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

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

**DECLARATION OF PETER A. SIDDIQUI PURSUANT TO LOCAL BANKRUPTCY
RULE 9077-1(a) IN SUPPORT OF ORDER TO SHOW CAUSE SCHEDULING
HEARING ON SHORTENED NOTICE FOR 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**

I, Peter A. Siddiqui, being duly sworn, deposes, and says:

1. I am a partner at the law firm of Katten Muchin Rosenman LLP ("Katten"), which maintains offices, among other locations, at 575 Madison Avenue, New York, New York 10022. Katten is counsel to the debtors and debtors in possession in the captioned cases (collectively,

¹ 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); Wireless Developer, 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, Fifth Floor, New York, NY 10016.

“Debtors” and, together with their non-debtor affiliates, the “Company”). I am admitted in, practicing in, and a member in good standing of the bar of the State of Illinois and admitted *pro hac vice* in this case.

2. I submit this declaration, pursuant to Rule 9077-1(a) of the Local Bankruptcy Rules for the United States Bankruptcy Court for the Southern District of New York (the “Local Bankruptcy Rules”), in support of Debtors’ request that the Court shorten the time for notice of the hearing to consider the proposed order, as more fully described in the *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* (the “Motion”).²

3. Except as otherwise indicated, I have personal knowledge of the information contained herein, either directly or through professionals at Katten working at my direction, members of management of Debtors, or Debtors’ other advisors, including FTI Capital Advisors, LLC and FTI Consulting, Inc. (together, “FTI”). Debtors are seeking an Order to Show Cause to schedule a hearing on June 18, 2019 because Debtors need expedited consideration of the relief sought under the Motion in order to avoid irreparable injury to their estates. Further, any prejudice that may result from shortening the notice period for the hearing is minimal, due to the diminishing value of the Debtor Seller’s Purchased Assets and any such prejudice is significantly outweighed by the benefits to Debtors’ estates described below, which can only be realized through a shortened notice period.

² Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

4. As described in detail in the Motion, on May 31, 2019, following a marketing and solicitation process conducted by Debtors' management with the assistance of FTI and Katten, the Sellers entered into the APA. Pursuant to the APA, the Buyer has undertaken to purchase the Purchased Assets for a purchase price of approximately \$30 million, which will be allocated between Debtor Seller and Non-Debtor Sellers as follows: (1) \$12,266,000 to Debtor Seller; (2) \$3,447,000 to Sizmek Technologies, Ltd (UK) ("Sizmek UK"); and (3) \$14,288,000 to Sizmek Technologies, Ltd. (Israel) ("Sizmek Israel"). The Sellers will also retain the accounts receivable related to the AdServer business.

5. As described in more detail in the Motion, the majority of the assets related to the AdServer are owned by Sizmek Israel, and its direct and indirect subsidiaries, one of which is Sizmek UK. For the avoidance of doubt, Debtors are not seeking Bankruptcy Court relief with regard to the sale of Non-Debtor Sellers' assets.

6. The AdServer business is made up of two principal types of assets: intellectual property and customer contracts. A vast majority of the intellectual property assets are owned by Sizmek Israel. The customer contracts are owned both by Debtors, Sizmek UK, and Sizmek Israel. The AdServer intellectual property represents the "know-how" and related technology of importing advertisements onto webpages. The customer contracts are the agreements by which the AdServer business provides services to its clients. The employees dedicated to the AdServer business include Debtor employees and non-debtor employees alike.

7. Debtors have determined that selling the AdServer business offers the best opportunity to maximize the value of the AdServer business. Appreciating their challenging financial condition and the tight timeline for the sale of AdServer, Debtors, after consultation with their advisors, have determined that a private sale of the AdServer to the Buyer is reasonable,

necessary and in the best interests of Debtors and their estates, given the circumstances of these Chapter 11 Cases.

8. A hearing on shortened notice is particularly appropriate for this private sale transaction that does not contemplate an auction or other further competitive bidding process. As discussed in more detail in the Motion, Debtors, with the assistance of their advisors, have already conducted a robust Sale Process. Through this Sale Process, Debtors received six (6) initial offers for AdServer by the initial April 12, 2019 bid deadline FTI set. Since receiving these initial purchase offers, FTI and Debtors' management have participated in extensive diligence sessions and negotiations with the parties who submitted letters of interest. Indeed, until very recently, Debtors had three parties actively engaged in bidding for the Purchased Assets. These parties engaged in many rounds of robust bidding over the course of several weeks. After Debtors were satisfied that they had negotiated the best deal possible, Debtors determined that it was in the best interest of their estates and their constituents to proceed forward with Buyer and work towards executing a mutually-agreeable transaction. Notwithstanding that decision, the Debtors continued to engage with other potential bidders to determine if a competing bid on better terms than those with the Buyer was obtainable. Despite those communications, the Debtors have not received any interest that is superior to what the Buyer is offering.

9. Central to maximizing value for the AdServer is completing the proposed Sale Transaction on an expedited time frame. Debtors face serious challenges, including the potential loss of access to cash collateral if the AdServer must be sold through a lengthier sale process. Moreover, given the robust sales and marketing process that has occurred to date, and the fact that the majority of the Purchased Assets are outside the jurisdiction of the Bankruptcy Court, a lengthier court-supervised process is not necessary or advisable under the circumstances.

10. Additionally, prompt consummation of the Sale Transaction will preserve as many jobs as possible – this is central to value maximization in these cases. The longer the assets stay in the chapter 11 process, the more value erodes as the likelihood of valuable employees resigning grows.

11. Thus, the Sale Transaction meets Debtors’ twin goals of a prompt sale that ensures maximum value.

12. A hearing on shortened notice, if the relief sought in the Motion is granted, would allow Debtors to sell the Debtor Seller’s Purchased Assets for the highest and best price, by preserving the AdServer’s going concern value. Pursuant to the APA, the Sale Transaction may be terminated if the Bankruptcy Court has not entered an order approving the Sale Motion on or before June 20, 2019, or if the Closing shall not have occurred on or before July 1, 2019. See APA, § 11.2(e).

13. Debtors have determined, in their business judgment that a divestiture of the AdSever, including the Debtor Seller’s Purchased Assets, is in line with Debtors’ general strategy, and will provide significant value for Debtors’ estates, their creditors, and all other parties in interest. The expeditious entry of the Sale Order will enable Debtors to promptly consummate a sale, preventing a drop in the AdSever’s value. These benefits substantially outweigh any prejudice to parties in interest that may result by shortening the notice period for the hearing on the Motion.

14. The Company and its advisors worked diligently and engaged in good faith negotiations with the Buyer, as well as other prospective Buyers, in an effort to file the Motion as soon possible.

15. Debtors do not believe that due process would be hindered as a result of the proposed shortening of the notice period for the hearing on the Motion to fourteen days, nor would any party in interest be unduly prejudiced by the shortened notice period. Debtors would propose a corresponding extension of the objection deadline, to June 15, 2019, at 10:00 a.m. (prevailing Eastern Time). Similar relief has been entered by this and other courts. *See, e.g.*, Order to Show Cause Scheduling Hearing on Shortened Notice for Debtors' Motion for an Order Authorizing and Approving a Private Sale of the Demand Side Platform and the Data Management Platform Free and Clear of All Liens, Claims, Encumbrances, and Other Interests, and Granting Related Relief, *In re Sizmek Inc.*, Case No. 19-10971 (SMB) (Bankr. S.D.N.Y. Apr. 19, 2019) (10 days between sale motion being filed and hearing for private sale) [Docket No. 81]; Order to Show Cause Scheduling Hearing on Shortened Notice, *In re SunEdison, Inc.*, Case No. 16-10992-SMB (Bankr. S.D.N.Y. Jan. 5, 2017) (19 days between sale motion being filed and hearing for private sale) [Docket No. 2126]; Order to Show Cause Scheduling Hearing on Shortened Notice, *In re SunEdison, Inc.*, Case No. 16-10992- SMB (Bankr. S.D.N.Y. May 20, 2016) (12 days between sale motion being filed and hearing for private sale) [Docket No. 363]; Order Shortening Notice and Setting an Expedited Hearing, *In re Metro Affiliates, Inc.*, Case No. 13-13591 (SHL) (Bankr. S.D.N.Y. Feb. 24, 2014) (11 days between sale motion being filed and hearing); Order to Show Cause, *In re Blockbuster*, Case No. 10-14997 (BRL) (Bankr. S.D.N.Y. April 21, 2011) (5 days between amended sale motion and hearing).

16. Debtors have actively engaged with Cerberus and its advisors in connection with the relief requested herein and in the Motion. Specifically, Debtors have provided drafts of the APA, the Motion and related exhibits, and the proposed Sale Order to Cerberus and its advisors in advance of filing, received comments from Cerberus and its advisors, and incorporated those

comments into the as-filed versions. Debtors and their advisors have been in nearly constant contact with Cerberus and its advisors regarding negotiations with the Buyer and the Sale Transaction, and have provided all related diligence requested by Cerberus and its advisors.

17. In addition, Debtors have also actively worked with the Committee's advisors, including sharing the Debtors' anticipated sale strategy, as well as drafts of the APA, the Motion and related exhibits, and the proposed Sale Order in advance of filing.

18. In the event that this Court does not grant the Order to Show Cause, Debtors respectfully request that the Court schedule a status conference to discuss an appropriate timeline for the consummation of the Sale Transaction.

19. As required by Local Bankruptcy Rule 9077-1(a), no previous application for similar relief has been made.

20. Accordingly, it is in all parties' best interests for the Court to grant the proposed Order to Show Cause so that the relief sought under the Motion can be heard at a hearing on June 18, 2019.

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

Dated: June 3 2019
Chicago, Illinois

/s/ Peter A. Siddiqui

Name: Peter A. Siddiqui