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

In re:

PARETEUM CORPORATION, *et al.*,

Debtors.<sup>1</sup>

Chapter 11

Case No.: 22-\_\_\_\_ ( )

(Joint Administration Requested)

**DEBTORS' MOTION FOR ENTRY OF INTERIM AND  
FINAL ORDERS AUTHORIZING THE DEBTORS  
TO PAY THE PREPETITION CLAIMS OF CERTAIN FOREIGN VENDORS**

The debtors and debtors in possession (collectively, the “Debtors”) in the above-captioned Chapter 11 cases (the “Chapter 11 Cases”) respectfully state the following in support of this motion (this “Motion”):

**Relief Requested**

1. The Debtors request, pursuant to sections 105(a) and 363 of title 11 of the United States Code (the “Bankruptcy Code”), entry of interim and final orders, in substantially the forms attached hereto as **Exhibit A** and **Exhibit B** (respectively, the “Interim Order” and “Final Order”) (a) authorizing, but not directing, the Debtors to pay up to \$628,000 on an interim basis and \$972,000 on a final basis towards certain claims of Foreign Vendors; and (b) authorizing all

<sup>1</sup> The Debtors in the Chapter 11 Cases, along with the last four digits of each Debtor’s federal tax identification number, if applicable, are: Pareteum Corporation (7538); Pareteum North America Corp. (f/k/a Elephant Talk North America Corp.) (9623); Devicescape Holdings, Inc. (2909); iPass, Inc. (4598); iPass IP LLC (2550); Pareteum Europe B.V.; Artilium Group Ltd. (f/k/a Artilium PLC); Pareteum Asia Pte. Ltd.; and Pareteum N.V. (f/k/a Artilium N.V.). The Debtors’ corporate headquarters is located at 1185 Avenue of the Americas, 2nd Floor, New York, NY 10036.



applicable banks and other financial institutions to receive, process, honor, and pay related checks and electronic payment requests, whether such checks or electronic payment requests were presented before or after the Petition Date, provided that sufficient funds are on deposit in the applicable accounts, and (c) implementing the following procedures with respect to the Foreign Vendor Claims:

- (i) In an effort to ensure that the payment of each Foreign Vendor Claim provides the Debtors with a benefit to their estates, the Debtors may request that a recipient of payment upon any portion of a Foreign Vendor Claim (a “Foreign Vendor Payment”) be required, to the extent applicable, to execute an agreement (a “Trade Agreement”) whereby the recipient agrees to provide the Debtors with: (A) a continuation of the parties’ existing business relationship, including, but not limited to, the acceptance and fulfillment (including the production and delivery of services and goods) of purchase orders and releases under such purchase orders in all postpetition transactions; (B) other business terms on a postpetition basis consistent with past practices for all postpetition transactions, including the pricing of services, on terms at least as favorable as those extended in the normal course prior to the Petition Date, or on such other terms that are acceptable to the Debtors; and (C) the release of services, goods or other assets of the Debtors in the Foreign Vendor’s possession (collectively, the “Trade Terms”). The Trade Terms would be applicable throughout the pendency of the Chapter 11 Cases.
- (ii) If a Foreign Vendor that has executed a Trade Agreement accepts a Foreign Vendor Payment and fails to provide the Debtors with the requisite Trade Terms specified therein, then (i) any Foreign Vendor Payment received by the Foreign Vendor may be deemed by the Debtors as an unauthorized postpetition transfer under section 549 of the Bankruptcy Code, which the Debtors may (a) recover from the Foreign Vendor in cash, (b) at the Debtors’ option, apply against any outstanding administrative claim held by such Foreign Vendor; and (ii) upon recovery of any Foreign Vendor Payment, the corresponding prepetition claim of the Foreign Vendor will be reinstated in the amount recovered by the Debtors.

### **Jurisdiction and Venue**

2. 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 Court

entering a final order 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.

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

4. The bases for the relief requested herein are sections 105(a) and 363 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**

5. On the date hereof (the “Petition Date”), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. A detailed description surrounding the facts and circumstances of these Chapter 11 Cases is set forth in the *Declaration of Laura W. Thomas in Support of the Debtors’ Chapter 11 Petitions and First Day Pleadings* (the “First Day Declaration”), filed contemporaneously with this Application.<sup>2</sup>

6. The Debtors continue to operate their businesses and manage their property as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. Concurrent with the filing of this Motion, the Debtors filed a motion requesting procedural consolidation and joint administration of these Chapter 11 Cases pursuant to Bankruptcy Rule 1015(b). No request for the appointment of a trustee or examiner has been made in these Chapter 11 Cases, and no committees have been appointed or designated.

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<sup>2</sup> Capitalized terms not defined herein shall have the meanings ascribed to such terms in the First Day Declaration.

### **Foreign Vendors**

7. In the ordinary course of business, the Debtors purchase services or goods from vendors outside the United States that, as an actual or practical matter, may be the only supplier available to the Debtors (the “Foreign Vendors”). These services or goods, are essential for the Debtors to continue to provide quality products with the level of service their customers expect. It is imperative that the Debtors obtain authority to make payments to key Foreign Vendors to preserve the Debtors’ business. The Debtors’ business cannot function without the mostly services and supplies provided by vendors that are not readily replaceable.

8. Foreign Vendors often have guarded reactions to the U.S. bankruptcy process and are unfamiliar or uncomfortable with the unique debtor in possession mechanism that is at the heart of chapter 11. A debtor seeking to explain this system and convince a Foreign Vendor, particularly an unsophisticated one, to continue shipment postpetition often is greeted with a high degree of skepticism and mistrust. Indeed, a risk exists that the nonpayment of a single invoice could cause a Foreign Vendor to completely sever its business relationship with the Debtors. Short of that, nonpayment of prepetition claims may cause the Foreign Vendors to utilize extreme caution and adopt a “wait-and-see attitude” in approaching the unfamiliar territory of chapter 11, resulting in costly delays in the shipment of additional goods.

9. In light of the potential for serious consequences if the Foreign Vendors do not continue to make uninterrupted and timely provision of crucial services or goods—and the lack of any workable enforcement mechanism against these parties—the Debtors have determined, in the exercise of their business judgment, that payment of certain of the Foreign Vendors’ prepetition claims (as well as any foreign taxes, import/export fees, customs fees, or duties related to such claims) (collectively, the “Foreign Vendor Claims”) is essential to avoid costly disruptions to the Debtors’ operations and to preserve their business as a going concern.

The Debtors will evaluate requests for payment by Foreign Vendors and only intend to pay such claimants whose continued services are critical to preserving the value of the Debtors' estates. Although it is difficult to precisely calculate the amounts due and owing at any given moment, the Debtors estimate that the prepetition outstanding amounts owed to Foreign Vendors essential to the preservation of the estates is approximately \$972,000 as of the Petition Date. Not all of the Debtors' foreign vendors, suppliers and service providers were determined to be critical, however. Pursuant to the authority sought herein, the Debtors identified as critical only those Foreign Vendors with whom the Debtors intend to continue business, and whose cooperation is essential for the Debtors' ability to effectively operate. The Debtors therefore seek authority, in their discretion, to pay the prepetition claims of the Foreign Vendors subject to the caps described below. Given the size of their businesses, the magnitude of the costs of any disruption in their operations and the demonstrated benefits to be obtained in exchange for any payments to the Foreign Vendors, the Debtors submit that the referenced cap is a reasonable and appropriate cap on the expenditure of estate funds.

10. To identify the Foreign Vendors to be paid pursuant to the relief requested in this Motion, the Debtors, in consultation with their advisors, closely reviewed their accounts payable and prepetition vendor lists, and consulted with employees most familiar with the Debtors' vendors to identify those vendors that are most essential to the Debtors' operations. The criteria considered included:

- which vendors are at risk of ceasing the provision of truly essential services or supplies;
- the degree to which replacement costs (including pricing, transition expenses, professional fees, and especially lost sales or future revenue) exceed the amount of a vendor's prepetition claim;

- whether the Debtors' inability to pay all or part of the vendor's prepetition claim could trigger financial distress for the applicable vendor and its potential downstream effects on the Debtors;
- the likelihood that a temporary break in the vendor's relationship with the Debtors could be remedied through the use of the tools available in these Chapter 11 Cases;
- whether failure to pay all or part of a particular vendor's claim could cause the vendor to refuse to provide critical services on a postpetition basis;
- whether an agreement exists by which the Debtors could compel a vendor to continue performing on prepetition terms.

11. Based on this analysis, the Debtors used a narrowly-tailored protocol identifying the relationships that are absolutely essential to preserve the continued provision of services and timely delivery of goods on which the Debtors rely. Following the above-described analysis, the Debtors identified the categories set forth above as critical to the Debtors' continued operations, and estimated the total payments, based on accounts payable outstanding as of the Petition Date, that would be necessary to ensure the continued cooperation of the Foreign Vendors.

12. As of the Petition Date, the Debtors estimate that they owed approximately \$9.6 million in the aggregate on account of Foreign Vendor Claims. The Debtors, in their business judgment, estimate that approximately \$972,000 of the total amount of Foreign Vendor Claims will need to be paid prior to entry of the Final Order, presuming such Order is entered approximately 30 days following the Petition Date. Accordingly, by this Motion, the Debtors request authorization, but not direction, to pay outstanding prepetition obligations on account of Foreign Vendor Claims, not to exceed \$628,000 on an interim basis and \$972,000 on a final basis, but only as such amounts come due in the ordinary course of business or as may be necessary to secure a vendor's agreement to continue business with the Debtors on Trade Terms (as defined above), and when necessary memorialized in a Trade Agreement.

13. As part of this evaluation, the \$972,000 of the requested final relief represents approximately 10% of the Debtors' outstanding foreign accounts payable and 4% of the Debtors' aggregate accounts payable as of the Petition Date.

14. The Debtors believe that failure to timely pay the Foreign Vendor Claims would irreversibly disrupt the Debtors' businesses, without any corresponding benefit for other stakeholders. This harm and disruption would far outweigh the cost of payment of the Foreign Vendor Claims. Thus, the Debtors requests authority, but not the direction, to pay, in part or in full and in their discretion, the Foreign Vendor Claims.

### **Basis for Relief**

#### **I. Payment of the Vendor Obligations as Provided Herein Is a Sound Exercise of the Debtors' Business Judgment.**

15. At least three Bankruptcy Code provisions support the satisfaction of the Foreign Vendor Claims: (a) section 363(b)(1) provides that after notice and a hearing, and based on a "sound business purpose," a debtor may "use, sell, or lease, other than in the ordinary course of business, property of the estate"; (b) section 1107(a) provides a debtor in possession with all rights, powers, and duties of a trustee, which includes maximizing the value of the estate; and (c) section 105(a) permits the Court to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." *In re Del. & Hudson Ry. Co.*, 124 B.R. 169, 175-76 (D. Del. 1991); *In re Filene's Basement, LLC*, 2014 Bankr. LEXIS 2000, at \*39-40 (Bankr. D. Del. Apr. 29, 2014) ("Transactions under § 363 must be based upon the sound business judgment of the debtor or trustee."); *In re Decora Indus.*, 2002 U.S. Dist. LEXIS 27031, at \*7-8 (D. Del. May 20, 2002) (a debtor satisfies the requirements of section 363(b)(1) through the "sound exercise of business judgment").

16. Payment of Foreign Vendor Claims is also supported by the “doctrine of necessity.” “The ‘doctrine of necessity’ or ‘necessity of payment’ doctrine is a general rubric for the proposition that a court can authorize the payment of prepetition claims if such payment is essential to the continued operation of the debtor.” *In re Motor Coach Indus. Int’l*, 2009 U.S. Dist. LEXIS 10024, at \*7 n.5 (D. Del. Feb. 10, 2009). Under the doctrine of necessity, a bankruptcy court may exercise its equitable power to authorize a debtor to pay critical prepetition claims, even though such payment is not explicitly authorized under the Bankruptcy Code. *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) (holding that 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, Inc.*, 98 B.R. 174, 176 (Bankr. S.D.N.Y. 1989) (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”)).

17. Courts have consistently and appropriately been reluctant to interfere with corporate decisions “unless it is shown that the bankrupt’s decision was one taken in bad faith or in gross abuse of the bankrupt’s retained business discretion.” *Lubrizol Enters., Inc. v. Richmond Metal Finishers, Inc.*, 756 F.2d 1043, 1047 (4th Cir. 1985). To that end, once a debtor articulates a sound basis for its business decisions, courts generally will not entertain objections to a debtor’s conduct. *See Ionosphere Clubs, Inc.*, 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); *In re Dura Auto. Sys.*, 2007 Bankr. LEXIS 2764, at \*259-60



(Bankr. D. Del. Aug. 15, 2007). In other words, if a debtor's actions satisfy the business judgment rule, those actions generally will be approved. *Id.*

18. Citing a combination of the above-identified Bankruptcy Code provisions and the doctrine of necessity, courts have repeatedly recognized “the existence of the judicial power to authorize a debtor . . . to pay pre-petition claims where such payment is essential to the continued operation of the debtor.” *In re Ionosphere Clubs, Inc.*, 98 B.R. at 176; *see also In re Columbia Gas Sys., Inc.*, 171 B.R. 189, 191-92 (Bankr. D. Del. 1994) (finding that a debtor is entitled to pay certain prepetition creditors upon a showing that the payment is “essential to the continued operation of the business”) (citations omitted); *In re Just for Feet, Inc.*, 242 B.R. 821, 825 (D. Del. 1999) (“The Supreme Court, the Third Circuit and the District of Delaware all recognize the court’s power to authorize payment of pre-petition claims when such payment is necessary for the debtor’s survival during chapter 11.”); *In re Lehigh & New England Ry. Co.*, 657 F.2d 570, 581 (3d Cir. 1981) (recognizing that “if payment of a [prepetition] claim . . . is essential to the continued operation of the [debtor,] . . . payment may be authorized[.]”).

19. This Motion satisfies the foregoing criteria, as the relief sought herein plainly is essential to the Chapter 11 Cases. The Debtors operate in a highly competitive sector. The Debtors cannot afford any material disruptions of their business operations or present anything less than a “business as usual” appearance to the public.

20. In some cases, literally no other vendor or supplier can supply such required goods or services. In other cases, substitute goods from other potential vendors or suppliers may theoretically be available, but these alternate vendors or suppliers cannot provide goods or services that meet the Debtors’ requirements for quality, quantity, or reliability, or cannot ensure availability on a cost-efficient and timely basis. As a result, the Debtors cannot

rely on these theoretical alternate sources to supply these essential goods. Under these circumstances, the Debtors believe that it is essential that they be authorized to pay such Foreign Vendors to ensure that their essential services continue without any interruption on a postpetition basis.

21. Furthermore, if the Debtors are not granted the relief requested herein, the Debtors' stakeholders may question the Debtors' ability to maintain "business as usual" operations and relationships with their stakeholders during the duration of these Chapter 11 Cases. The Debtors are in a highly competitive industry, and their continued success depends on maintaining the confidence of their key stakeholder groups. Any loss of confidence among these stakeholders could jeopardize important and valuable employee, customer, and vendor relationships, thereby harming the Debtors' estates. Under these circumstances, approval of the requested relief is appropriate and is necessary to avoid irreparable harm to the Debtors' estates.

22. Recently, in *dicta*, the Supreme Court of the United States endorsed motions seeking to pay certain prepetition claims, similar to the Foreign Vendor Claims, early in a chapter 11 case in order to "enable a successful reorganization and make even the disfavored creditors better off." See *Czyzewski v. Jevic Holding Corp.*, 137 S. Ct. 973, 985, (2017) ("Courts, for example, have approved first-day wage orders that allow payment of employees' prepetition wages, critical vendor orders that allow payment of essential suppliers' prepetition invoices, and roll-ups that allow lenders who continue financing the debtor to be paid first on their prepetition claims. In doing so, these courts have usually found that the distributions at issue would enable a successful reorganization and make even the disfavored creditors better off.") (internal citations omitted) (citing *In re Kmart Corp.*, 359 F.3d 866, 872 (7th Cir. 2004) (discussing the justifications for critical-vendor orders); *Toibb v. Radloff*, 501 U.S. 157, 163-164 (1991)

(recognizing “permitting business debtors to reorganize and restructure their debts in order to revive the debtors’ businesses” and “maximizing the value of the bankruptcy estate” as purposes of the Code)).

23. Courts in this district and elsewhere have authorized the payment of the prepetition claims of a debtor’s foreign vendors where the payment of such claims is essential to the debtor’s continued operations. *See, e.g., In re Aegean Marine Petroleum Network Inc.*, No. 18-13374 (MEW) (Bankr. S.D.N.Y. Dec. 6, 2018) (authorizing payments of up to \$3 million in prepetition claims to foreign vendors); *In re Nine West Holdings, Inc.*, No. 18-10947 (SCC) (Bankr. S.D.N.Y. May 7, 2018) (authorizing payments of up to \$38.4 million in prepetition claims to foreign vendors); *In re MPM Silicones, LLC*, No. 14-22503 (RDD) (Bankr. S.D.N.Y. May 16, 2014) (authorizing payments of up to \$3.3 million in prepetition claims to foreign vendors); *In re Dana Corp.*, No. 06-10354 (BRL) (Bankr. S.D.N.Y. May 22, 2006) (authorizing debtors to pay claims of foreign vendors in their sole discretion up to an established cap); *In re Sharper Image Corp.*, No. 08-10322 (KG) (Bankr. D. Del. Feb. 20, 2008) (same); *In re Dura Automotive Sys., Inc.*, No. 06-11202 (KJC) (Bankr. D. Del. October 31, 2006) (interim order) (same).

**II. The Court Should Authorize All Applicable Banks and Financial Institutions to Honor and Pay Checks in Connection with the Foreign Vendor Claims.**

24. In addition, by this Motion, the Debtors request that all applicable banks and other financial institutions (collectively, the “Banks”) be authorized, when requested by the Debtors, to receive, process, honor, and pay any and all checks presented for payment of, and to honor all fund transfer requests made by, the Debtors related to the Foreign Vendor Claims, whether such checks were presented, or fund transfer requests were submitted, prior to or after the Petition Date, provided that sufficient funds are available in the applicable accounts to make

the payments. The Debtors represent that these checks are drawn on specific disbursement accounts and can be readily identified as relating directly to the authorized payment of the Foreign Vendor Claims. Accordingly, the Debtors believe that such checks should be honored.

**Processing of Checks and Electronic Fund Transfers Should Be Authorized**

25. The Debtors have sufficient funds to pay the amounts described in this Motion by virtue of expected cash flows during the Chapter 11 Cases and anticipated access to cash collateral. In addition, under the Debtors' existing cash management system, the Debtors can readily identify checks or wire transfer requests as relating to an authorized payment in respect of the Foreign Vendor Claims. Accordingly, the Debtors believe that checks or wire transfer requests, other than those relating to authorized payments, will not be honored inadvertently. Therefore, the Debtors respectfully request that the Court authorize all applicable financial institutions to receive, process, honor, and pay any and all checks or wire transfer requests in respect of the relief requested in this Motion. Any such financial institution may rely on the representations of such Debtors as to which checks are issued or wire transfers are made (or, as applicable, requested to be issued or made) and authorized to be paid in accordance with this Motion without any duty of further inquiry and without liability for following the Debtors' instructions.

**The Requirements of Bankruptcy Rule 6003 Are Satisfied**

26. Bankruptcy Rule 6003 empowers a court to grant relief within the first twenty-one days after the Petition Date "to the extent that relief is necessary to avoid immediate and irreparable harm." As set forth in this Motion, the Debtors believe an immediate and orderly transition into chapter 11 is critical to the viability of their operations and that any delay in granting the relief requested could hinder the Debtors' operations and cause irreparable harm. Furthermore, failure to receive the requested relief during the first twenty-one (21) days of these

Chapter 11 Cases would severely disrupt the Debtors' operations at this critical juncture and imperil the Debtors' restructuring. 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.

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

27. To successfully implement the foregoing, 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 fourteen-day stay period under Bankruptcy Rule 6004(h).

**Reservation of Rights**

28. Nothing contained herein is intended to be or should be construed as: (a) an admission as to the validity of any claim against the Debtors; (b) a waiver of the Debtors' rights to dispute any claim on any grounds; (c) a promise to pay any claim; (d) an implication or admission that any particular claim would constitute a Foreign Vendor Claim or that any creditor is a Foreign Vendor; or (e) the assumption of any executory contract or unexpired lease.

**Motion Practice**

29. This Motion includes citations to the applicable rules and statutory authorities upon which the relief requested herein is predicated and a discussion of their application to this Motion. Accordingly, the Debtors submit that this Motion satisfies Local Rule 9013-1(a).

**Notice**

30. The Debtors will provide notice of this Motion to the following parties and/or their respective counsel, as applicable: (a) the U.S. Trustee; (b) counsel to the administrative agent under the DIP credit facility, DLA Piper LLP (US), 1251 Avenue of the

Americas, 27th Floor, New York, NY 10153, Attn: Jamila Justine Willis (jamila.willis@us.dlapiper.com), Shmuel Klahr (shmuel.klahr@us.dlapiper.com), Nadia Saleem (Nadia.Saleem@us.dlapiper.com), and Gregory Juell (gregory.juell@us.dlapiper.com); (c) counsel to the administrative agent under the Bridge Loan, DLA Piper LLP (US), 1251 Avenue of the Americas, 27th Floor, New York, NY 10153, Attn: Jamila Justine Willis (jamila.willis@us.dlapiper.com), Shmuel Klahr (shmuel.klahr@us.dlapiper.com), Nadia Saleem (Nadia.Saleem@us.dlapiper.com), and Gregory Juell (gregory.juell@us.dlapiper.com); (d) counsel to the administrative agent under the Debtors' Prepetition Senior Notes, DLA Piper LLP (US), 1251 Avenue of the Americas, 27th Floor, New York, NY 10153, Attn: Jamila Justine Willis (jamila.willis@us.dlapiper.com), Shmuel Klahr (shmuel.klahr@us.dlapiper.com), Nadia Saleem (Nadia.Saleem@us.dlapiper.com), and Gregory Juell (gregory.juell@us.dlapiper.com); (e) counsel to the administrative agent under the Junior Convertible Notes, Attn: Geoffrey van der Hauw (g.van.der.hauw@lexence.com); (f) counsel to the Stalking Horse Bidders, (i) DLA Piper LLP (US), 1251 Avenue of the Americas, 27th Floor, New York, NY 10153, Attn: Jamila Justine Willis (jamila.willis@us.dlapiper.com), Shmuel Klahr (shmuel.klahr@us.dlapiper.com), Nadia Saleem (Nadia.Saleem@us.dlapiper.com), and Gregory Juell (gregory.juell@us.dlapiper.com) and (ii) Geoffrey van der Hauw (g.van.der.hauw@lexence.com); (g) the parties identified on the Debtors' consolidated list of 30 largest unsecured creditors; (h) the United States Attorney's Office for the Southern District of New York; (i) the Internal Revenue Service; (j) the United States Securities and Exchange Commission; (k) the attorneys general for the states where the Debtors conduct business operations; (l) the Federal Communications Commission; and (m) to the extent not listed herein, those parties requesting 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**

31. No prior request for the relief sought in this Motion has been made to this or any other court in connection with these Chapter 11 Cases.

WHEREFORE, the Debtors respectfully request 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: May 15, 2022  
New York, New York

PARETEUM CORPORATION, *ET AL.*  
*Debtors and Debtors in Possession*  
*By their Proposed Counsel*  
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By:

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**Exhibit A**

**Proposed Interim Order**



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

In re:

PARETEUM CORPORATION, *et al.*,

Debtors.<sup>1</sup>

Chapter 11

Case No.: 22-\_\_\_\_ ( )

(Joint Administration Requested)

**INTERIM ORDER AUTHORIZING THE DEBTORS TO  
PAY THE PREPETITION CLAIMS OF CERTAIN FOREIGN VENDORS**

Upon the motion (the “Motion”)<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of an interim order (this “Interim Order”) (a) authorizing the Debtors, in their sole discretion, to remit and pay certain accrued and outstanding Foreign Vendors, (b) scheduling a final hearing to consider approval of the Motion on a final basis, and (c) granting related relief, all as more fully set forth in the Motion; and upon the First Day Declaration; and this 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 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

<sup>1</sup> The Debtors in the Chapter 11 Cases, along with the last four digits of each Debtor’s federal tax identification number, if applicable, are: Pareteum Corporation (7538); Pareteum North America Corp. (f/k/a Elephant Talk North America Corp.) (9623); Devicescape Holdings, Inc. (2909); iPass, Inc. (4598); iPass IP LLC (2550); Pareteum Europe B.V.; Artilium Group Ltd. (f/k/a Artilium PLC); Pareteum Asia Pte. Ltd.; and Pareteum N.V. (f/k/a Artilium N.V.). The Debtors’ corporate headquarters is located at 1185 Avenue of the Americas, 2nd Floor, New York, NY 10036.

<sup>2</sup> Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.

Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing, if any, 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:

2. The Motion is granted on an interim basis as set forth herein.

3. The final hearing (the "Final Hearing") on the Motion shall be held on \_\_\_\_\_, 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 \_\_\_\_\_, and shall be served on: (a) the Debtors; (b) proposed counsel to the Debtors, (i) Togut, Segal & Segal LLP, One Penn Plaza, Suite 3335, New York, NY 10119, Attn. Frank A. Oswald and Brian Moore; (c) counsel to any statutory committee appointed in these cases; (d) counsel to the administrative agent under the DIP credit facility, DLA Piper LLP (US), 1251 Avenue of the Americas, 27th Floor, New York, NY 10153, Attn: Jamila Justine Willis (jamila.willis@us.dlapiper.com), Shmuel Klahr (shmuel.klahr@us.dlapiper.com), Nadia Saleem (Nadia.Saleem@us.dlapiper.com), and Gregory Juell (gregory.juell@us.dlapiper.com); (e) counsel to the administrative agent under the Bridge Loan, DLA Piper LLP (US), 1251 Avenue of the Americas, 27th Floor, New York, NY 10153, Attn: Attn: Jamila Justine Willis (jamila.willis@us.dlapiper.com), Shmuel Klahr (shmuel.klahr@us.dlapiper.com), Nadia Saleem (Nadia.Saleem@us.dlapiper.com), and Gregory Juell (gregory.juell@us.dlapiper.com); (f) counsel to the administrative agent under the Debtors' Prepetition Senior Notes, DLA Piper LLP (US), 1251 Avenue of the Americas, 27th Floor, New York, NY 10153, Attn: Attn: Jamila Justine Willis (jamila.willis@us.dlapiper.com), Shmuel Klahr (shmuel.klahr@us.dlapiper.com),

Nadia Saleem (Nadia.Saleem@us.dlapiper.com), and Gregory Juell (gregory.juell@us.dlapiper.com); (g) counsel to the administrative agent under the Junior Convertible Notes, Geoffrey van der Hauw (g.van.der.hauw@lexence.com); (h) counsel to the Stalking Horse Bidders, (i) DLA Piper LLP (US), 1251 Avenue of the Americas, 27th Floor, New York, NY 10153, Attn: Jamila Justine Willis (jamila.willis@us.dlapiper.com) Shmuel Klahr (shmuel.klahr@us.dlapiper.com), Nadia Saleem (Nadia.Saleem@us.dlapiper.com), and Gregory Juell (gregory.juell@us.dlapiper.com); and (ii) Geoffrey van der Hauw (g.van.der.hauw@lexence.com); and (e) the United States Trustee, U.S. Federal Office Building, 201 Varick Street, Suite 1006, New York, New York 10014, Attn.: Susan A. Arbeit, Esq. (susan.arbeit@usdoj.gov). 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.

4. The Debtors are authorized, in their discretion, to pay Foreign Vendor Claims in an aggregate amount not to exceed \$628,000. Nothing in this paragraph shall be construed as requiring the Debtors to make a payment to a particular creditor or claimant.

5. The Debtors may require each recipient of a Foreign Vendor Payment to provide the Debtors with: (a) a continuation of the parties' existing business relationship, including, but not limited to, the acceptance and fulfillment (including the production and delivery of goods) of purchase orders and releases under such purchase orders in all postpetition transactions; (b) other business terms on a postpetition basis consistent with past practices for all postpetition transactions, including the pricing of services, on terms at least as favorable as those extended in the normal course prior to the Petition Date, or on such other terms that are acceptable to the Debtors; and (c) the release of goods or other assets of the Debtors in the Foreign Vendor's

possession (collectively, the “Trade Terms”). The Trade Terms shall be applicable throughout the pendency of the Chapter 11 Cases.

6. The Banks are authorized, when requested by the Debtors, to receive, process, honor, and pay all checks presented for payment of, and to honor all fund transfer requests made by, the Debtors related to the Foreign Vendor Claims, whether such checks were presented or fund transfer requests were submitted prior to or after the Petition Date, provided that sufficient funds are available in the applicable accounts to make the payments. The Banks are authorized to rely on the Debtors’ designation of any particular check or funds transfer as approved by this Order.

7. To the extent a Foreign Vendor fails to comply with any applicable Trade Terms, and subject to further Court approval: (a) any Foreign Vendor Payment received by the Foreign Vendor may be deemed by the Debtors as an unauthorized postpetition transfer under section 549 of the Bankruptcy Code that the Debtors are authorized to (i) recover from the Foreign Vendor in cash or (ii) apply the amount of the Foreign Vendor Payment against any outstanding administrative claim held by such Foreign Vendor; and (b) upon recovery of any Foreign Vendor Payment, the corresponding prepetition claim of the Foreign Vendor will be reinstated in the amount recovered by the Debtors.

8. Nothing in the Motion or this Order, nor the Debtors’ payment of claims pursuant to this Order, shall be deemed or construed as: (a) an admission as to the validity of any claim against the Debtors; (b) a waiver of the Debtors’ rights to dispute any claim on any grounds; (c) a promise to pay any claim; (d) an implication or admission that any particular claim is of a type specified or defined hereunder or that any creditor is a Foreign Vendor; or (e) the assumption of any executory contract or unexpired lease.

9. The requirements of Bankruptcy Rule 6003(b) have been satisfied with respect to the payments authorized by this Order.

10. This Order shall be immediately effective and enforceable upon its entry. To the extent that it may be applicable, the fourteen-day stay imposed by Bankruptcy Rule 6004(h) is hereby waived.

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

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

New York, New York

Dated: \_\_\_\_\_, 2022

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THE HONORABLE [\_\_\_\_\_] ]  
UNITED STATES BANKRUPTCY JUDGE

**Exhibit B**

**Proposed Final Order**

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

In re:

PARETEUM CORPORATION, *et al.*,

Debtors.<sup>1</sup>

Chapter 11

Case No.: 22-\_\_\_\_ ( )

(Joint Administration Requested)

**FINAL ORDER AUTHORIZING THE DEBTORS TO  
PAY THE PREPETITION CLAIMS OF CERTAIN FOREIGN VENDORS**

Upon the motion (the “Motion”)<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of a final order (this “Final Order”) (a) authorizing the Debtors, in their sole discretion, to remit and pay certain accrued and outstanding Foreign Vendors, (b) scheduling a final hearing to consider approval of the Motion on a final basis, and (c) granting related relief, all as more fully set forth in the Motion; and upon the First Day Declaration; and this 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 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

<sup>1</sup> The Debtors in the Chapter 11 Cases, along with the last four digits of each Debtor’s federal tax identification number, if applicable, are: Pareteum Corporation (7538); Pareteum North America Corp. (f/k/a Elephant Talk North America Corp.) (9623); Devicescape Holdings, Inc. (2909); iPass, Inc. (4598); iPass IP LLC (2550); Pareteum Europe B.V.; Artilium Group Ltd. (f/k/a Artilium PLC); Pareteum Asia Pte. Ltd.; and Pareteum N.V. (f/k/a Artilium N.V.). The Debtors’ corporate headquarters is located at 1185 Avenue of the Americas, 2nd Floor, New York, NY 10036.

<sup>2</sup> Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.

Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing, if any, 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 discretion, to pay Foreign Vendor Claims in an aggregate amount not to exceed \$972,000. Nothing in this paragraph shall be construed as an acceleration of any obligations or otherwise require the Debtors to make a payment to a particular creditor or claimant.
3. The Debtors may require each recipient of a Foreign Vendor Payment to provide the Debtors with: (a) a continuation of the parties' existing business relationship, including, but not limited to, the acceptance and fulfillment (including the production and delivery of goods) of purchase orders and releases under such purchase orders in all postpetition transactions; (b) other business terms on a postpetition basis consistent with past practices for all postpetition transactions, including the pricing of services, on terms at least as favorable as those extended in the normal course prior to the Petition Date, or on such other terms that are acceptable to the Debtors; and (c) the release of goods or other assets of the Debtors in the Foreign Vendor's possession (collectively, the "Trade Terms"). The Trade Terms shall be applicable throughout the pendency of the Debtors' chapter 11 cases.
4. The Banks are authorized, when requested by the Debtors, to receive, process, honor, and pay all checks presented for payment of, and to honor all fund transfer requests made by, the Debtors related to the Foreign Vendor Claims, whether such checks were presented or



fund transfer requests were submitted prior to or after the Petition Date, provided that sufficient funds are available in the applicable accounts to make the payments. The Banks are authorized to rely on the Debtors' designation of any particular check or funds transfer as approved by this Order.

5. To the extent a Foreign Vendor fails to comply with any applicable Trade Terms, and subject to further Court approval: (a) any Foreign Vendor Payment received by the Foreign Vendor may be deemed by the Debtors as an unauthorized postpetition transfer under section 549 of the Bankruptcy Code that the Debtors are authorized to (i) recover from the Foreign Vendor in cash or (ii) apply the amount of the Foreign Vendor Payment against any outstanding administrative claim held by such Foreign Vendor; and (b) upon recovery of any Foreign Vendor Payment, the corresponding prepetition claim of the Foreign Vendor will be reinstated in the amount recovered by the Debtors.

6. Nothing in the Motion or this Order, nor the Debtors' payment of claims pursuant to this Order, shall be deemed or construed as: (a) an admission as to the validity of any claim against the Debtors; (b) a waiver of the Debtors' rights to dispute any claim on any grounds; (c) a promise to pay any claim; (d) an implication or admission that any particular claim is of a type specified or defined hereunder or that any creditor is a Foreign Vendor; or (e) the assumption of any executory contract or unexpired lease.

7. The requirements of Bankruptcy Rule 6003(b) have been satisfied with respect to the payments authorized by this Order.

8. This Order shall be immediately effective and enforceable upon its entry. To the extent that it may be applicable, the fourteen-day stay imposed by Bankruptcy Rule 6004(h) is hereby waived.

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

10. This 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: \_\_\_\_\_, 2022

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THE HONORABLE [\_\_\_\_\_] ]  
UNITED STATES BANKRUPTCY JUDGE