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10 *Proposed Attorneys for the Official Committee
11 of Restricted Equity Security Holders of Xhibit Corp.*

12 **IN THE UNITED STATES BANKRUPTCY COURT**
13 **FOR THE DISTRICT OF ARIZONA**

14 In re:

15 SKYMALL, LLC

16 Debtor.

17 Jointly Administered with:

18 XHIBIT CORP.,
19 XHIBIT INTERACTIVE, LLC,
20 FLYREPLY CORP.,
21 SHC PARENT CORP.
22 SYPFIRE INTERACTIVE, LLC,
23 STACKED DIGITAL, LLC, and
24 SKYMALL INTERESTS, LLC.

Chapter 11 Proceedings

Case No. 2:15-BK-00679-BKM

Jointly Administered with Case Nos.

2:15-bk-00680-BKM
2:15-bk-00682-BKM
2:15-bk-00684-BKM
2:15-bk-00685-BKM
2:15-bk-00686-BKM
2:15-bk-00687-BKM
2:15-bk-00688-BKM

25 This filing applies to:

- 26 ALL DEBTORS
 Specified Debtors

**OFFICIAL COMMITTEE OF
RESTRICTED EQUITY SECURITY
HOLDERS' OF XHIBIT CORP.'S
OBJECTION TO DEBTORS' MOTION
FOR ORDERS AUTHORIZING SALE
OF ASSETS, ET AL.**

DATE: March 27, 2015
TIME: 10:00 a.m.
LOCATION: Courtroom 701

1 The Official Committee of Restricted Equity Security Holders of Xhibit Corp.
2 (“Equity Committee”), by and through its undersigned proposed counsel, hereby files this
3 preliminary Objection to Debtors’ Motion for Orders Authorizing Sale of Assets, et al. filed
4 on January 23, 2015 (Dkt #22 in the SkyMall, LLC case) (“Sale Motion”). Since the Equity
5 Committee was only appointed by the United States Trustee on March 4, 2015 (the deadline
6 date to object to the Sale Motion), the Equity Committee hereby reserves the right to
7 supplement this Objection within 10 days.

8 The equity holders of these jointly administered cases are listed on Debtor Xhibit
9 Corp.’s Statement of Financial Affairs filed in the Xhibit case on February 23, 2015 (Dkt
10 #18) at Exhibit A. That listing shows that there are approximately 149 shareholders of
11 Xhibit (and, by way of merger and subsequent transactions, SkyMall) who own
12 approximately 108,180,435 shares. In his January 22, 2015 Declaration filed on January 23,
13 2105 (Dkt # 8 in the SkyMall, LLC case), Scott Wiley values these shares at \$0.0001 per
14 share. Clearly, when these shares were purchased, the per share value was significantly
15 higher and these 108 million shares were worth well over hundreds of millions of dollars.
16 Prepetition, Xhibit shares had sold for more than \$5.00 per share.

17 The Equity Committee objects to the Sale Motion for two basic reasons.

18 First, these jointly administered cases were filed on January 22, 2015 – six weeks
19 ago. The amount at stake for the equity holders is immense. The sale will wipe out the
20 millions of dollars of investments made by these 149 shareholders. Debtors have failed to
21 fully explore other options available to them which proposals were communicated,
22 prepetition, to Debtors’ management by certain shareholders. The refusal of Debtors to
23 either meet with the shareholder group or to discuss substantively and in good faith will be
24 condoned by this Court if the auction is allowed to proceed and the Sale Motion is granted.
25 The shareholder group has developed a feasible and workable reorganization outline which
26

1 the Debtors must consider in order to satisfy their duties as Debtors-in-Possession. The
2 Equity Committee requests that the Debtors meet with it and the shareholder group to present
3 this reorganization alternative to Debtors and the Official Committee of Unsecured
4 Creditors. The Equity Committee is confident that such an approach will ensure that all
5 creditors, equity holders and interested parties will be better served than through a rushed
6 auction.

7 Second, it is unclear to the Equity Committee that the significant causes of action
8 against current and prior officers, directors and insiders for their prepetition conduct and
9 asset transfers manipulations will be preserved, investigated and prosecuted. The Equity
10 Committee is gravely concerned that the proposed auction and Sale Motion may not preserve
11 these actions which could bring multiple millions of dollars into the estates. The Equity
12 Committee notes that the Xhibit's Schedule B-9, Exhibit A (Dkt 17-3, page 5), filed on
13 February 23, 2015, lists a \$10 million Director and Officer liability insurance policy; a \$10
14 million Errors and Omissions Technology and Professional Liability insurance policy; a \$10
15 million Najafi Executive Liability Run Off policy; and a \$3 million Xhibit D & O Policy
16 Run Off coverage. Therefore, insurance exists to cover payment of the successful
17 prosecution of these causes of action. It is important to note that the Summary of Schedules
18 filed by SkyMall (Dkt #116-1) shows a relatively small deficit sum of <\$1,657,998>, against
19 total debt of \$12,345,339.

20 The Equity Committee is deeply troubled by the possibility that this rushed Sale
21 Motion and auction is an attempt by Debtors and prior management and insiders to do a
22 quick sale, pay off creditors through a liquidating Plan, wash their hands of any further
23 liability and walk away. The consequences of such a scenario would be financially
24 devastating to the innocent, good faith investor shareholders of SkyMall/Xhibit who would
25 lose multiple millions of dollars. This simply cannot be allowed to happen.

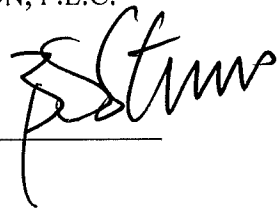
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1 The Equity Committee has read the SEC's Objection to the Sale Motion, filed March
2 3, 2015 (Dkt #153). It is extremely noteworthy that the SEC has already instituted an
3 investigation into the actions of Xhibit and are in the discovery phase of a serious review of
4 Xhibit's prepetition conduct. The Equity Committee joins in the SEC's Objection.

5 WHEREFORE, the Equity Committee hereby urges the Court to delay the auction
6 until the concerns raised herein can be addressed, to deny the Sale Motion, to allow the
7 Equity Committee the opportunity to supplement this preliminary Objection within 10 days
8 and for such other and further relief as the Court deems just and proper.

9 RESPECTFULLY SUBMITTED this 4th day of March, 2015.

10 JENNINGS, STROUSS & SALMON, P.L.C.

11
12
13 By: /s/ Bradley J. Stevens 
14 Bradley J. Stevens, Esq.
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16 Paul J. Valentine, Esq.
17 *Proposed Attorneys for the Official*
18 *Committee of Restricted Equity Security*
19 *Holder of Xhibit Corp.*

20 COPIES of the foregoing delivered
21 this 4th day of March, 2015 via the
22 Court's CM/ECF system on all
23 parties requesting notice.

24 COPIES of the foregoing mailed via
25 Email/U.S. Mail this 4th day of March,
26 2015 to all of the parties on the attached
service list.

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