

**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.)	(Joint Administration Requested)

**ORDER AUTHORIZING RETENTION AND
APPOINTMENT OF STRETTO AS CLAIMS AND NOTICING AGENT**

Upon the application (the “Application”)² of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of an order (this “Order”) granting the retention and appointment of Stretto (“Stretto”) as the claims and noticing agent (the “Claims and Noticing Agent”) pursuant to 28 U.S.C. §156(c), section 105(a) of the Bankruptcy Code, and Local Rule 5075-1 to, among other things, (a) distribute required notices to parties in interest, (b) receive, maintain, docket, and otherwise administer the proofs of claim filed in the Debtors’ chapter 11 cases, and (c) provide such other administrative services—as required by the Debtors—that would fall within the purview of services to be provided by the Clerk, all as set forth more fully in the Application; and upon the First Day Declaration and the Le Declaration submitted in support of the Application; and the Debtors having estimated that there are thousands of creditors in these chapter 11 cases, many of which are expected to file proofs of claim; and it appearing that the receiving, docketing, and maintaining of proofs of claim would be unduly time consuming and burdensome for the Clerk; and this Court being authorized under 28 U.S.C.

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, include: Sizmek Inc. (4624); Sizmek DSP, Inc. (2319); Point Roll, Inc. (3173); 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 the Debtors’ service address for purposes of these chapter 11 cases is: 401 Park Avenue South, Fifth Floor, New York, NY 10016.

² Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Application.

§156(c) to utilize, at the Debtors' expense, outside agents and facilities to provide notices to parties in title 11 cases and to receive, docket, maintain, photocopy, and transmit proofs of claim; and the Bankruptcy Court being satisfied that Stretto has the capability and experience to provide such services and that Stretto does not hold an interest adverse to the Debtors or the estates respecting the matters upon which it is to be engaged; and good and sufficient notice of the Application having been given and no other or further notice being required; and it appearing that the employment of Stretto is in the best interests of the Debtors, their estates and creditors; and sufficient cause appearing therefor; it is HEREBY ORDERED THAT:

1. Notwithstanding the terms of the Engagement Agreement attached to the Application, the Application is approved solely as set forth in this Order.

2. The Debtors are authorized to retain Stretto as the Claims and Noticing Agent effective *nunc pro tunc* to the Petition Date under the terms of the Engagement Agreement (as modified by this Order), and Stretto is authorized and directed to perform noticing services and to receive, maintain, record, and otherwise administer the proofs of claim filed in these chapter 11 cases, and all related tasks, all as described in the Application.

3. Stretto shall serve as the custodian of court records and shall be designated as the authorized repository for all proofs of claim filed in these chapter 11 cases and is authorized and directed to maintain official claims registers for each of the Debtors, to provide public access to every proof of claim unless otherwise ordered by the Court, and to provide the Clerk with a certified duplicate thereof upon the request of the Clerk.

4. Stretto is authorized and directed to provide an electronic interface for filing proofs of claim and to obtain a post office box or address for the receipt of proofs of claim.

5. Stretto is authorized to take such other action to comply with all duties set forth in the Application.

6. The Debtors are authorized to compensate Stretto in accordance with the terms of the Engagement Agreement upon the receipt of reasonably detailed invoices setting forth the services provided by Stretto and the rates charged for each, and to reimburse Stretto for all reasonable and necessary expenses it may incur, upon the presentation of appropriate documentation, without the need for Stretto to file fee applications or otherwise seek Court approval for the compensation of its services and reimbursement of its expenses.

7. Stretto shall maintain records of all services showing dates, categories of services, fees charged, and expenses incurred, and shall serve monthly invoices on the Debtors, the U.S. Trustee, counsel for the Debtors, counsel for any official committee monitoring the expenses of the Debtors, and any party-in-interest who specifically requests service of the monthly invoices.

8. The parties shall meet and confer in an attempt to resolve any dispute which may arise relating to the Engagement Agreement or monthly invoices; *provided* that the parties may seek resolution of the matter from this Court if resolution is not achieved.

9. Pursuant to section 503(b)(1)(A) of the Bankruptcy Code, the fees and expenses of Stretto under this Order shall be an administrative expense of the Debtors' estates.

10. Stretto may apply its retainer to all prepetition invoices, which retainer shall be replenished to the original retainer amount, and thereafter, Stretto may hold its retainer under the Engagement Agreement during the chapter 11 cases as security for the payment of fees and expenses incurred under the Engagement Agreement.

11. The Debtors shall indemnify Stretto in accordance with the terms of the Engagement Agreement, as modified pursuant to this Order.

12. All requests by Stretto for the payment of indemnification as set forth in the Engagement Agreement shall be made by means of an application to this Court and shall be subject to review by this Court to ensure that payment of such indemnity conforms to the terms of the Engagement Agreement and is reasonable under the circumstances of the litigation or settlement in respect of which indemnity is sought; *provided* that in no event shall Stretto be indemnified in the case of its own bad-faith, self-dealing, breach of fiduciary duty (if any), gross negligence, or willful misconduct.

13. In the event that Stretto seeks reimbursement from the Debtors for attorneys' fees and expenses in connection with the payment of an indemnity claim pursuant to the Engagement Agreement, the invoices and supporting time records for the attorneys' fees and expenses shall be included in Stretto's own applications, both interim and final, but determined by this Court after notice and a hearing.

14. In the event Stretto is unable to provide the services set out in this order, Stretto will immediately notify the Clerk and the Debtors' attorney and, upon approval of this Court, cause to have all original proofs of claim and computer information turned over to another claims and noticing agent with the advice and consent of the Clerk and the Debtors' attorney.

15. The Debtors may submit a separate retention application, pursuant to section 327 of the Bankruptcy Code or any applicable law, for work that is to be performed by Stretto but is not specifically authorized by this Order.

16. The Debtors and Stretto are authorized to take all actions necessary to effectuate the relief granted in this Order in accordance with the Application (including, without limitation, making copies of this Order, the Application, and any materials or other information related

thereto available in any local language in a jurisdiction in which the Debtors operate, in each case at the Debtors' sole expense).

17. Notwithstanding any term in the Engagement Agreement to the contrary, this Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation of this Order.

18. Notwithstanding any provision in the Bankruptcy Rules to the contrary, this Order shall be immediately effective and enforceable upon its entry.

19. Stretto shall not cease providing claims processing services during the chapter 11 cases for any reason, including nonpayment, without an order of this Court.

20. In the event of any inconsistency between the Engagement Agreement, the Application, and this Order, this Order shall govern.

New York, New York
Dated: April 4, 2019

/s/ Sean H. Lane

THE HONORABLE SEAN H. LANE
UNITED STATES BANKRUPTCY JUDGE