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Proposed Counsel to the Debtors and Debtors in Possession

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

In re

PARETEUM CORPORATION, *et al.*,

Debtors.¹

Chapter 11

Case No. 22-[] ()

(Joint Administration Requested)

**DECLARATION OF GLENN TOBIAS IN SUPPORT OF
DEBTOR-IN-POSSESSION FINANCING MOTION
AND BIDDING PROCEDURES AND SALE MOTION**

I, Glenn Tobias, declare that the following is true to the best of my knowledge, information
and belief:

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.; Artidium Group Ltd. (f/k/a Artidium PLC); Pareteum Asia Pte. Ltd.; and Pareteum N.V. (f/k/a Artidium N.V.). The Debtors' corporate headquarters is located at 1185 Avenue of the Americas, 2nd Floor, New York, NY 10036.



1. I am Chief Executive Officer of FTI Capital Advisors, LLC (“**FTICA**”), the investment banking practice of FTI Consulting, Inc. (“**FTI Consulting**,” and with FTICA, “**FTI**”). FTI is the proposed financial advisor to Pareteum Corporation and its affiliated debtors and debtors-in-possession (“the “**Debtors**”).

2. I submit this declaration in support of the following motions:

- Debtors Motion for Entry of Interim and Final Orders, Pursuant to 11 U.S.C. §§ 105, 362, 363, 364, 503, 506, 507 and 552, (I) Authorizing the Debtors to (A) Obtain Postpetition Financing and (B) Use Cash Collateral, (II) Granting Liens and Providing Claims With Superpriority Administrative Expense Status, (III) Granting Adequate Protection to the Prepetition Secured Parties, (IV) Modifying the Automatic Stay, (V) Scheduling a Final Hearing, and (VI) Granting Related Relief (the “**DIP Financing Motion**”).
- Motion of Debtors for Entry of Orders (I)(A) Approving Bidding Procedures for Sale of Debtors’ Assets, (B) Approving Stalking Horse Bid Protections, (C) Scheduling Auction 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 (III) Granting Related Relief (the “**Bidding Procedures Motion**”).²

3. Unless otherwise indicated, all facts set forth in this Declaration are based upon my personal knowledge, my discussions with the Debtors’ senior management, members of the FTI team, my review of relevant documents, or my opinion based on my experience, knowledge, and information concerning the Debtors’ operations and financial affairs. If I were called to testify, I would testify competently to the facts set forth here.

4. I joined FTI in January 2009 and have served as Senior Managing Director and Chief Executive Officer of FTICA since 2017. While at FTI, and at previous employers including

² Capitalized terms not otherwise defined have the meanings ascribed to them in the DIP Financing Motion or the Bidding Procedures Motion, as applicable.

BNP Paribas and Global Crossing, Ltd., I have worked on numerous M&A, financing, and restructuring advisory transactions. I hold Series 79, Series 82, Series 63, and Series 24 licenses.

THE PROPOSED DIP FACILITY

5. The Debtors seek authority to obtain senior secured postpetition financing in an aggregate principal amount of \$6 million, exclusive of roll-up financing, pursuant to the terms and conditions of the Senior Secured, Priming and Superpriority Debtor-in-Possession Credit Agreement with Circles MVNE Pte. Ltd. (“**Circles**”) and its affiliated lenders (collectively “**Lending Parties**”) and Circles MVNE Pte. Ltd. as Administrative Agent (the “**DIP Agent**,” and with the Lending Parties, the “**DIP Lenders**”). The Prepetition Secured Parties have consented to the Debtors’ use of Cash Collateral and entry into the DIP Credit Agreement pursuant to the terms of the DIP Credit Agreement and DIP Orders.

BACKGROUND TO THE SALE AND DIP FACILITY STRATEGY

6. In large part due to negative cash flows and legal, accounting and regulatory costs resulting from prior management’s misstatements of revenue for fiscal years 2018 and 2019, the Debtors suffered from limited liquidity and the risk of defaulting under their prepetition debt. More recently, the COVID-19 pandemic negatively impacted customer churn and customer’s delayed growth initiatives, causing a snowball effect on the Debtors’ ability to continue as a growing concern. Limited liquidity has also impeded the Debtors ability to hire new members of senior management. Further, the Debtors have tripped certain non-payment related covenants in its debt facilities, further constraining access to liquidity. Due to these financial constraints, among other things, the Debtors had limited resources available to grow to the scale necessary to generate positive cash flow and address large vendor accounts payable balances.

7. The Debtors hired financial and legal restructuring advisors, including FTI, to aid the Debtors and the Board's independent directors in exploring all potential paths forward while simultaneously seeking to arrange for additional capital. The Debtors' Board and management have evaluated a wide range of strategic alternatives to address the Debtors' near and long-term liquidity and operational needs, including an equity raise, refinancing the Debtors' existing credit facilities to obtain additional funds, asset sales of the Debtors' various business lines, a sale of the Debtors' entire business, and a stand-alone reorganization through an in-court proceeding.

8. After numerous discussions with the Debtors' prior first lien lender, potential lenders and acquirers (of any and all assets and operating divisions of the Debtors), it became evident that none of these parties were willing to provide the critical funding necessary to sustain the Debtors' operations outside of a bankruptcy process, nor would they acquire the Debtors or a material portion of its assets without the protections afforded an acquirer pursuant to a sale conducted under section 363 of the Bankruptcy Code.

THE DIP FACILITY AND DIP LOAN NEGOTIATIONS

9. Due to the Debtors' financial position and existing capital structure, as well as the expedited timeline leading up to the Petition Date, the Debtors found limited options to secure an adequate amount of financing other than through Circles. The Debtors' prior first lien lender was unwilling to advance additional funds, including debtor-in-possession financing. In light of the Debtors' financial position and leveraged capital structure, unsecured financing would not have been a viable option. Further, any senior financing that does involve the Prepetition Secured Parties would require non-consensual priming of all liens of the Prepetition Secured Parties. Commencing these chapter 11 cases with a priming dispute and litigation over adequate protection (with the

attendant destruction of value) was not a risk the Debtors, in their business judgment, were willing to take.

10. After completing diligence on the Company, Circles purchased all of the first lien debt of the Debtors, made an additional first-priority loan through the Prepetition Bridge Loan, and has now committed to make up to \$6.0 million available in new money term DIP loan commitments.

11. I was actively involved in the arms-length, good-faith negotiations that preceded execution of the DIP Credit Agreement. It is my opinion that the Debtors' entry into the DIP Facility is consistent with an exercise of sound business judgment for several important reasons:

- The Debtors are entering chapter 11 with limited cash on hand. Immediate access to DIP Financing is therefore critical to ensure the Debtors' smooth entry into chapter 11 and their ability to prudently operate their business during the pendency of these chapter 11 cases and pursue the Sale Strategy.
- The Debtors, with assistance from experienced financial and legal advisors, engaged with Circles to solicit an initial proposal to provide debtor-in-possession financing.
- Negotiations with the proposed DIP Lenders were conducted at arms-length. The Debtors believe the DIP Facility provides sufficient liquidity with customary budget restrictions, all at reasonable rates and market fees. As confirmed by the Debtors' prepetition marketing process, there is no alternative financing available which wouldn't require a priming of the first lien lender.
- The Roll-Up DIP Loans will be subject to an interest rate that is less than the interest rate that would otherwise be applicable under both the Prepetition Senior Notes and the Prepetition Bridge Loan, thereby providing the Debtors with an economic benefit.
- The Debtors expect that vendors, users, customers, and their employees will be highly focused on whether these chapter 11 cases are appropriately funded to maximize the greatest possibility of success.

12. Absent immediate access to the funds available from the DIP Facility and the Debtors' continued use of Cash Collateral, the Debtors could face a value-destroying interruption of their business and, simultaneously, eliminate their best chance for negotiating and consummating a going concern sale, all to the detriment of the Debtors, the estates, and all creditors

and parties in interest. The DIP Facility is the product of an arms-length, good-faith negotiation with the DIP Lenders and is warranted by the Debtors' sound business judgment. For the reasons set forth above, the proposed DIP Facility represents the best presently available post-petition financing option for the Debtors.

THE SALE STRATEGY AND PREPETITION MARKETING EFFORTS

13. As indicated, prior to the Petition Date, the Debtors' management and advisors concluded that a sale of the Debtors as a going-concern would be the best path forward for the Debtors and their stakeholders.

14. Beginning in April 2021, the Debtors retained FTI to initiate a marketing process to sell certain assets to create liquidity. In October 2021, the Debtors retained FTI to serve as its investment banker and to design and execute a broad-based "M&A" process for its different business lines. In total, FTI contacted 210 entities, including 112 potential strategic buyers and 98 financial buyers. Based on expressions of interests, FTI provided parties with teaser information regarding the Debtors' businesses. Of those parties, 56 entities, including the Stalking Horse Bidder, expressed serious interest in consummating a transaction with the Debtors and executed non-disclosure agreements ("NDAs"). Those who executed NDAs were granted access to a data room containing additional confidential information regarding the Assets. FTI assisted in the due diligence process for multiple interested parties and sent out process letters to 8 parties who remained interested in Pareteum's assets as of December 2021. As a result of the marketing work of the Debtors and FTI, 8 parties submitted indications of interest or term sheets.

15. After extensive deliberations with its advisors, and several rounds of negotiations with interested parties, the Debtors elected to pursue the Stalking Horse Bid. In reaching the decision to proceed with the Stalking Horse Bid, the Debtors determined that, of all the bids

received by the Debtors before it became necessary to execute a binding asset purchase agreement, the Stalking Horse Bid offered a combination of the best value for the Stalking Horse Package and the greatest level of deal certainty. The Stalking Horse Bidders have committed significant capital to the Debtors in the form of a prepetition bridge loan and agreement to act as DIP Lender pending a sale.

BID PROCEDURES AND STALKING HORSE PROTECTIONS

16. **Bid Procedures.** In my opinion, and based on my experience in distressed M&A and bankruptcy sale transactions, the proposed Bidding Procedures provide for an orderly, uniform, and competitive process through which interested parties may submit offers to purchase the Debtors' Assets. The Debtors, with the assistance of their advisors, have structured the Bidding Procedures to promote active bidding by interested parties and to reach the highest or otherwise best offer reasonably available for the Debtors' Assets. Additionally, the Bidding Procedures will allow the Debtors to conduct the Auction, if necessary, in a fair and transparent manner that will encourage participation by financially capable bidders with demonstrated ability to timely consummate a Sale Transaction. The Bidding Procedures provide the Debtors with an adequate opportunity to consider competing bids and to select the highest or otherwise best offers for the potential completion of a Sale Transaction.

17. **Timing of Sale Process.** Timing in this case is critical. I understand that on July 12, 2022, the Debtors' liability insurance policy for its directors and officers will expire, and the Debtors do not have the \$1.6 million it will cost to extend the policy for a mere three months. If a sale to the Stalking Horse Bidder or another Successful Bidder does not close by that expiration date, the Debtors' management and directors may choose not to continue to serve, and the Debtors may be left without the ability to consummate a transaction. This may result in a significant

deterioration in the value of the Assets to the detriment of the Debtors' creditors, customers, millions of users, hundreds of employees and other stakeholders.

18. Given the significant costs associated with the ongoing operations of the Debtors' businesses and the Debtors' current financial condition, along with the incremental risk related to the expiration of the Debtors' directors and officers liability insurance on July 12, 2022, the DIP Lenders established strict timeline milestones that will govern the Debtors' sale process. In my opinion, the Debtors need these interim timelines as quickly as possible to ensure the business is able to operate on a go-forward basis as a going concern.

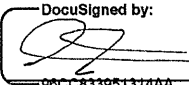
19. **Stalking Horse Bid Protections.** In my experience, the Stalking Horse Bid Protections are fair and reasonable. The 1.9 percent Break-Up fee is, in my experience, on the low end of break-up fees, which typically approach three percent. In the context of a complex \$60 million-plus transaction with multiple international subsidiaries, with a buyer that does not have a long and close relationship with the seller (such as, for instance, a long-time ABL lender), a great deal of due diligence is to be expected from a buyer such as Circles. Thus, proposed Expense Reimbursement cap of \$1.5 million is well within the range of reasonableness.

20. These bid protections were only offered after good faith, arms-length negotiations with the Debtors who were acting in the interest of their estates, consistent with their fiduciary duties. These protections, individually and collectively, were a material inducement for, and condition of, the Stalking Horse Bidder's entry into the Stalking Horse Agreement. During spirited negotiations, the Stalking Horse Bidders, which expended significant resources in connection with its legal, financial and operational due diligence, expressed unwillingness to hold open its purchase offer without assurance of payment of the Break-Up Fee and Expense Reimbursement under the conditions set forth in the Stalking Horse Agreement.

21. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Dated: May 15, 2022

New York, New York

DocuSigned by:

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Glenn Tobias