

**UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION**

In re:

PROCOM AMERICA, LLC,

Case No.: 8:20-bk-03522-MGW

Debtor.

Chapter 7

**TRUSTEE'S MOTION FOR APPROVAL OF SETTLEMENT  
AGREEMENT WITH RIVERGATE TOWER OWNER, LLC**

**NOTICE OF OPPORTUNITY TO OBJECT AND REQUEST FOR HEARING**

Pursuant to Local Rule 2002-4, the Court will consider the relief requested in this paper without further notice or hearing unless a party in interest files a response within twenty-one (21) days from the date set forth on the attached proof of service, plus an additional three days for service if any party was served by U.S. Mail. You should read these papers carefully and discuss them with your attorney if you have one. If the paper is an objection to claim in this bankruptcy case, your claim may be reduced, modified, or eliminated.

If you object to the relief requested in this paper, you must file a response with the Clerk of the Court at 300 North Hogan Street, Suite 3-150, Jacksonville, FL 32202 and serve a copy on the movant's attorney, Steven M. Berman, Esq., Shumaker, Loop & Kendrick, LLP, 101 E. Kennedy Blvd., Suite 2800, Tampa, Florida 33602, and any other appropriate persons within the time allowed. If you file and serve a response within the time permitted, the Court will either schedule and notify you of a hearing or consider the response and grant or deny the relief requested without a hearing. Effective March 16, 2020 and continuing until further notice, Judges in all Divisions will conduct all hearings by telephone.

If you do not file a response within the time permitted, the Court will consider that you do not oppose the relief requested in the paper, will proceed to consider the paper without further notice or hearing, and may grant the relief requested.

Douglas N. Menchise, as Chapter 7 Trustee (the "Trustee"), by and through undersigned counsel and pursuant to Federal Rule of Bankruptcy Procedure 9019 and Local Bankruptcy Rule 2002-4, moves the Court for an Order in the form attached hereto as **Exhibit A**, approving the terms of the settlement agreement described below (the "Settlement Agreement") by and

between the Trustee and Rivergate Tower Owner, LLC (the "Landlord"), and says in support thereof:

### **Background**

On May 1, 2020 (the "Petition Date"), several petitioning creditors filed an involuntary Chapter 7 petition against Procom America, LLC (the "Debtor") initiating the case styled as *Procom America, LLC*, Case No. 8:20-bk-03522-MGW, in the United States Bankruptcy Court, Middle District of Florida, Tampa Division (the "Involuntary Case"). The petitioning creditors are comprised of the Landlord, Electronic Merchant Systems, LLC, and Dennis J. Ross. On May 8, 2020, the Trustee was appointed as Chapter 7 Trustee.

### **Leased Premises**

Prior to the Petition Date, the Debtor operated a travel company that sold World War II tours (the "Travel Company"). The Debtor ceased operating the Travel Company prior to the Petition Date. The Debtor is a tenant under an unexpired Office Lease dated June 7, 2019 (the "Lease") with the Landlord for the lease of the property located at 400 North Ashley Drive, Suite 1010, Tampa, Florida 33602, and described in more detail on Exhibit A to the Lease (the "Leased Premises"). As of the Petition Date, the Debtor had not made any payments under the Lease since March 3, 2020 and had a minimum balance due of \$3,077.21 under the Lease (the "Unpaid Prepetition Date Rent").

The Trustee did not assume the Lease within 60 days of the Petition Date and the Lease is deemed rejected pursuant to 11 U.S.C. § 365(d)(1). For the 60 days from the Petition Date to the date the Lease was deemed rejected, rent due under the Lease was in the minimum amount of \$18,009.26, which Landlord asserts constitutes an administrative expense claim against the Debtor's bankruptcy estate.

Certain personal property owned by the Debtor remains on the Leased Premises, including but not limited to furniture and fixtures specifically described on **Exhibit B** hereto (the "Property").<sup>1</sup> The Trustee is not aware of any liens on the Property. A search of the Florida Secured Transaction Registry evidences no pre-Petition Date recorded UCC-1 Financing Statements applicable to the Property. Accordingly, the Trustee believes the Property is not encumbered by any liens. The Trustee therefore holds a superior interest in the Property and may sell the Property. Additionally, the Landlord asserts it is entitled to an administrative expense claim for storing the Property after the Petition Date and is entitled to retain certain of the Property based upon the Debtor's default under the Lease. Furthermore, the Property is of questionable value and Landlord may actually have to incur expense above its value if Landlord has to remove the Property from the Leased Premises. Landlord has also cooperated with the Trustee to facilitate access to the Leased Premises for purposes of the Trustee recovering certain computers, servers, records and related items.

### **Terms of Settlement Agreement**

The Trustee and the Landlord have agreed to a settlement of claims related to the Lease, Leased Premises, Unpaid Rent, Property, and Landlord's Administrative Claim, whereby:

- 1) The Lease was rejected by operation of 11 U.S.C. § 365(d)(1) as of July 1, 2020 and Landlord was entitled to take possession of the Leased Premises immediately thereafter;
- 2) Upon entry of an Order approving this Settlement Agreement, the Trustee will deliver a Bill of Sale for the Property to the Landlord in the form attached hereto as **Exhibit C**;
- 3) Upon entry of an Order approving this Settlement Agreement, the Landlord shall have an allowed administrative expense claim under 11 U.S.C. § 503(b) in the amount of

---

<sup>1</sup> Landlord claims ownership of other personal property located on the Leased Premises.

\$16,200 for approximately ninety percent (90%) of May 2020 and June 2020 rent under the Lease, which shall be have priority under 11 U.S.C. § 507(a)(2) but be subordinated to the allowed claims of the Trustee and his retained professionals;

4) Upon entry of an Order approving this Settlement Agreement, the Landlord shall have an allowed unsecured, nonpriority claim in the amount \$114,390.05, which is comprised of \$3,077.21 for the pre-May 1, 2020 rent balance and \$111,312.84 for the one year of rejection damages allowed under the bankruptcy code for the period from July 1, 2020 to June 30, 2021 under 11 U.S.C. § 502(b)(6). Landlord shall separately file a proof of claim for this \$114,390.05 and for the \$16,200.00 administrative expense claim; and

5) Upon entry of a Final Order<sup>2</sup> granting this Motion, the Trustee and the bankruptcy estate shall be deemed to have released the Landlord from any and all claims arising from or related to the Settled Claims, and the Landlord shall be deemed to have released the Trustee and the bankruptcy estate from any and all claims arising from or related to the Settled Claims, including any claims the Trustee could assert against Landlord under 11 U.S.C. §§ 544-550; *provided, however*, that nothing herein shall deemed to be a release of any of the Parties' respective rights or obligations under this Settlement Agreement, including but not limited to the claims to be allowed in favor of the Landlord, subject to the subordination noted above.

The Trustee submits that the Settlement Agreement and sale represents a sound exercise of the Trustee's business judgment because it will dispose of estate property efficiently, bring funds into the bankruptcy estate, and resolve administrative claims against the estate with

---

<sup>2</sup> The term "Final Order" shall mean an order approving the Settlement Agreement that has not been stayed, reversed or amended and the time, as computed under the Bankruptcy Rules, to appeal or seek review or rehearing of such order (or any revision, modification or amendment thereof) has expired and no appeal or petition for review or rehearing of such order was timely filed, or if filed, remains pending.

certainty and without the costs and delay of litigation. The Trustee further submits the Court should approve the Settlement Agreement and sale.

This Settlement Agreement shall be deemed the joint work product of all parties and their respective counsel, if any, and all parties shall be considered the drafters of this Settlement Agreement. Any rule of construction to the effect that any ambiguities are to be construed against the drafting party shall not be applicable in any interpretation of this Settlement Agreement. Each of the parties declares that they have been represented by counsel in connection with the negotiation of this Settlement Agreement or have had the opportunity and wherewithal to be represented by counsel in the review, negotiation, and execution of this Settlement Agreement, and that the terms and conditions of this Settlement Agreement are understood fully and agreed to voluntarily.

Because the costs and time involved in resolving the bankruptcy estate's interest in the Settled Claims other claims described herein could yield less than what creditors will receive as a result of this compromise, the Trustee believes that this compromise is reasonable and recommends it to the creditors of this estate.

This Motion is being served on all parties on the attached mailing matrix.

**SHUMAKER, LOOP & KENDRICK, LLP**

**AKERMAN LLP**

By: /s/ Steven M. Berman  
Steven M. Berman, Esq.  
Florida Bar No.: 856290  
Email: sberman@slk-law.com  
101 E. Kennedy Blvd., Suite 2800  
Tampa, Florida 33602  
Telephone: (813) 229-7600  
Facsimile: (813) 229-1660

By: /s/ Jacob A. Brown  
Jacob A. Brown  
Florida Bar No.: 0170038  
Email: jacob.brown@akerman.com  
50 North Laura Street, Suite 3100  
Jacksonville, FL 32202  
Telephone: (904) 798-3700  
Facsimile: (904) 798-3730

*Attorney for Douglas N. Menchise, Chapter 7 Trustee    Attorneys for Rivergate Tower Owner, LLC*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on August 6, 2020, a true and correct copy of the foregoing was furnished either by electronic notification or by United States mail, postage prepaid per Order Limiting Notice (Doc 138) and to:

United States Trustee - TPA7, 7  
Timberlake Annex, Suite 1200  
501 E. Polk Street  
Tampa, FL 33602

Stuart J. Levine, Esq.  
Walters Levine Lozano & DeGrave  
601 Bayshore Blvd., Suite 720  
Tampa, FL 33606

Alberto F. Gomez, Jr., Esq.  
Johnson Pope Bokor Ruppel & Burns, LLP  
401 East Jackson Street, Suite 3100  
Tampa, FL 33602

Scott A. Stichter, Esq.  
Stichter, Riedel, Blain & Postler, P.A.  
110 E. Madison Street, Suite 200  
Tampa, FL 33602-4700

Jacob A. Brown, Esq.  
Akerman LLP  
50 North Laura Street, Suite 3100  
Jacksonville, FL 32202

/s/ Steven M. Berman  
**Steven M. Berman, Esq.**

# Exhibit A

**UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION**  
[www.flmb.uscourts.gov](http://www.flmb.uscourts.gov)

In re:

PROCOM AMERICA, LLC,

Case No.: 8:20-bk-03522-MGW

Debtor.

Chapter 7

\_\_\_\_\_ /

**ORDER GRANTING TRUSTEE'S MOTION FOR APPROVAL OF  
SETTLEMENT AGREEMENT WITH RIVERGATE TOWER OWNER, LLC**

THIS CASE came before the Court upon the Motion<sup>1</sup> (Doc. \_\_\_\_ ) of Douglas N. Menchise, as Chapter 7 Trustee, for Approval of Settlement Agreement with Rivergate Tower Owner, LLC. There being no objection to the Motion after proper notice to interested parties pursuant to Local Bankruptcy Rule 2002-4 on \_\_\_\_\_, 2020, it is

**ORDERED:**

1. The Motion is GRANTED.
2. The Settlement Agreement is approved and is fully enforceable in all respects.

The Trustee and the Landlord shall comply with all terms of the approved Settlement Agreement.

\_\_\_\_\_  
<sup>1</sup> Defined terms from the Motion are incorporated by reference herein.



3. The Lease was rejected by operation of 11 U.S.C. § 365(d)(1) as of July 1, 2020 and Landlord was entitled to take possession of the Leased Premises immediately thereafter.

4. Within fourteen days of entry of this Order, the Trustee shall deliver a Bill of Sale for the Property to the Landlord in the form attached the Motion as Exhibit C.

5. Landlord shall have (i) an allowed administrative expense claim under 11 U.S.C. § 503(b) in the amount of \$16,200.00, which shall be have priority under 11 U.S.C. § 507(a)(2) but be subordinated to the allowed claims of the Trustee and his retained professionals, and (ii) an allowed unsecured, nonpriority claim in the amount \$114,390.05.

6. Except as otherwise specifically provided in the Settlement Agreement, upon this Order becoming a Final Order, the Trustee and the bankruptcy estate shall be deemed to have released the Landlord from any and all claims arising from or related to the Settled Claims, and the Landlord shall be deemed to have released the Trustee and the bankruptcy estate from any and all claims arising from or related to the Settled Claims. This release includes any claims the Trustee could assert against Landlord under 11 U.S.C. §§ 544-550.

Attorney Steven M. Berman is directed to serve a copy of this Order on interested parties who are non-CM/ECF users and file a proof of service within 3 days of entry of the Order.

# Exhibit B

All tangible personal property located in the premises at 400 North Ashley Drive, Suite 1010, Tampa, Florida 33602 as of the date of this Bill of Sale, including, but not limited to:

Two (2) quad (4) cubes  
Eleven (11) Ergonomic desk chairs  
Six (6) office guest chairs  
Five (5) office desks  
Eleven (11) conference room chairs  
One (1) conference room table  
One (1) receptionist desk  
Four (4) front office guest chairs  
Two (2) breakroom tables with 8 chairs  
Two (2) TV's one in the break room and one in the conference room

# Exhibit C



**EXHIBIT A**

All tangible personal property located in the premises at 400 North Ashley Drive, Suite 1010, Tampa, Florida 33602 as of the date of this Bill of Sale, including, but not limited to:

Two (2) quad (4) cubes  
Eleven (11) Ergonomic desk chairs  
Six (6) office guest chairs  
Five (5) office desks  
Eleven (11) conference room chairs  
One (1) conference room table  
One (1) receptionist desk  
Four (4) front office guest chairs  
Two (2) breakroom tables with 8 chairs  
Two (2) TV's one in the break room and one in the conference room