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**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

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In re:	)	Chapter 11
	)	
SIZMEK INC., <i>et al.</i> , <sup>1</sup>	)	Case No. 19-10971 (SMB)
	)	
Debtors.	)	(Jointly Administered)
	)	

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**SUPPLEMENT TO DEBTORS' MOTION FOR AN ORDER AUTHORIZING  
AND APPROVING A PRIVATE SALE OF DEBTOR SELLER'S PORTION OF  
THE ADSERVER BUSINESS FREE AND CLEAR OF ALL LIENS, CLAIMS,  
ENCUMBRANCES, AND OTHER INTERESTS, AND GRANTING RELATED RELIEF**

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The above-captioned debtors and debtors in possession (collectively, "Debtors") respectfully provide the following supplement (this "Supplement")<sup>2</sup> to *Debtors' Motion for an Order Authorizing and Approving a Private Sale of Debtor Seller's Portion of the AdServer*

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<sup>1</sup> Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, include: Sizmek Inc. (4624); Point Roll, Inc. (3173); Sizmek DSP, Inc. (2319); Sizmek Technologies, Inc. (6402); Wireless Artist LLC (0302); WirelessDeveloper, Inc. (9686); X Plus One Solutions, Inc. (8106); and X Plus Two Solutions, LLC (4914). The location of Debtors' service address for purposes of these chapter 11 cases is: 401 Park Avenue South, 5th Floor, New York, NY 10016.

<sup>2</sup> A detailed description of Debtors and their businesses, and the facts and circumstances supporting this Supplement and Debtors' chapter 11 cases, are set forth in greater detail in the *Declaration of Sascha Wittler, Chief Financial Officer of Sizmek Inc., (I) in Support of Chapter 11 Petitions and First Day Pleadings, and (II) Pursuant to Local Rule 1007-2* [Dkt. 13], filed on April 2, 2019, and the *Supplemental Declaration of Sascha Wittler, Chief Financial Officer of Sizmek, Inc. (I) in Support of Chapter 11 Petitions and First Day Pleadings, and (II) Pursuant to Local Rule 1007-2* [Dkt. 54], filed on April 9, 2019 (together, the "First Day Declaration").

*Business Free and Clear of All Liens, Claims, Encumbrances, and Other Interests, and Granting Related Relief* [Dkt. 210] (the “Sale Motion”):<sup>3</sup>

### **Introduction**

1. At the beginning of these chapter 11 cases, Debtors faced significant uncertainty. Debtors had failed to pay employees on the Petition Date, one of their three business lines, the Demand Side Platform (“DSP”) and Data Management Platform (“DMP”) business, was failing by the day, there was significant employee attrition in that business line, and Debtors were only able to secure from their secured lender consensual use of cash collateral for three weeks. Since the early stages of these chapter 11 cases, Debtors, with the cooperation of management and their secured lender, have (i) stabilized the business lines to pursue sales of Debtors’ assets, (ii) successfully completed the sale of the DSP/DMP business [Dkt. 143], (iii) moved for approval of the sale of the AdServer business; and (iv) are negotiating the sale of Debtors’ last significant business line, Peer39. Debtors’ are working to close those sales as quickly and to confirm a plan that provides for as high a recovery as available under the circumstances for all stakeholders.

2. Debtors filed the Sale Motion on June 3, 2019, seeking, among other things, approval of the sale of Debtor Seller’s Purchased Assets, the assumption and assignment of certain executory contracts and leases related to the Purchased Assets, and the granting of related relief. A hearing on the Sale Motion is scheduled for Tuesday, June 18, 2019, at 10:00 a.m. (prevailing Eastern Time) (the “Sale Hearing”).

3. This Supplement is filed to update the Court and creditors as to recent developments since Debtors filed the Sale Motion including: (A) Sellers’<sup>4</sup> receipt of a competing bid for the

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<sup>3</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Sale Motion.

<sup>4</sup> As disclosed in the Sale Motion, the Sellers include both the Debtor Seller and the Non-Debtor Sellers.

AdServer business; (B) Amazon's offer of employment to an additional member of Debtors' management; and (C) proposed incentive payments to be made to certain key members of Debtors' management.

**A. Receipt of Competing Bid to Purchase AdServer Business**

4. As referenced in the Tobias Declaration filed in support of the Sale Motion [Dkt. 211], prior to Debtors' decision to focus on completing a transaction with Amazon, Debtors and FTI had been working with three parties each of which was actively engaged in bidding for the AdServer business. *See* Tobias Declaration, ¶ 12. Ycor SCA ("Ycor") was one of these bidders.

5. On June 7, 2019, Ycor submitted an unsolicited, revised offer to purchase the AdServer business from the Sellers (the "Ycor Bid") [Dkt 247]. That offer was subsequently clarified by letter on June 11, 2019 [Dkt. 247].

6. Debtors have advised their pre-petition secured lender and the Official Committee of Unsecured Creditors of these developments, including discussing and evaluating appropriate actions to maximize value for the benefit of all stakeholders.

7. At the Sale Hearing, Debtors intend to go forward with the Sale Motion and to seek approval of the highest and best proposal available under the circumstances.

**B. Amazon's Employment Offers to Key Employees and Management**

8. In the Sale Motion, Debtors previously informed the Court that Amazon intends to continue the AdServer business and offer employment to many of the current employees of Sellers' AdServer business.

9. As disclosed in the Sale Motion, Amazon has discussed employment opportunities with certain of Sellers' key employees and management, and, in some cases, certain of Sellers' key employees and management have received employment offers from Amazon, subject to the

Closing of Sale Transaction. Subsequent to the filing of the Sale Motion, Amazon made additional employment offers to certain employees of Sellers, including one member of management, George Pappachen, Sellers' General Counsel. Mr. Pappachen also serves as the Shareholder Representative for Sizmek Israel and the Director of Sizmek UK. Mr. Pappachen has accepted the employment offer, subject to certain contingencies.

**C. Management Incentive Payments**

10. As disclosed in the Sale Motion and this Supplement, certain of Debtors' key employees (collectively, "Key Management") have received and/or accepted employment offers from Amazon. Debtors were informed by Key Management that Buyer's employment offers included provisions that Key Management asserted were unfavorable, including an eighteen month, world-wide, no notice, no severance, non-compete provision that severely restrains the ability of Key Management to work in their chosen industry following their cessation of employment with Buyer. There will be a motion to approve payments to Key Management on account of the Sale Transaction with Amazon (the "Management Payments"). The motion will request that Management Payments be made to Debtors' CEO, Mark Grether, their CFO, Sascha Wittler, their General Counsel, George Pappachen, and two employees of Debtors' German subsidiary who, nonetheless, provide management services to Debtors, Chief Technology Officer Markus Plattner and Chief Data Officer Dr. Volker Hatz.<sup>5</sup>

**Reservation of Rights**

11. Nothing contained in this Supplement shall be construed as a limitation on Debtors' right to make further inquiries regarding the value of the Ycor Bid, the enforceability of the

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<sup>5</sup> The amount of the Management Payments is \$900,000 and Debtors understand that the Management Payments have been allocated by management as follows: \$375,000 for Mark Grether, \$150,000 for Sascha Wittler, \$150,000 for Markus Plattner, \$150,000 for Volker Hatz, and \$75,000 for George Pappachen.

No-Shop Provision, or an admission as to which bid is the highest and best offer for the AdServer business. Debtors reserve their right to request a Local Bankruptcy Rule 9076-1 conference before the Sale Hearing. In addition, in the event the Court has any questions regarding any of the information contained in this Supplement, Debtors are available for a status conference in advance of the Sale Hearing, at the Court's convenience.

**Notice**

12. Debtors will provide notice of this Supplement in accordance with the *Order Establishing Certain Notice, Case Management, and Administrative Procedures* [Dkt. 103]. Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

**Conclusion**

13. Debtors take seriously their fiduciary duty to maximize the value of their estates. Debtors have been and remain focused on selling the AdServer through a fair and open process, and want to ensure that the Court is fully informed of all relevant information in advance of the Sale Hearing. Debtors will continue discussing and evaluating appropriate actions to maximize value and look forward to achieving a value-maximizing transaction for their stakeholders.

Dated: June 14, 2019  
New York, New York

*/s/ Steven J. Reisman*

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