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**Hearing Date: June 23, 2022**  
**Hearing Time: 9:00 AM**  
**Objection Date: June 14, 2022**

And

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

In re:

**PARETEUM CORPORATION, et. al.,**  
  
Debtors.

**Chapter 11**

**Case No. 22-10615 (LGB)**

**Jointly Administered**

**ORACLE’S LIMITED OBJECTION TO AND RESERVATION OF RIGHTS  
REGARDING (1) MOTION OF DEBTORS FOR ENTRY OF AN ORDER (I)(A)  
AUTHORIZING SALE OF DEBTORS’ ASSETS FREE AND CLEAR OF LIENS,  
CLAIMS, INTERESTS, AND ENCUMBRANCES, (B) AUTHORIZING ASSUMPTION  
AND ASSIGNMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES;  
AND (II) GRANTING RELATED RELIEF; and (2) NOTICE OF CURE COSTS AND  
PROPOSED ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS AND  
UNEXPIRED LEASES IN CONNECTION WITH SALE**

Oracle America, Inc. (“Oracle”), a creditor and contract counter-party in the above-captioned Chapter 11 cases, submits this limited objection to and reservation of rights regarding (“Rights Reservation”) the *Motion of Debtors for Entry of Orders (I)(A) Approving Bidding Procedures for Sales of Debtors’ Assets, (B) Approving Stalking Horse Bid Protections, (C) Scheduling Auction for and Hearing to Approve Sales of Debtors’ Assets, (D) Approving Form and Manner of Notice of Sale, Auction, and Sale Hearing, (E) Approving Assumption and Assignment Procedures and Form and Manner of Notice of Assumption and Assignment; and*



*(II)(A) Authorizing Sale of Debtors' Assets Free and Clear of Liens, Claims, Interests, and Encumbrances, (B) Authorizing Assumption and Assignment of Executory Contracts and Unexpired Leases; and (II) Granting Related Relief* [CM-ECF No. 13] ("Sale Motion"); and (2) *Notice of Cure Costs and Proposed Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection with Sale* [CM-ECF No. 77] ("Assumption Notice"), filed by Pareteum Corporation, et al. ("Debtors").

## **I. INTRODUCTION**

1. In connection with the Sale Motion, the Debtors seek Bankruptcy Court authority to, among other things, assume and potentially assign certain executory contracts between the Debtors and Oracle.

2. Oracle objects to the proposed assumption and assignment for several reasons.

- a) First, the targeted Oracle agreements are, or pertain to, one or more licenses of intellectual property which are not assignable absent Oracle's consent pursuant to both the underlying license agreements and applicable law.
- b) Second, the Assumption Notice does not provide a complete description of the Oracle contracts which the Debtors seek to assume and assign. As a result, Oracle is unable to identify with certainty the agreements at issue, or to confirm whether the Debtors' proposed cure is accurate.
- c) Third, the Sale Motion does not provide Oracle with sufficient information to determine whether the ultimate purchaser/assignee is capable of performing under the terms of the contracts the Debtors seek to assume and assign.
- d) Finally, the APA (defined below) could potentially include a transitional services agreement ("TSA") in connection with the proposed sale. Oracle objects to any unauthorized shared use of its licenses which may be contemplated by the Debtors.

3. Accordingly, Oracle requests that the Court deny the Debtors' request for authority to assume and assign, transfer, or share use of any Oracle agreement without Oracle's consent.

## II. FACTUAL BACKGROUND

4. The Debtors filed the above captioned case on May 15, 2022 (“Petition Date”), and an order directing joint administration was entered shortly thereafter. The Debtors continue to operate as debtors in possession.

5. On May 16, 2022, the Debtors filed the Sale Motion, which seeks Court authority to sell substantially all of the Debtors’ assets.

6. The stalking horse bidders are Circles MVNE Pte. Ltd. (“Circles”) and Channel Ventures Group, LLC (“CVG”, together with Circles, “Stalking Horse Bidders”).

7. Attached as Exhibit “C” to the Sale Motion is the Asset Purchase Agreement between the Debtors and the Stalking Horse Bidders (“APA”).

8. The APA contemplates that Circles and CVG may enter into a TSA, a shared services agreement (“SSA”) or a similar agreement. (*See*, Sections 6.3, 6.10 and 8.10 of the APA).

9. Neither the TSA nor the SSA are included as part of the APA. Thus, Oracle and other counter-parties are unable to determine whether and how they may be impacted.

10. Oracle reserves all rights regarding any transitional use contemplated by Debtors and the Stalking Horse Bidders, including with respect to any TSA or SSA.

11. In addition, since the proposed sale is subject to overbid, the Stalking Horse Bidders may not be the ultimate purchasers.

12. Therefore, Oracle reserves all rights regarding any subsequent APA which proposes to include transitional use, and which involves an as yet unknown buyer.

13. On May 31, 2022, an Order [CM-ECF No. 76] was entered approving certain bid and assumption and assignment procedures (“Bid Procedures Order”).

14. The Bid Procedures Order sets forth the following deadlines: (1) June 13, 2022 at 4:00 p.m. (EST) for bids; (2) June 14, 2022 at 4:00 p.m. (EST) to object to the Sale Motion and

Assumption Notice; (3) June 15, 2022 at 8:00 a.m. (EST) for the auction; (4) June 17, 2022 at 4:00 p.m. (EST) to object to sale, if the winning bidder is not the Stalking Horse Bidders.

15. This timeline requires that objections to the Sale Motion and Assumption Notice be filed prior to the auction's occurrence.

16. In addition, if someone other than the Stalking Horse is the winning bidder, this timeline provides little time for contract counterparties either to determine adequate assurance, or to review any additional or amended sale or purchaser related documents, including the resultant asset purchase agreement.

17. On June 1, 2022, the Debtors filed the Assumption Notice. The Assumption Notice identifies three Oracle agreements with iPass, Inc. ("Oracle Agreements").

18. The Debtors list a \$2,572.68 cure for one of the Oracle Agreements. The Oracle Agreements are identified as follows:

Debtor Name	Counterparty	Description	Cure Amount
iPass, Inc.	Oracle	License and Services Agreement US-TERM-OLSAv051111- 626811-10-Aug-2011	\$2,572.68
iPass, Inc.	Oracle Corporation	Corporate Remote Access Agreement	\$0.00
iPass, Inc.	Oracle License Management Services	Certification of the Programs re: Unlimited License Agreement	\$0.00

### III. ARGUMENT

#### A. The Debtors May Not Assume And Assign Any Oracle Agreement Absent Oracle's Consent Because The Oracle Agreements Pertain To One Or More Licenses Of Intellectual Property.

19. Section 365(c) of the Bankruptcy Code provides, in relevant part:

The trustee may not assume or assign any executory contract ... of the debtor ... if (1)(A) applicable law excuses a party, other than the debtor, to such contract or lease from accepting performance from or rendering performance to an entity other than the debtor ..., whether or not such contract or lease prohibits or restricts assignment of rights or delegation of duties; and (B) such party does not consent to such assumption or assignment.

20. Federal law makes non-exclusive copyright licenses non-assignable absent consent of the licensor. *See In re Catapult Entertainment, Inc.*, 165 F.3d 747 (9th Cir. 1999), *cert. dismissed*, 528 U.S. 924 (1999) (patent law renders non-exclusive patent licenses personal and non-assignable under Bankruptcy Code § 365(c)(1)); *In re Sunterra Corp.*, 361 F.3d 257, 271 (4th Cir. 2004) (holding that a debtor was statutorily barred by § 365(c)(1) from assuming a computer software license where contract counterparty did not consent to the assumption); *In re: West Elec., Inc.*) 852 F. 2d 79 (3d Cir. 1988) (holding that the “provision limiting assumption of contracts is applicable to any contract subject to a legal prohibition against assignment.”). *See, In re Patient Educ. Media* 210 B.R. 237, 243 (Bankr. S.D.N.Y 1997); *See, In re Adelpia Communications Corp, et al.*, 359 B.R. 65 (Bankr. S.D.N.Y. 2007).

21. The Oracle Agreements are, or pertain to, non-exclusive licenses of copyrighted software.

22. Therefore, pursuant to Bankruptcy Code section 365, the Debtors may not assume and assign any Oracle agreement without Oracle’s consent.

23. For the reasons discussed herein, Oracle does not consent to the Debtors’ proposed assumption and assignment at this time.

**B. The Debtors Have Not Adequately Identified The Oracle Agreements To Be Assumed and Assigned.**

24. The Debtors’ Assumption Notice very generally describe the Oracle Agreements which the Debtors seek to assume and assign.

25. In some instances, the Debtors also failed to identify any governing master agreement or support renewals.

26. It is impermissible for the Debtors to segregate the underlying Oracle license agreement from the corresponding support and master agreement for purposes of assumption and assignment, if that is the Debtors’ intention. *See, e.g., In re Interstate Bakeries Corporation*, 751

F.3d 955, 963 (8th Cir. 2014); *In re Buffets Holdings*, 387 B.R. 115 (Bankr. D. Del. 2008). An executory contract must be assumed in its entirety and “[c]orrespondingly, all of the contracts that comprise an integrated agreement must either be assumed or rejected, since they all make up one contract.” *In re Taylor-Wharton Int’l LLC*, 2010 WL 4862723, at \*3 (Bankr. D. Del. Nov. 23, 2010) (citing *In re Exide Tech.*, 340 B.R. 222, 228 (Bankr. D. Del. 2006)).

27. Under California law,<sup>1</sup> made applicable by the Oracle Agreements, “[s]everal contracts relating to the same matters, between the same parties, and made as parts of substantially one transaction, are to be taken together.” Cal. Civ. Code § 1642.

28. Because the support agreements and master agreement relate to the underlying license agreements as part of substantially the same transaction, they constitute integrated contracts which may not be separately assumed and assigned.

29. To clarify which Oracle contracts Debtors hope to assume and assign, Oracle requests that the Debtors specify the targeted contracts: (a) name and date; (b) identification number; (c) any associated support or support renewals; and (d) the governing license agreement.

30. This information will enable Oracle to evaluate whether the Oracle Agreements are assignable, supported, expired or in default, and, if in payment default, the appropriate cure amount.

31. Additionally, the information will allow Oracle to assess whether Oracle may accept performance from an entity other than the Debtors.

32. Oracle reserves its right to be heard on this issue until after the Oracle Agreements the Debtors seek to assume and assign are identified with greater specificity.

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<sup>1</sup> *In re Hawker Beechcraft, Inc.*, No. 12-11873 (SMB), 2013 WL 2663193, at \*3 (Bankr. S.D.N.Y. June 13, 2013) (“State law governs the question whether an agreement is divisible or indivisible for the purposes of assumption and rejection under Bankruptcy Code § 365.”)

**C. The Debtors May Not Have Provided The Correct Cure Amount.**

33. Before assuming and assigning any executory contract, the Debtor must cure (or provide adequate assurance of a prompt cure of) any default under the subject contracts. 11 U.S.C. § 365(b)(1).

34. The Debtors have identified a \$2,572.68 cure amount associated with one of the Oracle Agreements identified in the Assumption Notice.

35. However, the Debtors have failed to describe the Oracle Agreements they seek to assume and assign with sufficient particularity for Oracle to identify which agreements are at issue, and thereby confirm the corresponding cure amount.

36. Oracle reserves its right to be heard regarding all cure amounts until after the contract or contracts the Debtors seek to assume and assign are identified with enough specificity to allow Oracle to determine the correct cure amount owed.

**D. The Debtors Have Not Provided Adequate Assurance of Future Performance By the Assignee.**

37. Before assuming and assigning any executory contract, the Debtors must provide adequate assurance of future performance. 11 U.S.C. § 365(b)(1).

38. The Sale Motion is subject to overbid, and the Stalking Horse Bidders may not be the successful buyers. If necessary, an auction will be held on June 15, 2022, after the deadline for Oracle to object to the Sale Motion<sup>2</sup>.

39. To satisfy Bankruptcy Code section 365(b), Oracle requests that the Debtors provide the following information about the ultimate purchaser or the Stalking Horse Bidders: (a) financial bona fides; (b) confirmation that the purchaser is not an Oracle competitor; and

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<sup>2</sup> Oracle is aware that pursuant to the Bid Procedures Order, the last day to file an objection to the Sale Motion if the Stalking Horse Bidders are not the successful bidders is June 17, 2022. However, in order to save duplicate filings, Oracle incorporates its objection to adequate assurance in this Rights Reservation.

(c) confirmation that the ultimate assignee will (i) execute an Oracle Assignment Agreement and related documentation which identifies with specificity the Oracle executory contract(s) to be assigned; and, if appropriate (ii) enter into an Oracle Master License Agreement.

40. Absent these assurances, Oracle cannot determine the proposed assignee's creditworthiness, its suitability as an Oracle customer, or its ability to adequately perform the terms of the Oracle Agreements.

41. Until the information described above is provided, the Debtors have not complied with the requirements of section 365(b)(1)(C).

**E. Oracle's Agreements Do Not Authorize Simultaneous Use By The Debtors and the Stalking Horse Bidders/Eventual Purchaser.**

42. The APA contemplates that undisclosed transitional services will be provided between what appears to be Circles and CVG.

43. The Debtors have not provided any additional information, nor has the TSA or SSA been filed, precluding Oracle from determining either the scope of the proposed transitional use, or whether its contracts will be affected.

44. Shared access to and use of Oracle's licenses exceeds the scope of the permitted uses under the Oracle Agreements, and may constitute an unauthorized splitting of the respective licenses.

45. Oracle reserves all rights regarding any transitional use, including under the TSA or SSA, pending Oracle's review of the agreements and an opportunity to assess how it may impact Oracle, including whether the use contemplated thereunder constitutes non-compliance under the terms of the Oracle Agreements.



**IV. CONCLUSION**

46. For the reasons set forth above, Oracle respectfully requests that the Court deny the Debtors' request for authority to assume and assign, transfer, or share use of, any Oracle agreement. Oracle reserves its right to be heard on all issues set forth herein.

Dated: June 14, 2022  
Lake Success, New York

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on June 14, 2022, I served a copy of *Oracle's Limited Objection To And Reservation Of Rights Regarding (1) Motion Of Debtors For Entry Of An Order (I)(A) Authorizing Sale Of Debtors' Assets Free And Clear Of Liens, Claims, Interests, And Encumbrances, (B) Authorizing Assumption And Assignment Of Executory Contracts And Unexpired Leases; And (II) Granting Related Relief; And (2) Notice Of Cure Costs And Proposed Assumption And Assignment Of Executory Contracts And Unexpired Leases In Connection With Sale* on the parties listed on the attached service list via email containing a pdf of the document. In addition, the parties entitled to receive notice by the Court's CM-ECF system were sent an email notification of such filing by the Court's CM-ECF System.

/s/ Amish R. Doshi

**SERVICE LIST**

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