

**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)

**FINAL ORDER (I)
AUTHORIZING DEBTORS (A)
TO PAY PREPETITION EMPLOYEE WAGES,
SALARIES, AND OTHER COMPENSATION AND (B) CONTINUE
EMPLOYEE BENEFITS PROGRAMS, AND (II) GRANTING RELATED RELIEF**

Upon the motion (including the Supplement filed on April 9, 2019, the “Motion”)² of the above-captioned debtors and debtors in possession (collectively, “Debtors”) for entry of a final order (this “Final Order”), (a) authorizing Debtors to (i) pay certain prepetition employee wages, salaries, other compensation, and reimbursable employee expenses and (ii) continue employee benefits programs in the ordinary course, including payment of certain prepetition obligations related thereto, and (b) granting related relief, all as more fully set forth in the Motion; and upon the First Day Declaration; and the Bankruptcy Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the Southern District of New York*, dated February 1, 2012; and this Bankruptcy Court having authority to enter a final order consistent with Article III of the United

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); 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.

² Capitalized terms used but not otherwise defined herein shall have the meaning given to them elsewhere in the Motion, in the Supplement filed April 9, 2019, or in the First Day Declaration, as applicable.

States Constitution; and this Bankruptcy Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Bankruptcy Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b); and this Bankruptcy Court having found that Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and the Bankruptcy Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing, if any, before the Bankruptcy Court (the "Hearing"); and this Bankruptcy Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before the Bankruptcy Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Motion is granted as set forth herein.

1. Debtors are authorized and directed, to continue and/or modify, change, or discontinue, and to pay any claims or obligations on account of, the Employee Compensation and Benefits and the Reimbursable Expenses in the ordinary course of business and in accordance with Debtors' prepetition policies and prepetition practices, irrespective of whether such obligations arose prepetition or postpetition.

2. Debtors are authorized, but not directed, to pay the Employee Compensation and Benefits and Reimbursable Expenses, including amounts having arisen prior to the Petition Date.

3. Debtors shall not make any non-ordinary course bonus, incentive, or severance payments to their Employees or any Insiders (as such term is defined in Bankruptcy Code Section 101(31)) without further order of the Bankruptcy Court. For the avoidance of doubt, no bonus,

incentive, or severance payments shall be made to any Insider without further order of the Bankruptcy Court.

4. Debtors are authorized to forward any unpaid amounts on account of deductions or withholding obligations to the appropriate third-party recipients or taxing authorities in accordance with Debtors' prepetition policies and practices.

5. Debtors are authorized to pay costs and expenses incidental to payment of the Employee Compensation and Benefits and Reimbursable Expenses obligations, including all administrative and processing costs and payments to outside professionals.

6. Nothing contained herein is intended or should be construed to create an administrative priority claim on account of the Employee Compensation and Benefits or Reimbursable Expenses obligations.

7. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized and directed to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, and all such banks and financial institutions are authorized to rely on Debtors' designation of any particular check or electronic payment request as approved by this Final Order without any duty of further inquiry and without liability for following Debtors' instructions.

8. Notwithstanding the relief granted in this Final Order and any actions taken pursuant to such relief, nothing in this Final Order shall be deemed: (a) an admission as to the validity of any prepetition claim against a debtor entity; (b) a waiver of Debtors' rights to dispute any prepetition claim on any grounds; (c) a promise or requirement to pay any prepetition or postpetition claim; (d) an implication or admission that any particular claim is of a type specified

or defined in this Final Order or the Motion; (e) a request or authorization to assume any prepetition agreement, contract, or lease pursuant to Bankruptcy Code Section 365; (f) a waiver or limitation of Debtors' rights or the rights of any other party in interest under the Bankruptcy Code or any other applicable law; or (g) a concession by Debtors that any liens (contractual, common law, statutory, or otherwise) satisfied pursuant to the Motion are valid, and Debtors expressly reserves their rights to contest the extent, validity, or perfection or seek avoidance of all such liens.

9. Debtors are authorized to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a consequence of these chapter 11 cases with respect to prepetition amounts owed in connection with any Employee Compensation and Benefits and Reimbursable Expenses.

10. The contents of the Motion satisfy the requirements of Bankruptcy Rule 6003(b).

11. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Local Bankruptcy Rules are satisfied by such notice.

12. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Final Order are immediately effective and enforceable upon its entry.

13. Debtors are authorized to take all actions necessary to effectuate the relief granted in this Final Order in accordance with the Motion.

14. This Bankruptcy Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Final Order.

New York, New York
Dated: **April 23, 2019**

/s/ STUART M. BERNSTEIN
THE HONORABLE STUART M. BERNSTEIN
UNITED STATES BANKRUPTCY JUDGE