

Steven J. Reisman, Esq.
Jerry L. Hall, Esq. (admitted *pro hac vice*)
Cindi M. Giglio, Esq.
KATTEN MUCHIN ROSENMAN LLP
575 Madison Avenue
New York, NY 10022
Telephone: (212) 940-8800
Facsimile: (212) 940-8876
sreisman@kattenlaw.com
jerry.hall@kattenlaw.com
cindi.giglio@kattenlaw.com

Peter A. Siddiqui, Esq. (admitted *pro hac vice*)
KATTEN MUCHIN ROSENMAN LLP
525 W. Monroe Street
Chicago, IL 60661
Telephone: (312) 902-5455
Facsimile: (312) 902-1061
peter.siddiqui@kattenlaw.com

Counsel to Debtors and Debtors-in-Possession

**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 GLENN TOBIAS IN SUPPORT OF DEBTORS' MOTION FOR
AN ORDER AUTHORIZING AND APPROVING A PRIVATE SALE OF DEBTOR
SELLER'S PORTION OF THE PEER39 BUSINESS FREE AND CLEAR OF ALL
LIENS, CLAIMS, ENCUMBRANCES, AND OTHER INTERESTS, AND GRANTING
RELATED RELIEF**

I, Glenn Tobias, make this Declaration (the "Declaration") pursuant to 28 U.S.C. §1746, and state as follows:

Introduction

1. I am the Chief Executive Officer of FTI Capital Advisors, LLC ("FTICA") and a Senior Managing Director with FTI Consulting, Inc. ("FTI Consulting", together with FTICA,

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, 5th Floor, New York, NY 10016.

“FTI”). On March 21, 2019, Sizmek Inc. and its affiliated debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, “Debtors”) engaged FTICA to provide investment banking and restructuring advisory services in these chapter 11 cases.

2. I submit this declaration (“Declaration”) in support of *Debtors’ Motion for an Order Authorizing and Approving a Private Sale of Debtor Seller’s Portion of the Peer39 Business Free and Clear of all Liens, Claims, Encumbrances, and Other Interests and Granting Related Relief* (the “Motion”).²

3. Except as otherwise indicated, all statements in this Declaration are based on my personal knowledge of Debtors’ operations and finances gleaned during the course of my engagement with Debtors; my discussions with Debtors’ senior management, other members of the FTI team, and Debtors’ other advisors; my review of relevant documents; and my views based upon my experience. If called to testify, I would testify competently to each of the facts set forth in this Declaration. I am authorized to submit this Declaration on behalf of FTI for Debtors.

Background and Qualifications

4. I joined FTI in 2009 and have more than twenty-five years of experience advising clients on and executing mergers and acquisitions and financings. Prior to joining FTI more than ten years ago, wherein most of my time has been spent building and now leading our investment banking efforts, I have worked in positions focused on advising and executing transactions through senior banking and corporate positions, as well as an independent consultant. I have advised clients in many industries, including media, internet and software companies, on a broad range of restructuring, acquisition, and capital raising transactions.

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

5. FTI is an internationally recognized restructuring and turnaround firm, has a wealth of experience in providing financial advisory services, and enjoys an excellent reputation for the services it has rendered in large and complex chapter 11 cases on behalf of debtors and creditors throughout the United States. FTI's professionals, including those within FTICA, have provided strategic advice to debtors, creditors, bondholders, investors and other entities in numerous chapter 11 cases of similar size and complexity to Debtors' chapter 11 cases. FTI has provided or is providing restructuring and/or investment banking services in cases such as: Sears Holdings Corp., Open Road Films, LLC, F+W Media, Inc., RadioShack Corporation, SFX Entertainment, Chassis, Inc., Peabody Energy Corp., CIT Group, MF Global, Vertellus Specialties, Inc., Aeropostale, Inc., American Apparel, Inc., and Hastings Entertainment, Inc.

FTI's Engagement

6. Pursuant to the Engagement Letter dated March 21, 2019, FTICA agreed to serve as Debtors' investment banker and financial advisor. Since it was engaged, FTI's professionals have worked closely with Debtors' management, employees and other advisors to assist Debtors with, among other things, contacting prospective buyers, business and due diligence discussions with prospective buyers, and participating in negotiations among Debtors and prospective buyers to help facilitate a going concern sale of Debtors' assets.

7. FTI immediately began work on a sale process upon commencement of its engagement, creating a data room, contacting potentially interested parties and fielding dozens of inbound inquiries. The data room was available on March 31, 2019 and over fifty-five (55) parties have been granted access to the data room. Twenty-four of these parties indicated they were primarily interested in the Peer39 business.

8. Under my supervision, the FTI team has worked closely with Debtors' management and their other professionals and has developed substantial knowledge about Debtors' operations and financial condition.

The Marketing and Sale Efforts

9. FTI, with the support of Debtors' management and other advisors, is leading the sale process for Sizmek's last remaining significant asset, the Peer39 business.

10. As explained in connection with the DSP/DMP and AdServer sales, FTI indicated to all buyers that the Peer 39 business was available for purchase both individually, or together with DSP/DMP and/or AdServer, in order to ensure that Debtors receive the highest and best price for all assets. In the sale process letter FTI sent to more than seventy (70) interested parties, it indicated that it would accept bids for any of the individual business segments or all of them.

11. Debtors received five (5) initial offers for Peer39 by the initial April 12, 2019 bid deadline FTI set in the process letter. 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 by the bid deadline and afterwards. Ultimately, Debtors received eight offers for Peer39 and two additional offers that included Peer39 as part of a broader bid for multiple business lines or the entire company.

12. Until the Debtors decided to focus on completing a transaction with the Buyer, Debtors and FTI had been working with multiple parties each of which was actively engaged in providing initial and subsequent proposals for the Purchased Assets. Several of the parties increased their proposed purchase price multiple times during the process and/or improved the structure of their proposals in response to competitive feedback FTI provided regarding the status of their proposals. 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.

13. Based on my conversations with Debtors' management and my conversations with prospective buyers, as well as my understanding of the business realities, I believe selling Peer39 to Buyer on a timely basis is the best way to maximize the value of this asset.

The Buyer and APA

14. In my role as Debtors' investment banker and financial advisor, I was actively involved in the solicitation and review of Peer 39 acquisition offers, as well as the negotiation of the APA.

15. Based on my participation in negotiations with the Buyer and my review of the APA, I believe the Sale Transaction and the APA represent the best way to maximize the value of Peer39. The APA contemplates a Purchase Price of approximately \$13 million, which will be allocated between Debtor Seller and Non-Debtor Seller as follows: \$3,648,000 to Debtor Seller; and (2) \$9,341,000 to Non-Debtor Seller.³

16. Central to maximizing value for Peer39 is completing the transaction timely. Debtors face serious challenges, including the potential loss of access to cash collateral and employee attrition (including management having accepted offers with another employer), if Peer39 must be sold through a further sale process. Peer39 has already suffered significant employee attrition during the pendency of the Chapter 11 Cases and there is a meaningful risk, given how few employees are employed by the Peer 39 business, that any additional losses may jeopardize the viability of Peer39 as a going concern business. Moreover, given the robust sales

³ A de minimis amount, \$11,000, is also allocated to Sizmek Technologies, LTD, a non-debtor company organized under the laws of the United Kingdom.

and marketing process that has occurred to date, and the fact that the majority of the Purchased Assets are owned by non-debtors, a lengthier process is not necessary or advisable under the circumstances.

17. Throughout the marketing and solicitation process, the FTI team has participated in extensive conversations with Cerberus, in order to confirm that Cerberus is informed of the contemplated Sale Transaction and finds it acceptable.

18. The terms and conditions of the Sale Transaction are the product of good faith arm's length negotiations between the parties. Based on my extensive participation in all aspects of the marketing process, I believe the Buyer has acted in good faith and without any collusion. Based on the sale process and a review and evaluation of all of the proposals and potential buyers, the Buyer's offer very likely presents Debtors with the best value for the Purchased Assets and the proposed private sale to the Buyer is the most efficient means of maximizing the value of the Purchased Assets.

19. Based on the extensive sales and marketing process FTI has conducted to date, including my conversations with potential buyers, I do not believe another party is interested in purchasing the Purchased Assets for an amount superior to the Purchase Price. While one can never predict with certainty that nobody will provide a higher price in an auction, in my view an auction is both unlikely to result in an increase to the Purchase Price and presents the risk of a delay and diminishment in the value of Peer39, due to on-going employee losses, regarding which potential bidders have expressed significant concerns. Additionally, in the event any potential bidders elect to substantially increase their bids, we have negotiated a structure to allow Debtors to negotiate and accept alternative offers. Recently, I reached out to the most serious bidders in the process and advised them that Debtors were close to accepting a competing proposal; however,

none of those parties provided increased bids or otherwise attempted to supplant the existing prevailing bid.

20. Peer39 is Debtors' only remaining substantial asset, and the portion owned by Debtors is small, with only \$3,648,000 of the Purchase Price allocated to Debtors. Due to the sales of Debtors' primary assets, the DSP/DMP business and the AdServer business, many of Debtors' employees, including all of Debtors' key management team, have received and accepted job offers with the purchasers of the businesses. While there is a transition services agreement in place to allow Debtors' former management to assist with the sale, they are no longer full time employees.

21. Based on my review of the APA, the Sale Transaction will result in significant benefits to Debtors' estates.

22. Absent consummation of the Sale Transaction, the value of Peer39 will likely diminish, both by loss of employees and customers.

23. Debtors' entry into the APA is necessary, appropriate, and a reasonable exercise of Debtors' business judgment and should be approved.

24. Based on my experience, the terms and conditions of the Sale Transaction are fair, reasonable, and consistent with current market conditions.

Dated: July 3, 2019
New York, NY

/s/ Glenn Tobias

Glenn Tobias
Chief Executive Officer of FTI Capital Advisors, LLC
Senior Managing Director of FTI Consulting, Inc.