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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.)	
)	(Joint Administration Requested)

**DEBTORS' MOTION SEEKING ENTRY
OF AN ORDER (I) AUTHORIZING THE DEBTORS TO
(A) CONTINUE TO OPERATE THEIR CASH MANAGEMENT
SYSTEM, (B) HONOR CERTAIN PREPETITION OBLIGATIONS
RELATED THERETO, (C) MAINTAIN EXISTING BUSINESS FORMS,
AND (D) CONTINUE TO PERFORM INTERCOMPANY TRANSACTIONS,
(II) GRANTING ADMINISTRATIVE EXPENSE STATUS TO POSTPETITION
INTERCOMPANY BALANCES, AND (III) GRANTING RELATED RELIEF**

The above-captioned debtors and debtors in possession (collectively, the "Debtors") respectfully state the following in support of this motion (the "Motion"): ²

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 A detailed description of the Debtors and their businesses, and the facts and circumstances supporting this Motion and the Debtors' chapter 11 cases, are set forth in greater detail in the *Declaration of Sascha Wittler, Chief*

Relief Requested

1. The Debtors seek entry of interim and final orders, substantially in the forms attached hereto as **Exhibit A** and **Exhibit B** (respectively, the “Interim Order” and the “Final Order”), (a) authorizing the Debtors to (i) operate their cash management system and maintain their existing bank accounts, including honoring certain prepetition obligations related thereto, and (ii) continue intercompany transactions and funding consistent with the Debtors’ historical practices, subject to the terms described herein, and (b) granting related relief.

2. In addition, the Debtors request that the Court schedule a final hearing within approximately 25 days of the commencement of these chapter 11 cases to consider approval of this Motion on a final basis.

Jurisdiction and Venue

3. The United States Bankruptcy Court for the Southern District of New York (the “Court”) has 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. The Debtors confirm their consent, pursuant to rule 7008 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), to the entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

4. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

Financial Officer of Sizmek Inc., (I) in Support of Chapter 11 Petitions and (II) Pursuant to Local Rule 1007-2 (the “First Day Declaration”), filed on April 2, 2019.

5. The bases for the relief requested herein are sections 105, 345, 362, 363, and 553 of title 11 of the United States Code (the “Bankruptcy Code”), Bankruptcy Rules 6003 and 6004, and rule 9013-1(a) of the Local Bankruptcy Rules for the Southern District of New York (the “Local Rules”).

Background

6. Sizmek Inc., together with its Debtor and non-Debtor affiliates, is a leading online advertising campaign management and distribution platform for advertisers, media agencies, and publishers. The Debtors and their non-Debtor affiliates, who have approximately 1,114 employees worldwide, assist their clients with engaging a broad consumer audience in 19 countries across multiple online media channels by facilitating the implementation of targeted, data-driven advertising strategies that encompass all of the technology and intelligence necessary to execute effective global advertisement campaigns. The Debtors are headquartered in New York, New York, with operations and assets in the United States and abroad. As of the Petition Date (as defined herein), the Debtors have approximately \$172 million of funded indebtedness.

7. On March 29, 2019, (the “Petition Date”) each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. As of the date hereof, the Office of the United States Trustee for the Southern District of New York (the “U.S. Trustee”) has not appointed an official committee of unsecured creditors in these chapter 11 cases. Additional information regarding the Debtors’ business, their capital structure, and the circumstances leading to these chapter 11 filings is contained in the First Day Declaration.

The Cash Management System

I. Overview of the Cash Management System.

8. As of the Petition Date, the Debtors have approximately \$3,930,000 million in available cash. Additionally, the Debtors have \$134,000 in restricted cash. This cash is managed through a system of bank accounts (collectively, the “Bank Accounts”) consisting of both U.S. and foreign banks (the “Cash Management Banks”) in the ordinary course of business (together, the “Cash Management System”).

9. The Cash Management System is comparable to the cash management systems used by similarly situated international business enterprises to manage the cash of operating units located across the globe. The Debtors use the Cash Management System in the ordinary course of their businesses to collect, transfer, and disburse funds generated from their operations, and to facilitate cash monitoring, forecasting, and reporting. The Cash Management System allows the Debtors to, among other things, control funds, ensure cash availability for each operating entity, and reduce administrative costs by facilitating the movement of funds among multiple entities.

10. The Debtors’ integrated Cash Management System permits it to manage the cash flow of its operating units in a cost-effective and efficient manner. The Cash Management System facilitates the timely and efficient collection, management, and disbursement of funds used in the Debtors’ businesses. The Debtors historically have deposited approximately 60–70 percent of all cash receipts generated from their business operations into their main operating accounts, with the remainder distributed into subsidiary accounts through direct billing and cash collections with local third parties. The main operating accounts then serve as the source of funding for the Debtors’ Bank Accounts to satisfy obligations. To the extent the Debtors generate excess cash from their operations, the Debtors historically have deposited the cash in a Bank Account held by

the applicable Debtor that generated the surplus. This permits the Debtors to reflect any such surplus in the cash balance of the applicable Debtor whose operations generated such excess cash.

11. The Debtors' Cash Management System spans two continents and manages funds in four currencies across multiple banks. The Debtors' Cash Management System is integrated into their business operations, with automatic and manual account actions occurring on a daily and weekly basis. Disruption to the Cash Management System would have an immediate adverse effect on the Debtors' businesses and operations to the detriment of their estates and numerous stakeholders, as the efficient movement of cash is vital to the Debtors' collection and disbursement of cash. Accordingly, to minimize the disruption caused by these chapter 11 cases and to maximize the value of the Debtors' estates, the Debtors request authority to continue to utilize their existing Cash Management System during the pendency of these chapter 11 cases.

II. The Bank Accounts

12. As of the Petition Date, the Debtors' Cash Management System is comprised of approximately fifteen Bank Accounts, each of which is identified on **Exhibit 1** annexed to **Exhibit A** and **Exhibit B** attached hereto.³ The Debtors maintain approximately six of the Bank Accounts at JP Morgan Chase. The Debtors also maintain Bank Accounts with the following banking institutions:

- 1 Bank Account at HSBC US;
- 3 Bank Accounts at Comerica;
- 1 Bank Account at Silicon Valley Bank;
- 1 Bank Account at Signature Bank; and
- 3 Bank Accounts at HSBC UK.

³ The Debtors may close existing accounts or open new accounts in the ordinary course.

13. The Debtors seek to continue using the Bank Accounts described above and in **Exhibit 1** annexed to **Exhibit A** and **Exhibit B** attached hereto, subject to the Debtors' right to open and close certain accounts in its discretion and subject to all the restrictions and requirements regarding accounts contained in the Debtors' proposed interim cash collateral order.⁴ The Bank Accounts generally can be described as follows:

Account	Account Description
Depository and Collection Accounts	The Depository and Collection Accounts are used by the Debtors to collect deposits from customers. Amounts are then swept into the Debtors' Depository and Disbursement Accounts. The Debtors maintain 3 lockboxes; two under Debtor Sizmek Technologies, Inc. (in USD and CAD); and one under Debtor Sizmek DSP, Inc.
Depository and Disbursement Accounts	Funds in the Depository and Disbursement Accounts are used to satisfy various corporate accounts payable including, but not limited to, vendor payments, taxes, consulting payments, employee reimbursements, and manual and direct ACH transactions.
Collection and Foreign Currency Disbursement Account	The Debtors use the Collection and Foreign Currency Disbursement Accounts as the primary international collections concentration accounts for collections outside the U.S. and in foreign currencies. Funds in the Collection and Foreign Disbursement Accounts transferred manually into Depository and Collection Accounts 2-3 times a week (depending on balances).
Security Deposit	Funds in these accounts serve as security against letters of credit (security deposits).
Depository Account	The Depository Account is a cash concentration account related solely to letters of credit.
Checking Account	The Checking Account is an administrative account with no activity.

14. The Debtors incur periodic service charges and other fees in connection with the use and maintenance of the Cash Management System ("**Bank Fees**"). As of the Petition Date, the Debtors estimate that they owe the Cash Management Banks approximately \$40,000 on account of unpaid Bank Fees, the entirety of which will come due and payable within the first twenty-one

⁴ In the event that the Debtors open a new bank account, it will likely open it at one of its existing Cash Management Banks or will open it at an authorized depository.

days following the Petition Date. The Debtors seek authority to pay these prepetition amounts and to continue paying Bank Fees, in the ordinary course on a postpetition basis, consistent with historical practices.

III. The Cash Management System's Compliance with the U.S. Trustee Guidelines and Section 345 of the Bankruptcy Code.

15. The *Operating Guidelines and Reporting Requirements for Debtors in Possession and Trustees* (the "U.S. Trustee Guidelines") generally require chapter 11 debtors to, among other things, deposit all estate funds into an account with an authorized depository that agrees to comply with the requirements of the Office of the United States Trustee for the Southern District of New York (the "U.S. Trustee").

16. The Debtors' Cash Management System spans the United States and the United Kingdom. Many of the Bank Accounts are maintained at highly rated, global financial institutions that are widely recognized as well-capitalized and financially stable. As of the Petition Date, six of the Debtors' fifteen Bank Accounts were with authorized depositories under the U.S. Trustee Guidelines: namely, four of the Debtors' six Bank Accounts with J.P. Morgan Chase, the Debtors' Bank Account with Silicon Valley Bank, and the Debtors' Bank Account with HSBC US. Of the Debtors' remaining Bank Accounts, the Debtors submit that cause exists to allow the Debtors to continue utilizing the existing Bank Accounts consistent with historical practices. The principal reason that these Bank Accounts are not authorized depositories is that they are located outside of the United States; however, these financial institutions are well positioned to perform the depository and cash management functions during the chapter 11 cases. Given the global scope of the Debtors' operations and cash management requirements, it is not feasible to consolidate all cash activities to the narrow group of financial institutions approved in the U.S. Trustee Guidelines.

17. As of the Petition Date, the Debtors' Bank Accounts generally comply with section 345(b) of the Bankruptcy Code. Each of the U.S. Cash Management Banks is insured by the Federal Deposit Insurance Corporation (the "FDIC"). To the extent that any of the Cash Management Banks are not on the authorized depositories list, the Debtors believe that, based on their business relationships with such banks, the banks are well-capitalized and financially stable financial institutions. In the event that the Bank Accounts cease to comply with the requirements of section 345(b) of the Bankruptcy Code during the chapter 11 cases, the Debtors' request that the Court provide the Debtors with 45 days to bring the Bank Accounts into compliance with section 345(b) of the Bankruptcy Code or to seek appropriate relief from the Court.

18. Continuation of the Debtors' prepetition Cash Management System is critical to the ongoing stability of the Debtors and in ensuring a smooth transition into chapter 11 from a day-to-day operational position. Requiring the Debtors to transfer any of the Bank Accounts to a designated authorized depository would not render a perceptible benefit to the Debtors' estates, while placing a needless administrative burden on the Debtors, imposing significant costs to the Debtors' estates, and crippling the Debtors' ability to operate in the jurisdictions where all of their assets and operations are located. The Debtors will work in good faith with the U.S. Trustee to resolve any concerns regarding the continued use of these accounts on a postpetition basis, so that the concerns underlying the U.S. Trustee Guidelines can be adequately addressed.

IV. Intercompany Transactions

19. In the ordinary course of business, the Debtors engage in routine business relationships with each other (collectively, the "Intercompany Transactions") resulting in intercompany receivables and payables (the "Intercompany Balances").⁵ Accordingly, at any

⁵ This Motion provides an illustrative overview of the Debtors' typical Intercompany Transactions. The relief requested herein is applicable with respect to all Intercompany Transactions and is not limited to those

given time there may be Intercompany Balances owing between the Debtors. Such Intercompany Transactions are frequently conducted pursuant to prepetition shared services and informal intercompany trade arrangements, among others.

20. The Intercompany Transactions are an essential component of the Debtors' complex global operations. More specifically, the Debtors engage in Intercompany Transactions to process payroll, provide enterprise-wide management and support services, and facilitate operations on a daily basis. The Intercompany Transactions are trackable, and the Debtors intend to account for all postpetition Intercompany Transactions in accordance with past historical practice.

21. The Debtors have historically reflected Intercompany Balances as journal entry receivables and payables, as applicable, in their respective accounting systems. The Debtors closely track all Intercompany Transactions fund transfers in their respective accounting systems and, therefore, can ascertain, trace, and account for all Intercompany Transactions.

22. Any interruption of the Intercompany Transactions would severely disrupt the Debtors' operations and result in great harm to the Debtors' estates and their stakeholders. Accordingly, the Debtors seek the authority to continue the Intercompany Transactions in the ordinary course of business, in a manner consistent with prepetition practice. In addition, the Debtors request that all postpetition payments from the Debtors to another debtor entity under any

Intercompany Transactions specifically described. To the extent that there are any outstanding prepetition transactions related to Intercompany Transactions not described herein, the Debtors, out of an abundance of caution, seek authority to continue such transactions. For the avoidance of doubt, the relief requested in this Motion with respect to the postpetition Intercompany Transactions and the Intercompany Balances resulting therefrom does not constitute an admission of the Debtors or any other party as to the validity, priority, or status of any prepetition Intercompany Balance or any Intercompany Transaction from which such Intercompany Balance may have arisen.

postpetition Intercompany Transactions authorized hereunder are hereby accorded administrative expense status under section 503(b) of the Bankruptcy Code.

V. Business Forms

23. The Debtors use certain, limited preprinted correspondence and business forms, such as letterhead (collectively, the “Business Forms”), in the ordinary course of their businesses. Notably, the Business Forms do not include preprinted checks or invoices, as the Debtors print such forms as needed. The Debtors also maintain books and records to document, among other things, their profits and expenses. To minimize unnecessary additional expenses to their estates, the Debtors request that the Court authorize their continued use of their Business Forms to the limited extent they are preprinted, all as such forms were in existence immediately before the Petition Date, without reference to the Debtors’ status as debtors-in-possession, rather than requiring the Debtors to incur the unnecessary expense, nuisance, and delay of ordering entirely new forms as required under the U.S. Trustee Operating Guidelines. Once the Debtors have exhausted their existing stock of Business Forms, they will ensure that any new Business Forms are clearly labeled “Debtor In Possession”; and with respect to any Business Forms that exist or are generated electronically, the Debtors shall ensure that such electronic Business Forms are clearly labeled “Debtor In Possession.”

Basis for Relief

I. The Court Should Approve the Debtors’ Continued Use of the Cash Management System as Essential to the Debtors’ Operations and Restructuring Efforts.

24. The U.S. Trustee Guidelines require debtors-in-possession to, among other things:

- (a) close all existing bank accounts and open new debtor-in-possession bank accounts;
- (b) establish one debtor in possession account for all estate monies required for payment of taxes including payroll taxes;
- (c) physically set aside all monies required by law to be withheld from

employees or collected from others for taxes; (d) open a new set of books and records as of the commencement date of the case; (e) use new business forms indicating the debtor in possession status of the chapter 11 debtor; and (f) make all disbursements of estate funds by check with a notation representing the reason for the disbursement. *See Region 2 Guidelines for Debtors-in-Possession*. These requirements are intended to provide a clear line of demarcation between prepetition and postpetition transactions and operations and to prevent inadvertent payment of prepetition claims.

25. The continuation of the Cash Management System is nevertheless permitted pursuant to section 363(c)(1) of the Bankruptcy Code, which authorizes the debtor in possession to “use property of the estate in the ordinary course without notice or a hearing.” Section 363(c)(1) of the Bankruptcy Code also allows a debtor in possession to engage in ordinary course transactions required to operate its business without additional oversight from its creditors or the Court. *See, e.g., Med. Malpractice Ins. Ass’n v. Hirsch (In re Lavigne)*, 114 F.3d 379, 384 (2d Cir. 1997) (“Section 363(c)(1) of the Bankruptcy Code authorizes a debtor-in-possession to enter into transactions involving property of the estate within the ordinary course of business without notice or a hearing.”); *In re Enron Corp.*, Case No. 01-16034 (AJG), 2003 WL 1562202, at *15 (Bankr. S.D.N.Y. Mar. 21, 2003) (stating same). Included within the purview of section 363(c) of the Bankruptcy Code is a debtor’s ability to continue the “routine transactions” necessitated by a debtor’s cash management system. *In re Frigitemp Corp.*, 34 B.R. 1000, 1010 (S.D.N.Y. 1983), *aff’d*, 753 F.2d 230 (2d Cir. 1985); *see also Amdura Nat’l Distrib. Co. v. Amdura Corp. (In re Amdura Corp.)*, 75 F.3d 1447, 1453 (10th Cir. 1996).

26. Here, requiring the Debtors to adopt a new, segmented cash management system during these chapter 11 cases would be expensive, burdensome, and unnecessarily disruptive to

the Debtors' operations. Importantly, the Cash Management System provides the Debtors with the ability to ensure cash availability to the enterprise and reduce administrative costs through a centralized method of coordinating the collection and movement of funds. As a result, any disruption of the Cash Management System would have a severe and adverse effect on the Debtors' restructuring efforts. Indeed, absent the relief requested herein, requiring the Debtors to adopt a new, segmented cash management system would cause the Debtors' operations to grind to a halt, needlessly destroying the value of the Debtors' business enterprise. By contrast, maintaining the current Cash Management System will facilitate the Debtors' transition into chapter 11 by, among other things, minimizing delays in paying postpetition debts and eliminating administrative inefficiencies.⁶ Finally, maintaining the current Cash Management System will allow the Debtors' treasury and accounting employees to focus on their daily responsibilities.

27. Bankruptcy courts routinely treat requests for authority to continue utilizing existing cash management systems as a relatively "simple matter." *See In re Baldwin-United Corp.*, 79 B.R. 321, 327 (Bankr. S.D. Ohio 1987). Additionally, courts have noted that an integrated cash management system "allows efficient utilization of cash resources and recognizes the impracticalities of maintaining separate cash accounts for the many different purposes that require cash." *In re Columbia Gas Sys., Inc.*, 136 B.R. 930, 934 (Bankr. D. Del. 1992), *aff'd in part and rev'd in part*, 997 F.2d 1039 (3d Cir. 1993). As a result, courts have concluded that the requirement to maintain all accounts separately "would be a huge administrative burden and economically inefficient." *Id.*, 997 F.2d at 1061; *see also In re Southmark Corp.*, 49 F.3d 1111,

⁶ Notwithstanding the Debtors' use of a consolidated cash management system, the Debtors intend to calculate quarterly fees under 28 U.S.C. § 1930(a)(6) based on the disbursements of each Debtor, regardless of which entity pays those disbursements.

1114 (5th Cir. 1995) (noting that maintaining an existing cash management system allows debtors “to administer more efficiently and effectively its financial operations and assets”).

28. Parties in interest will not be harmed by the Debtors’ maintenance of the Cash Management System, including maintenance of the Bank Accounts and the Intercompany Transactions. The Debtors have implemented appropriate mechanisms to ensure that Debtor entities will not make unauthorized payments on account of prepetition or postpetition obligations. In addition, although not all of the Debtors’ Bank Accounts are with authorized depositories as required by the U.S. Trustee Guidelines, such Bank Accounts are with banks that are stable, international financial institutions of similar quality. Accordingly, the Debtors submit that maintaining the Cash Management System and authorizing the Debtors’ use of their existing Bank Accounts is in the best interest of their estates and creditors, and request authorization to continue utilizing the Cash Management System in accordance with historic prepetition practice.

29. The Debtors further request that the Court authorize the Cash Management Banks to receive, process, honor, and pay any and all checks, electronic fund transfer, credit card, ACH payments and other instructions, and drafts payable through, or drawn or directed on, such Bank Accounts after the Petition Date by holders, makers, or other parties entitled to issue instructions with respect thereto, irrespective of whether such checks, drafts, electronic fund transfers, credit card, or ACH payment are dated prior or subsequent to the Petition Date, but only to the extent consistent with the Debtors’ proposed interim cash collateral order and the exercise of control over certain accounts by Cerberus. The Debtors also respectfully request that, to the extent a Cash Management Bank honors a prepetition check or other item drawn on any account that is the subject of this motion, either at the direction of the Debtors or in a good-faith belief that the Court has authorized such prepetition check or item to be honored, such Cash Management Bank will

not be deemed to be liable to the Debtors or to their estates on account of such prepetition check or other item honored postpetition.

30. The relief requested is reasonable and appropriate because the Cash Management Banks are not in a position to independently verify or audit whether the Debtors may pay a particular item in accordance with a Court order or otherwise. Considering the breadth of their operations, the Debtors need to conduct transactions by debit, electronic fund, ACH payments, and other similar methods. If the Debtors are denied the opportunity to conduct transactions by debit, electronic fund, ACH payments, or other methods used in the ordinary course of business, the Debtors likely would have difficulty performing on their contracts, and the Debtors' business operations would be disrupted unnecessarily, burdening the Debtors and their creditors with additional costs.

31. Finally, the Debtors respectfully request that the Court authorize the Debtors to continue to pay the Bank Fees, including any prepetition Bank Fees. In light of the material benefit of maintaining the Cash Management System in order to avoid unnecessary disruption and costly delay, especially as compared to the relatively modest amount of the Bank Fees, the Debtors respectfully submit that such relief is warranted under the circumstances.

32. Courts in this district have regularly waived certain U.S. Trustee Guidelines and allowed the continued use of cash management systems and prepetition bank accounts employed in the ordinary course of a debtor's prepetition business. *See, e.g., In re Windstream Holdings, Inc.*, Case No. 19-22312 (RDD) (Bankr. S.D.N.Y. Feb. 28, 2019) (allowing debtors to continue using their cash management system); *In re FULLBEAUTY Brands Holdings Corp.*, Case No. 19-22185 (RDD) (Bankr. S.D.N.Y. Feb. 7, 2019) (same); *In re Aegean Marine Petroleum Network Inc.*, Case No. 18-13374 (MEW) (Bankr. S.D.N.Y. Nov. 9, 2018) (same); *In re Nine West*

Holdings, Inc., Case No. 18-10947 (SCC) (Bankr. S.D.N.Y. June 26, 2018) (same); *In re Cenveo, Inc.*, Case No. 18-22178 (RDD) (Bankr. S.D.N.Y. March 8, 2018) (same); *In re Global A&T Electronics Ltd.*, Case No. 17-23931 (RDD) (Bankr. S.D.N.Y. Dec. 19, 2017) (same).⁷

II. Payment of Fees and Prepetition Obligations Related to the Bank Accounts Will Facilitate a Smooth Transition into Chapter 11 and Benefit the Estates.

33. Courts in this district generally acknowledge that it is appropriate to authorize the payment of prepetition obligations where necessary to protect and preserve the estate, including an operating business's going-concern value. *See, e.g., In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) (granting authority to pay prepetition wages); *Armstrong World Indus, Inc., v. James A. Phillips, (In re James A. Phillips, Inc.)*, 29 B.R. 391, 398 (S.D.N.Y. 1983) (granting authority to pay prepetition claims of suppliers); *see also In re CoServ.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002). In so doing, these courts have found that sections 105(a) and 363(b) of the Bankruptcy Code support the payment of prepetition claims as provided herein.

34. Pursuant to section 363(b) of the Bankruptcy Code, courts may authorize payment of prepetition obligations where a sound business purpose exists for doing so. *See Ionosphere Clubs*, 98 B.R. at 175 (noting that section 363(b) provides "broad flexibility" to authorize a debtor to honor prepetition claims where supported by an appropriate business justification); *see also In re James A. Phillips*, 29 B.R. at 397 (relying upon section 363 as a basis to allow a contractor to pay the prepetition claims of suppliers who were potential lien claimants). Indeed, courts have recognized that there are instances when a debtor's fiduciary duty can "only be fulfilled by the pre-plan satisfaction of a prepetition claim." *In re CoServ*, 273 B.R. at 497.

⁷ Because of the voluminous nature of the orders cited herein, such orders have not been attached to this motion. Copies of these cited orders are available upon request to the Debtors' proposed counsel.

35. Courts also may authorize payment of prepetition claims in appropriate circumstances based on section 105(a) of the Bankruptcy Code. Section 105(a) codifies the Court's inherent equitable powers to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." Under section 105(a), courts may authorize pre-plan payments of prepetition obligations when essential to the continued operation of a debtor's businesses. *See In re C.A.F. Bindery, Inc.*, 199 B.R. 828, 835 (Bankr. S.D.N.Y. 1996); *see also In re Fin. News Network Inc.*, 134 B.R. 732, 735–36 (Bankr. S.D.N.Y. 1991) ("The 'doctrine of necessity' stands for the principle that a bankruptcy court may allow pre-plan payments of prepetition obligations where such payments are critical to the debtor's reorganization."); *In re Ionosphere Clubs*, 98 B.R. at 176 (holding that a court may authorize payments of prepetition obligations under section 105(a) of the Bankruptcy Code pursuant to the "necessity of payment" rule (also referred to as the "doctrine of necessity")).

36. Certain payments to their Cash Management Banks, such as the payment of prepetition Bank Fees will ensure the continued support of the Debtors' Cash Management Banks on a go-forward basis at this critical juncture of the Debtors' chapter 11 cases. Continuation of such payments play a role in the efficient and effective operations of the Debtors' businesses, allowing the Debtors' employees to focus their efforts on the tasks that make a difference to the Debtors' ultimate performance and minimizing administrative tasks. The Debtors believe that any interference or delay in any of these programs is unnecessary and unduly burdensome.

III. The Debtors Should Be Granted Authority to Use Existing Business Forms.

37. To avoid disruption of the Cash Management System and unnecessary expense, the Debtors request that they be authorized to continue to use their Business Forms, substantially in the form existing immediately before the Petition Date, without reference to their status as debtors in possession. The Debtors submit that, given the limited nature of the preprinted Business Forms,

parties in interest will not be prejudiced if the Debtors are authorized to continue to use their Business Forms substantially in the forms existing immediately before the Petition Date. Parties doing business with the Debtors undoubtedly will be aware of their status as debtors in possession and, thus, changing forms such as letterhead would be an unnecessary additional expense and unduly burdensome. Moreover, due to the international scope of the Debtors' vendor relationships, many of the parties doing business with the Debtors are foreign. These parties may be unfamiliar with the chapter 11 process and therefore the modifications to the Business Forms will have limited, if any, meaning to these parties, particularly when weighed against the attendant costs of updating their Business Forms. Once the Debtors have exhausted their existing stock of Business Forms, they will ensure that any new Business Forms are clearly labeled "Debtor In Possession" and with respect to any Business Forms that exist or are generated electronically, to the extent reasonably practicable, the Debtors shall ensure that such electronic Business Forms are clearly labeled "Debtor In Possession."

38. In other chapter 11 cases, courts in this district have allowed debtors to use their prepetition business forms without the "debtor in possession" label. *See, e.g., In re Windstream Holdings, Inc.*, Case No. 19-22312 (RDD) (Bankr. S.D.N.Y. Feb. 28, 2019) (authorizing use of existing business forms); *In re FULLBEAUTY Brands Holdings Corp.*, Case No. 19-22185 (RDD) (Bankr. S.D.N.Y. Feb. 7, 2019) (same); *In re Aegean Marine Petroleum Network Inc.*, Case No. 18-13374 (MEW) (Bankr. S.D.N.Y. Nov. 9, 2018) (same); *In re Nine West Holdings, Inc.*, Case No. 18-10947 (SCC) (Bankr. S.D.N.Y. June 26, 2018) (same); *In re Cenveo, Inc.*, Case No. 18-22178 (RDD) (Bankr. S.D.N.Y. Mar. 8, 2018) (same).

IV. The Court Should Authorize the Debtors to Continue Engaging in Postpetition Intercompany Transactions.

39. Allowing the Debtors to engage in postpetition Intercompany Transactions is in the best interests of the Debtors' estates and their creditors, and the Debtors seek authority to enter into such postpetition Intercompany Transactions in the ordinary course of business.⁸ The Debtors respectfully submit that postpetition Intercompany Transactions arising in the ordinary course are authorized as a matter of law pursuant to section 363(c)(1) of the Bankruptcy Code for which no additional relief is required.

40. The Debtors respectfully submit that the relief requested herein fairly balances the Debtors' needs to facilitate the ordinary course operation of their business, minimize disruption, and preserve value with the interests of their stakeholders in transparency. As noted above, the Debtors request authority to continue postpetition Intercompany Transactions in the ordinary course (including with respect to "netting" or setoffs taken in the ordinary course). The Debtors respectfully submit that such a structure reflects a fair balance of interests.

41. Additionally, the Debtors respectfully request that the Court order that all valid postpetition payments from a Debtor to another Debtor on account of a postpetition Intercompany Transaction shall be accorded administrative expense status. As noted above, the Debtors believe such relief is necessary to ensure that a particular Debtor's estate will not be required to fund the operations of other Debtors without adequate recompense.

42. Similar relief has been granted in other similarly situated chapter 11 cases in this district. *See, e.g., In re Windstream Holdings, Inc.*, Case No. 19-22312 (RDD) (Bankr. S.D.N.Y.

⁸ Because the Debtors engage in Intercompany Transactions on a regular basis and such transactions are common among similar enterprises, the Debtors believe the postpetition Intercompany Transactions are ordinary course transactions within the meaning of section 363(c)(1) of the Bankruptcy Code and, thus, do not require the Court's approval.

Feb. 28, 2019) (allowing intercompany transactions to continue); *In re FULLBEAUTY Brands Holdings Corp.*, Case No. 19-22185 (RDD) (Bankr. S.D.N.Y. Feb. 7, 2019) (same); *In re Aegean Marine Petroleum Network Inc.*, Case No. 18-13374 (MEW) (Bankr. S.D.N.Y. Nov. 9, 2018) (same); *In re Nine West Holdings, Inc.*, Case No. 18-10947 (SCC) (Bankr. S.D.N.Y. June 26, 2018) (same); *In re Cenveo, Inc.*, Case No. 18-22178 (RDD) (Bankr. S.D.N.Y. Feb. 2, 2018) (same).

V. Cause Exists for Waiving the U.S. Trustee Guidelines Regarding Authorized Depositories.

43. To the extent the Cash Management System does not strictly comply with section 345 of the Bankruptcy Code, the Debtors further seek a waiver of the deposit and investment requirements set forth therein.

44. Section 345(a) of the Bankruptcy Code authorizes deposit or investment of money of estates, such as cash, as “will yield the maximum reasonable net return on such money, taking into account the safety of such deposit or investment.” For deposits that are not “insured or guaranteed by the United States or by a department, agency or instrumentality of the United States or backed by the full faith and credit of the United States,” section 345(b) of the Bankruptcy Code provides that the estate must require from the entity with which the money is deposited or invested a bond in favor of the United States secured by the undertaking of a corporate security, “unless the court for cause orders otherwise.” Additionally, under the U.S. Trustee Guidelines, debtors in possession must, among other things, close prepetition bank accounts and open new “debtor in possession” operating, payroll, and tax accounts at one or more authorized depositories.

45. Courts may waive compliance with the Bankruptcy Code section 345 and the U.S. Trustee Guidelines for “cause.” In evaluating whether “cause” exists, courts have considered a number of factors such as:

- a. the sophistication of the debtor's business;
- b. the size of the debtor's business operations;
- c. the amount of the investments involved;
- d. the bank ratings (Moody's and Standard & Poor) of the financial institutions where the debtor in possession funds are held;
- e. the complexity of the case;
- f. the safeguards in place within the debtor's own business for ensuring the safety of the funds;
- g. the debtor's ability to reorganize in the face of a failure of one or more of the financial institutions;
- h. the benefit to the debtor;
- i. the harm, if any, to the debtor;
- j. the harm, if any, to the estate; and
- k. the reasonableness of the debtor's request for relief from section 345(b) requirements in light of the overall circumstances of the case.

See In re Serv. Merch. Co., Inc., 240 B.R. 894, 896 (Bankr. M.D. Tenn. 1999).

46. Because the Bank Accounts are vital to the Cash Management System, requiring the Debtors to transfer funds to other banks would be unduly burdensome to the Debtors' operations, which span multiple jurisdictions, and potentially cause severe tax consequences to the detriment of the Debtors' estates. In addition, the Bank Accounts are maintained at well-capitalized, highly-rated banks, hold only *de minimis* cash amounts, or are otherwise necessary for the Debtors to transact in certain jurisdictions. Therefore, the Debtors submit that cause exists to waive the U.S. Trustee Guidelines and allow the Debtors to continue to maintain the Bank Accounts in the ordinary course of business.

47. In the event that the Bank Accounts do not comply with the requirements of section 345(b) of the Bankruptcy Code during the chapter 11 cases, the Debtors' request that the Court provide the Debtors with 45 days to bring the Bank Accounts into compliance with section 345(b) or to seek appropriate relief from the Court.

48. Similar relief has been granted in other similarly situated chapter 11 cases in this district. *See, e.g., In re Windstream Holdings, Inc.*, Case No. 19-22312 (RDD) (Bankr. S.D.N.Y. Feb. 28, 2019) (waiving U.S. Trustee Guidelines regarding authorized depositories); *In re FULLBEAUTY Brands Holdings Corp.*, Case No. 19-22185 (RDD) (Bankr. S.D.N.Y. Feb. 7, 2019) (same); *In re Aegean Marine Petroleum Network Inc.*, Case No. 18-13374 (MEW) (Bankr. S.D.N.Y. Nov. 9, 2018) (same); *In re Nine West Holdings, Inc.*, Case No. 18-10947 (SCC) (Bankr. S.D.N.Y. June 26, 2018) (same); *In re Global A&T Electronics Ltd.*, Case No. 17-23931 (RDD) (Bankr. S.D.N.Y. Dec. 19, 2017) (same).

Processing of Checks and Electronic Fund Transfers Should Be Authorized

49. The Debtors have sufficient funds to pay the amounts described in this motion in the ordinary course of business by virtue of expected cash flows from ongoing business operations and anticipated access to cash collateral. Under the Debtors' existing Cash Management System, the Debtors have made arrangements to readily identify checks or wire transfer requests, as applicable. Accordingly, the Debtors believe that checks or wire transfer requests that are not related to authorized payments will not be honored inadvertently. Therefore, the Debtors respectfully request that the Court authorize all applicable financial institutions, when requested by the Debtors, to receive, process, honor, and pay any and all checks or wire transfer requests in respect of the relief requested in this motion, but only to the extent consistent with the Debtors' proposed interim cash collateral order and the exercise of control over certain accounts by Cerberus.

The Requirements of Bankruptcy Rule 6003 Are Satisfied

50. Bankruptcy Rule 6003 empowers a court to grant relief within the first 21 days after the Petition Date “to the extent that relief is necessary to avoid immediate and irreparable harm.” Fed. R. Bankr. P. 6003. Immediate and irreparable harm exists where the absence of relief would impair a debtor’s ability to reorganize or threaten the debtor’s future as a going concern. *See In re Ames Dep’t Stores, Inc.*, 115 B.R. 34, 36 n.2 (Bankr. S.D.N.Y. 1990) (discussing the elements of “immediate and irreparable harm” in relation to Bankruptcy Rule 4001). For the reasons discussed above, authorizing the Debtors to (a) continue to operate their Cash Management System; (b) honor certain prepetition obligations related thereto; (c) maintain existing Business Forms in the ordinary course of business; (d) continue to perform Intercompany Transactions consistent with historical practice; and (e) granting the other relief requested herein is integral to the Debtors’ ability to transition their operations into these chapter 11 cases smoothly. Failure to receive such authorization and other relief during the first 21 days of these chapter 11 cases would severely disrupt the Debtors’ operations at this critical juncture. For the reasons discussed herein, the relief requested is necessary in order for the Debtors to operate their business in the ordinary course, preserve the going concern value of the Debtors’ operations, and maximize the value of their estates for the benefit of all stakeholders. Accordingly, the Debtors submit that they have satisfied the “immediate and irreparable harm” standard of Bankruptcy Rule 6003 to support granting the relief requested herein.

Motion Practice

51. This motion includes citation to the applicable rules and statutory authorities upon which the relief requested herein is predicated and a discussion of their application to this motion. Moreover, in addition to all entities otherwise entitled to receive notice, the Debtors have given notice of this motion to all entities believed to have or be claiming an interest in the subject matter

of the proposed order. Accordingly, the Debtors submit that this motion satisfies Local Rule 9013-1(a).

Reservation of Rights

52. Nothing contained in this motion or any actions taken by the Debtors pursuant to relief granted in the Order is intended or should be construed as: (a) an admission as to the validity, priority, or amount of any particular claim against a Debtor entity; (b) a waiver of the Debtors' or any other party-in-interest's rights to dispute any particular claim on any grounds; (c) a promise or requirement to pay any particular claim; (d) an implication or admission that any particular claim is of a type specified or defined in this motion; (e) a request or authorization to assume any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) a waiver or limitation of the Debtors' or any other party-in-interest's rights under the Bankruptcy Code or any other applicable law; or (g) a concession by the Debtors or any other party-in-interest that any liens (contractual, common law, statutory, or otherwise) satisfied pursuant to this motion are valid, and the Debtors and all other parties-in-interest expressly reserve their rights to contest the extent, validity, or perfection, or to seek avoidance of all such liens. If the Court grants the relief sought herein, any payment made pursuant to the Court's order is not intended and should not be construed as an admission as to the validity, priority, or amount of any particular claim or a waiver of the Debtors' or any other party-in-interest's rights to subsequently dispute such claim.

Waiver of Bankruptcy Rule 6004(a) and 6004(h)

53. To implement the foregoing successfully, the Debtors request that the Court enter an order providing that notice of the relief requested herein satisfies Bankruptcy Rule 6004(a) and that the Debtors have established cause to exclude such relief from the 14-day stay period under Bankruptcy Rule 6004(h).

Notice

54. The Debtors will provide notice of this Motion to the following parties and/or their respective counsel, as applicable: (a) the Office of the United States Trustee for the Southern District of New York Attn: Richard C. Morrissey, Esq; (b) the holders of the 50 largest unsecured claims against the Debtors (on a consolidated basis); (c) the Prepetition Secured Parties; (d) the Pension Benefit Guaranty Corporation; (e) the United States Attorney's Office for the Southern District of New York; (f) the Internal Revenue Service; (g) the United States Securities and Exchange Commission; (h) the Environmental Protection Agency and all similar state environmental agencies; (i) the attorneys general in the states where the Debtors conducts their business operations; and (j) any party that has requested notice pursuant to Bankruptcy Rule 2002. The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

No Prior Request

55. No prior request for the relief sought in this motion has been made to this or any other court.

[Remainder of page intentionally left blank]

WHEREFORE, the Debtors respectfully requests that the Court enter the Interim Order and Final Order granting the relief requested herein and such other relief as the Court deems appropriate under the circumstances.

Dated: April 2, 2019
New York, New York

/s/ Steven J. Reisman

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Proposed Counsel to the Debtors and Debtors-in-Possession

EXHIBIT A

Proposed Interim Order

**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 Administered Requested)

**INTERIM ORDER
(I) AUTHORIZING THE DEBTORS TO
(A) CONTINUE TO OPERATE THEIR CASH MANAGEMENT
SYSTEM, (B) HONOR CERTAIN PREPETITION OBLIGATIONS
RELATED THERETO, (C) MAINTAIN EXISTING BUSINESS FORMS,
AND (D) CONTINUE TO PERFORM INTERCOMPANY TRANSACTIONS,
(II) GRANTING ADMINISTRATIVE EXPENSE STATUS TO POSTPETITION
INTERCOMPANY BALANCES, AND (III) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”)² of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of an interim order (this “Interim Order”) (i) authorizing the Debtors to continue to (a) operate their cash management system and maintain their existing bank accounts, including honoring certain prepetition obligations related thereto, (b) maintain existing business forms, and (c) continue intercompany transactions and funding consistent with the Debtors’ historical practices, subject to the terms described herein, and (b) granting related relief, all as more fully set forth in the Motion; and upon the First Day Declaration; and the Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157(a)-(b) and 1334(b) and the *Amended Standing Order of Reference from the United States District Court for the Southern District of*

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 have the meanings ascribed to them in the Motion.

New York, dated February 1, 2012; and that this Court may enter a final order consistent with Article III of the United States Constitution; and this 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 Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b); and this Court having found that the 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 this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Hearing"); and this 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 this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Motion is granted on an interim basis as set forth herein.
2. The final hearing (the "Final Hearing") on the Motion shall be held on _____, 2019, at __:__ .m., prevailing Eastern Time. Any objections or responses to entry of a final order on the Motion shall be filed on or before 4:00 p.m., prevailing Eastern Time, on _____, 2019, and shall be served on: (a) the Debtors and their counsel; (b) the Office of the United States Trustee for the Southern District of New York Attn: Richard C. Morrissey, Esq.; (c) the holders of the 50 largest unsecured claims against the Debtors (on a consolidated basis); (d) the Prepetition Secured Parties; (e) the Pension Benefit Guaranty Corporation; (f) the United States Attorney's Office for the Southern District of New York; (g) the Internal Revenue Service; (h) the United States Securities and Exchange Commission; (i) the Environmental Protection Agency and all similar state environmental agencies; (j) the attorneys general in the states where the Debtors conduct their business operations; and (k) any party that has requested notice pursuant to

Bankruptcy Rule 2002. In the event no objections to entry of a final order on the Motion are timely received, this Court may enter such final order without need for the Final Hearing.

3. The Debtors are authorized, on an interim basis and in their sole discretion, to: (a) continue operating the Cash Management System; (b) honor their prepetition obligations related thereto; and (c) continue to perform intercompany transactions among multiple Debtors consistent with historical practice.

4. The Debtors are authorized, on an interim basis and in their sole discretion, to: (a) continue to use, with the same account numbers, the Bank Accounts in existence as of the Petition Date, including those accounts identified on **Exhibit 1** attached hereto; (b) treat the Bank Accounts for all purposes as accounts of the Debtors as debtors in possession; (c) deposit funds in and withdraw funds from the Bank Accounts by all usual means, including checks, wire transfers, and other debits; (d) pay the prepetition Bank Fees; and (e) pay any ordinary course Bank Fees incurred in connection with the Bank Accounts, irrespective of whether such fees arose prior to the Petition Date, and to otherwise perform its obligations under the documents governing the Bank Accounts.

5. The Debtors are authorized, but not directed, to continue using, in its present form, the Business Forms, as well as checks and other documents related to the Bank Accounts existing immediately before the Petition Date, without reference to the Debtors' status as debtors in possession; *provided, however*, once the Debtors have exhausted their existing stock of Business Forms, the Debtors shall ensure that any new Business Forms are clearly labeled "Debtor In Possession"; *provided, further*, with respect to any Business Forms that exist or are generated electronically, the Debtors shall ensure that such electronic Business Forms are clearly labeled "Debtor In Possession."

6. The Cash Management Banks at which the Bank Accounts are maintained are authorized to continue to maintain, service, and administer the Bank Accounts as accounts of the Debtors as debtors in possession, without interruption and in the ordinary course, and to receive, process, honor, and pay, to the extent of available funds, any and all checks, drafts, wires, and ACH transfers issued and drawn on the Bank Accounts after the Petition Date by the holders or makers thereof, as the case may be, but only to the extent consistent with the Debtors' proposed interim cash collateral order and the exercise of control over certain accounts by Cerberus.

7. As soon as practicable following entry of this Interim Order, the Debtors shall contact the Cash Management Banks at which they hold Bank Accounts that are party to a Uniform Depository Agreement with the U.S. Trustee and: (a) provide such Cash Management Bank with the Debtors' employer identification number; and (b) identify each of their Bank Accounts as being held by a debtor in possession.

8. All banks provided with notice of this Interim Order maintaining any of the Bank Accounts shall not honor or pay any bank payments drawn on the listed Bank Accounts, or otherwise issued before the Petition Date, absent further direction from the Debtors.

9. The Debtors will maintain records in the ordinary course reflecting transfers of cash, if any, including Intercompany Transactions, so as to permit all such transactions to be ascertainable.

10. In the course of providing cash management services to the Debtors, each of the Cash Management Banks at which the Bank Accounts are maintained is authorized, without further order of this Court, to deduct the applicable fees and expenses associated with the nature of the deposit and cash management services rendered to the Debtors, whether arising prepetition or postpetition, from the appropriate accounts of the Debtors, and further, to charge back to the

appropriate accounts of the Debtors any amounts resulting from returned checks or other returned items, including returned items that result from ACH transactions, wire transfers, or other electronic transfers of any kind, regardless of whether such items were deposited or transferred prepetition or postpetition and regardless of whether the returned items relate to prepetition or postpetition items or transfers.

11. Each of the Cash Management Banks is authorized to debit the Debtors' accounts in the ordinary course of business without the need for further order of this Court for: (a) all checks drawn on the Debtors' accounts which are cashed at such Cash Management Bank's counters or exchanged for cashier's checks by the payees thereof prior to the Petition Date; (b) all checks or other items deposited in one of the Debtors' accounts with such Bank prior to the Petition Date which have been dishonored or returned unpaid for any reason, together with any fees and costs in connection therewith, to the same extent the Debtors were responsible for such items prior to the Petition Date; and (c) all undisputed prepetition amounts outstanding of the date hereof, if any, owed to any bank as service charges for the maintenance of the Cash Management System.

12. Each of the Debtors' Cash Management Banks may rely on the representations of the Debtors with respect to whether any check or other payment order drawn or issued by the Debtors prior to the Petition Date should be honored pursuant to this or any other order of this Court, and such Bank shall not have any liability to any party for relying on such representations by the Debtors as provided for herein.

13. The Debtors are authorized to open any new bank accounts or close any existing Bank Accounts as it may deem necessary and appropriate in its sole discretion; *provided that* (a) those certain existing deposit agreements between the Debtors and their existing depository and disbursement Banks shall continue to govern the postpetition cash management relationship

between the Debtors and the Banks, and that all of the provisions of such agreements, including, without limitation, the termination and fee provisions, shall remain in full force and effect; and (b) either the Debtors or the Banks may, without further order of this Court, implement changes to the Cash Management Systems and procedures in the ordinary course of business pursuant to the terms of those existing deposit agreements, including, without limitation, the opening and closing of Bank accounts; *provided, however*, that in the event that the Debtors open a new bank account it shall open one at an authorized depository; *provided, further, however*, that the Debtors shall give notice of the opening or closing of any Bank Account to the U.S. Trustee.

14. Nothing contained herein shall permit any Bank at which the Bank Accounts are maintained to terminate any cash management services without thirty days prior written notice to the Debtors, the U.S. Trustee, and any official committee appointed in these chapter 11 cases.

15. The requirement to establish separate accounts for cash collateral and/or tax payments is hereby waived.

16. Notwithstanding anything to the contrary set forth herein, the Debtors are authorized to continue Intercompany Transactions arising from or related to the operation of its business in the ordinary course.

17. All postpetition payments from the Debtors to another Debtor entity under any postpetition Intercompany Transactions authorized hereunder are hereby accorded administrative expense status under section 503(b) of the Bankruptcy Code.

18. Notwithstanding the Debtors' use of a consolidated Cash Management System, the Debtors shall calculate quarterly fees under 28 U.S.C. § 1930(a)(6) based on the disbursements of each debtor entity, regardless of which entity pays those disbursements.

19. The 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 Bank Fees.

20. Notwithstanding the relief granted in this Interim Order and any actions taken pursuant to such relief, nothing in this Interim Order shall be deemed: (a) an admission as to the validity of any prepetition claim against the Debtors; (b) a waiver of the Debtors' right to dispute any prepetition claim on any grounds; (c) a promise or requirement to pay any prepetition claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Interim Order or the Motion; (e) a request or authorization to assume any prepetition agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) a waiver or limitation of the Debtors' rights or the rights of any other Person under the Bankruptcy Code or any other applicable law; or (g) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) satisfied pursuant to the Motion are valid, and the Debtors expressly reserve their rights to contest the extent, validity, or perfection or seek avoidance of all such liens.

21. The Debtors shall have an additional forty-five days, without prejudice to seeking an additional extension, from the entry of this Interim Order to either come into compliance with section 345(b) of the Bankruptcy Code or to seek appropriate relief from the Court.

22. Notwithstanding anything to the contrary contained in this Interim Order or in the Motion, any payment, obligation, account status, or other relief authorized by this Interim Order shall be subject to and limited by the requirements and limitations imposed on the Debtors under the terms of any interim and/or final orders regarding the use of cash collateral (any such order, a "Financing Order"), and any budget utilized in connection therewith, approved by this Court in

these chapter 11 cases. In the event of any conflict between the terms of this Interim Order and a Financing Order, the terms of the applicable Financing Order shall control (solely to the extent of such conflict).

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

24. 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 Rules are satisfied by such notice.

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

26. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Interim Order in accordance with the Motion.

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

Dated: _____, 2019
New York, New York

THE HONORABLE STUART M. BERNSTEIN
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT 1

Bank Accounts

BANK ACCOUNT LIST

Domestic Accounts			
Currency	Bank Name	Account number	Type of Account
USD	JPMorgan Chase	736457698	Disbursement Account
USD	JPMorgan Chase	810451955	Depository and Collection Account
CAD	JPMorgan Chase	4683000146	Collection and Disbursement Account
USD	JPMorgan Chase	3769920126	Security Deposit
USD	Comerica	1894346012	Depository Account
USD	Comerica	1894934643	Disbursement Account
USD	Comerica	1894937745	ZBA Account
USD	JPMorgan Chase	235168991	Depository and Disbursement Account
USD	JPMorgan Chase	936023600	Collection Account
EUR	HSBC UK	401276-74061932	Collection and Foreign Currency Disbursement Account
GBP	HSBC UK	400106-92617617	Collection and Foreign Currency Disbursement Account
USD	HSBC US	267100884	Checking account
USD	HSBC UK	401276-74061315	Collection Account
USD	Silicon Valley Bank	3301018020	Security Deposit

EXHIBIT B

Proposed Final Order

**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)

**FINAL ORDER (I) AUTHORIZING THE DEBTORS TO
(A) CONTINUE TO OPERATE THEIR CASH MANAGEMENT
SYSTEM, (B) HONOR CERTAIN PREPETITION OBLIGATIONS
RELATED THERETO, (C) MAINTAIN EXISTING BUSINESS FORMS,
AND (D) CONTINUE TO PERFORM INTERCOMPANY TRANSACTIONS,
(II) GRANTING ADMINISTRATIVE EXPENSE STATUS TO POSTPETITION
INTERCOMPANY BALANCES, AND (III) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”)² of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of an final order (this “Final Order”) (a) authorizing the Debtors to continue to (i) operate their cash management system and maintain their existing bank accounts, including honoring certain prepetition obligations related thereto, and (ii) continue intercompany transactions and funding consistent with the Debtors’ historical practices, subject to the terms described herein, and (b) granting related relief, all as more fully set forth in the Motion; and upon the First Day Declaration; and the Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157(a)-(b) and 1334(b) 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 that this Court may enter a final order consistent with Article III of the United States Constitution;

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 have the meanings ascribed to them in the Motion.

and this 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 Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b); and this Court having found that the 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 this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Hearing"); and this 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 this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Motion is granted on a final basis as set forth herein.
2. The Debtors are authorized, in their sole discretion, to: (a) continue operating the Cash Management System; (b) honor its prepetition obligations related thereto; (c) maintain existing Business Forms; and (d) continue to perform intercompany transactions among multiple Debtors consistent with historical practice.
3. The Debtors are further authorized, in their sole discretion, to: (a) continue to use, with the same account numbers, the Bank Accounts in existence as of the Petition Date, including those accounts identified on **Exhibit 1** attached hereto; (b) treat the Bank Accounts for all purposes as accounts of the Debtors as debtors in possession; (c) deposit funds in and withdraw funds from the Bank Accounts by all usual means, including checks, wire transfers, and other debits; (d) pay the prepetition Bank Fees; and (e) pay any ordinary course Bank Fees incurred in connection with the Bank Accounts, irrespective of whether such fees arose prior to the Petition Date, and to otherwise perform its obligations under the documents governing the Bank Accounts.

4. The Debtors are authorized, but not directed, to continue using, in their present forms, the Business Forms, as well as checks and other documents related to the Bank Accounts existing immediately before the Petition Date, without reference to the Debtors' status as debtors in possession; *provided, however*, once the Debtors have exhausted its existing stock of Business Forms, the Debtors shall ensure that any new Business Forms are clearly labeled "Debtor In Possession"; *provided, further*, with respect to any Business Forms that exist or are generated electronically, the Debtors shall ensure that such electronic Business Forms are clearly labeled "Debtor In Possession."

5. The Cash Management Banks at which the Bank Accounts are maintained are authorized to continue to maintain, service, and administer the Bank Accounts as accounts of the Debtors as debtors in possession, without interruption and in the ordinary course, and to receive, process, honor, and pay, to the extent of available funds, any and all checks, drafts, wires, and ACH transfers issued and drawn on the Bank Accounts after the Petition Date by the holders or makers thereof, as the case may be, but only to the extent consistent with the Debtors' proposed interim cash collateral order and the exercise of control over certain accounts by Cerberus.

6. All banks provided with notice of this Final Order maintaining any of the Bank Accounts shall not honor or pay any bank payments drawn on the listed Bank Accounts, or otherwise issued before the Petition Date, absent further direction from the Debtors.

7. The Debtors will maintain records in the ordinary course reflecting transfers of cash, if any, including Intercompany Transactions, so as to permit all such transactions to be ascertainable.

8. In the course of providing cash management services to the Debtors, each of the Cash Management Banks at which the Bank Accounts are maintained is authorized, without

further order of this Court, to deduct the applicable fees and expenses associated with the nature of the deposit and cash management services rendered to the Debtors, whether arising prepetition or postpetition, from the appropriate accounts of the Debtors, and further, to charge back to the appropriate accounts of the Debtors any amounts resulting from returned checks or other returned items, including returned items that result from ACH transactions, wire transfers, or other electronic transfers of any kind, regardless of whether such items were deposited or transferred prepetition or postpetition and regardless of whether the returned items relate to prepetition or postpetition items or transfers.

9. Each of the Debtors' Cash Management Banks is authorized to debit its accounts in the ordinary course of business without the need for further order of this Court for: (a) all checks drawn on the Debtors' accounts which are cashed at such Cash Management Bank's counters or exchanged for cashier's checks by the payees thereof prior to the Petition Date; (b) all checks or other items deposited in one of the Debtors' accounts with such Cash Management Bank prior to the Petition Date which have been dishonored or returned unpaid for any reason, together with any fees and costs in connection therewith, to the same extent as if the Debtors were responsible for such items prior to the Petition Date; and (c) all undisputed prepetition amounts outstanding of the date hereof, if any, owed to any bank as service charges for the maintenance of the Cash Management System.

10. Each of the Debtors' Cash Management Banks may rely on the representations of the Debtors with respect to whether any check or other payment order drawn or issued by the Debtors prior to the Petition Date and should be honored pursuant to this or any other order of this Court, and such Cash Management Bank shall not have any liability to any party for relying on such representations by the Debtors as provided for herein.

11. The Debtors are authorized to open any new bank accounts or close any existing Bank Accounts as they may deem necessary and appropriate in their sole discretion; *provided that* (a) those certain existing deposit agreements between the Debtors and their existing depository and disbursement Cash Management Banks shall continue to govern the postpetition cash management relationship between the Debtors and the Cash Management Banks, and that all of the provisions of such agreements, including, without limitation, the termination and fee provisions, shall remain in full force and effect; and (b) either the Debtors or the Cash Management Banks may, without further order of this Court, implement changes to the Cash Management Systems and procedures in the ordinary course of business pursuant to the terms of those existing deposit agreements, including, without limitation, the opening and closing of bank accounts; *provided, however,* that in the event the Debtors open a new bank account they shall open one at an authorized depository; *provided, further, however,* that the Debtors shall give notice of the opening or closing of any Bank Account to the U.S. Trustee.

12. Nothing contained herein shall permit any Cash Management Bank at which the Bank Accounts are maintained to terminate any cash management services without thirty days prior written notice to the Debtors, the U.S. Trustee, and any official committee appointed in these chapter 11 cases.

13. The requirement to establish separate accounts for cash collateral and/or tax payments is hereby waived.

14. Notwithstanding anything to the contrary set forth herein, the Debtors are authorized to continue Intercompany Transactions arising from or related to the operation of its business in the ordinary course.

15. All postpetition payments from the Debtors to another Debtor entity under any postpetition Intercompany Transactions authorized hereunder are hereby accorded administrative expense status under section 503(b) of the Bankruptcy Code.

16. Notwithstanding the Debtors' use of a consolidated Cash Management System, the Debtors shall calculate quarterly fees under 28 U.S.C. § 1930(a)(6) based on the disbursements of each debtor entity, regardless of which entity pays those disbursements.

17. The 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 Bank Fees.

18. 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 the Debtors' right to dispute any prepetition claim on any grounds; (c) a promise or requirement to pay any prepetition 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 section 365 of the Bankruptcy Code; (f) a waiver or limitation of the Debtors' rights or the rights of any other Person under the Bankruptcy Code or any other applicable law; or (g) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) satisfied pursuant to the Motion are valid, and the Debtors expressly reserve their rights to contest the extent, validity, or perfection or seek avoidance of all such liens.

19. The requirements of section 345(b) of the Bankruptcy Code are hereby waived.

20. Notwithstanding anything to the contrary contained in this Final Order or in the Motion, any payment, obligation, account status or other relief authorized by this Final Order shall be subject to the requirements and limitations imposed on the Debtors under the terms of any interim and/or final orders regarding the use of cash collateral (any such order, a “Financing Order”), and any budget utilized in connection therewith, approved by this Court in these chapter 11 cases. In the event of any conflict between the terms of this Final Order and a Financing Order, the terms of the applicable Financing Order shall control (solely to the extent of such conflict).

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

22. 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 Rules are satisfied by such notice.

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

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

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

Dated: _____, 2019
New York, New York

THE HONORABLE STUART M. BERNSTEIN
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT 1

Bank Accounts

BANK ACCOUNT LIST

Domestic Accounts			
Currency	Bank Name	Account number	Type of Account
USD	JPMorgan Chase	736457698	Disbursement Account
USD	JPMorgan Chase	810451955	Depository and Collection Account
CAD	JPMorgan Chase	4683000146	Collection and Disbursement Account
USD	JPMorgan Chase	3769920126	Security Deposit
USD	Comerica	1894346012	Depository Account
USD	Comerica	1894934643	Disbursement Account
USD	Comerica	1894937745	ZBA Account
USD	JPMorgan Chase	235168991	Depository and Disbursement Account
USD	JPMorgan Chase	936023600	Collection Account
EUR	HSBC UK	401276-74061932	Collection and Foreign Currency Disbursement Account
GBP	HSBC UK	400106-92617617	Collection and Foreign Currency Disbursement Account
USD	HSBC US	267100884	Checking Account
USD	HSBC UK	401276-74061315	Collection Account
USD	Silicon Valley Bank	3301018020	Security Deposit
USD	Signature Bank	1503639455	Depository and Disbursement Accounts