11 plan may require leaving Advanta as a dramatically smaller, but reorganized, entity in order to distribute proceeds in a tax efficient manner and maximize creditors' pro rata recoveries. The insider Eligible Employee is an important component of these complicated strategic restructuring decisions. Finally, this employee is charged with playing a lead role in ensuring that the Debtors operate and liquidate in the most cost-efficient manner. This saves the estates money and preserves cash, which is the Debtors' most valuable asset.

26. In addition, although the Incentive Bonus is designed primarily to incentivize this employee, the Debtors are at risk of losing this critical employee. As discussed in greater detail on **Schedule D**, this critical insider Eligible Employee is very marketable to other employers, even in the current troubled economic environment. I believe that the Debtors cannot afford to lose this employee, whose knowledge and skills are necessary for the Debtors to preserve and maximize the value of assets for their estates and creditors.

I declare under the penalty of perjury under the laws of the United States of America that, to the best of my knowledge, information and belief, the foregoing is true and correct.

Dated: May 5, 2010

By: /s/ William A. Rosoff
Name: William A. Rosoff
Title: President and Vice Chairman of the Board

SCHEDULE A

FILED UNDER SEAL

SCHEDULE B

FILED UNDER SEAL

SCHEDULE C

FILED UNDER SEAL

SCHEDULE D

FILED UNDER SEAL