

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

In re:

PARETEUM CORPORATION, *et al.*,

Debtors.¹

Chapter 11

Case No.: 22-10615 (LGB)

(Jointly Administered)

**ORDER AUTHORIZING THE RETENTION AND EMPLOYMENT OF FTI
CAPITAL ADVISORS, LLC AS INVESTMENT BANKER AND FINANCIAL
ADVISOR TO THE DEBTORS *nunc pro tunc* TO THE PETITION DATE**

Upon the application (the “Application”)² of the above-captioned debtors and debtors in possession (collectively, the “Debtors”), for entry of an order (this “Order”) (i) authorizing and approving the retention and employment of FTI CapitalAdvisors, LLC (“FTICA”), in partnership with its parent FTI Consulting, Inc. (“FTI Consulting” and together with FTICA, “FTI”), as investment banker and financial advisor to the Debtors in these Chapter 11 Cases, effective *nunc pro tunc* to the Petition Date, (ii) modifying the time-keeping requirements under Bankruptcy Rule 2016(a), Local Bankruptcy Rule 2016-1(a), and the Amended Guidelines in connection with FTICA’s engagement by the Debtors, and (iii) granting such other and further relief as the Court deems just and proper; and upon the Tobias Declaration in support of the Application; and upon the First Day Declaration; and due and adequate notice of the Application having been given; and it appearing that no other notice need be given; and it appearing that FTI neither holds nor represents any interest adverse to the Debtors’ estates; and it

¹ 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.; Pareteum B.V. (f/k/a Artilium B.V.); 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.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Application..



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appearing that FTI is “disinterested,” as that term is defined in section 101(14) of the Bankruptcy Code; and it appearing that the relief requested in the Application is in the best interest of the Debtors’ estates and their creditors; after due deliberation and sufficient cause appearing therefore, it is HEREBY ORDERED THAT:

1. The Application is GRANTED as set forth herein.
2. In accordance with Sections 327(a) and 328(a) of the Bankruptcy Code, the Debtors are authorized to retain and employ FTICA as their investment banker and financial advisor in these Chapter 11 Cases, pursuant to the terms and subject to the conditions set forth in the Engagement Letter, as modified herein, *nunc pro tunc* to the Petition Date.
3. Such services other than set forth in the Application that the Debtors may request that FTICA provide during the course of these Chapter 11 cases, and as agreed to by FTICA, shall be subject to separate application and Order of this Court.
4. FTICA shall be compensated for fees and reimbursed for out-of-pocket expenses in accordance with the terms of the Application and Engagement Letter, as modified herein, and all fees and out-of-pocket expense reimbursements to be paid to FTICA, including without limitation the Monthly Work Fees and the Transaction Success Fees, shall be subject to Section 328(a) of the Bankruptcy Code, except as set forth herein.
5. Notwithstanding anything to the contrary contained herein or in the Application or Engagement Letter, FTICA shall file interim and final fee applications for allowance of compensation and reimbursement of out-of-pocket expenses pursuant to Bankruptcy Code sections 330 and 331, the Bankruptcy Rules, the Local Bankruptcy Rules, the Amended Guidelines, and any other Orders of the Court.

6. Notwithstanding anything to the contrary contained herein or in the Application or Engagement Letter, all of FTICA's personnel who provide services to or on behalf of the Debtors, with the exception of clerical staff, shall keep contemporaneous records of the services they have performed in one-half hour increments.

7. The U.S. Trustee retains all rights to respond or object to FTICA's interim and final applications for compensation (including without limitation the Monthly Work Fees and the Transaction Success Fees) and reimbursement of out-of-pocket expenses on all grounds including, but not limited to, reasonableness pursuant to Section 330 of the Bankruptcy Code, and the Court retains jurisdiction to consider the United States Trustee's response or objection to FTICA's interim and final fee on all grounds, including, but not limited to, reasonableness pursuant to Section 330 of the Bankruptcy Code.

8. FTICA shall apply any remaining amounts of its prepetition retainer as a credit toward postpetition fees and expenses, after such postpetition fees and expenses are approved pursuant to the first Order of this Court allowing compensation and reimbursement of out-of-pocket expenses to FTICA.

9. All requests of FTICA for payment of indemnity pursuant to the Engagement Letter shall be made by means of an application (interim or final as the case may be) and shall be subject to review by the Court to ensure that payment of such indemnity conforms to the terms of the Engagement Letter and is reasonable based upon the circumstances of the litigation or settlement in respect of which indemnity is sought, *provided, however*, that in no event shall FTICA be indemnified in the case of its own bad-faith, self dealing, breach of fiduciary duty (if any), gross negligence, or willful misconduct.

10. In the event that, during the pendency of these cases, FTICA requests reimbursement for any attorneys' fees and/or expenses in connection with the payment of an indemnity claim pursuant to the Application and Engagement Letter, the invoices and supporting time records from such attorneys shall be included in FTICA's fee applications, both interim and final, and such invoices and time records shall be in compliance with Local Rule 2016-1 and be subject to the Amended Guidelines and approval of the Bankruptcy Court under the standards of sections 330 and 331 of the Bankruptcy Code, without regard to whether such attorney has been retained under section 327 of the Bankruptcy Code and without regard to whether such attorney's services satisfy section 330(a)(3)(C) of the Bankruptcy Code. Attorneys' fees and/or expenses reimbursed under the Engagement Letter shall be limited to those expended in representing FTICA in retention and fee application matters. For the avoidance of doubt, the preceding sentence does not apply to, and in no way limits, the provisions with respect to reimbursement of attorney's fees and/or expenses set forth in Exhibit I to the Engagement Letter with respect to indemnification.

11. In no event shall FTI be indemnified if the Debtors or a representative of the estates asserts a claim for, and a court determines by final order that, such claim arose out of FTI's own bad-faith, self-dealing, breach of fiduciary duty (if any), gross negligence, or willful misconduct.

12. Notwithstanding any provision to the contrary in the Application and Engagement Letter, any dispute relating to the services provided by FTICA shall be referred to arbitration consistent with the terms of the Application and Engagement Letter only to the extent that this Court does not have, retain or exercise jurisdiction over the dispute.

13. Prior to any increases in FTICA's hourly rates, FTICA shall file a supplemental affidavit with the Court and provide ten business days' notice to the Debtors, the United States Trustee, and the Official Committee, which supplemental affidavit shall explain the basis for the requested rate increases in accordance with Section 330(a)(3)(F) of the Bankruptcy Code and state whether the Debtors have consented to the rate increase. The United States Trustee retains all rights to object to any rate increase on all grounds including, but not limited to, the reasonableness standard provided for in section 330 of the Bankruptcy Code, and all rates and rate increases are subject to review by the Court.

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

15. The Debtors and FTICA are authorized and empowered to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Application and the Engagement Letter.

16. Notice of the Application as provided therein shall be deemed good and sufficient notice of such Application, and the requirements of the Bankruptcy Rules and Local Rules are satisfied by such notice.

17. Notwithstanding any provision in the Bankruptcy Rules to the contrary, the terms and conditions of this Order are immediately effective and enforceable upon its entry.

18. Notwithstanding any term in the Engagement Letter to the contrary, this Court retains jurisdiction over all matters arising from or related to the implementation or interpretation of this Order.

Dated: **June 30, 2022**
New York, New York

/s/ Lisa G. Beckerman
THE HONORABLE LISA G. BECKERMAN
UNITED STATES BANKRUPTCY JUDGE