

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

In Re:

ProCom America, LLC

**Case No.: 8:20-03522-MGW
Chapter 7 Case**

Debtors.

**AMENDED APPLICATION OF CHAPTER 7 TRUSTEE TO RETAIN
DAVID C. CIMO AND THE LAW FIRM OF CIMO MAZER MARK PLLC
AS SPECIAL LITIGATION COUNSEL EFFECTIVE AS OF JULY 20, 2020**

Douglas N. Menchise, Chapter 7 Trustee for the estate (the “Estate”) of the above-captioned Debtor, Procom America, LLC, (the “Debtor” or “Procom”), pursuant to 11 U.S.C §§ 105, 327(e), 328(a), 330, and 331, and Fed. R. Bankr. P. 2014 and 2016, as applicable as set forth herein, and Rules 2014 and 2016 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), moves to retain David C. Cimo and the law firm of Cimo Mazer Mark PLLC (“CMM”) (collectively, the “Applicant”) as special litigation counsel effective as of July 20, 2020, the date services were first rendered (the “Application”), and in support of this Application respectfully represents that:

JURISDICTION

1. This Court has jurisdiction to consider the Motion pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

BACKGROUND

2. On May 1, 2020, an involuntary petition was filed against the Debtor filed a voluntary petition for relief under Chapter 7 of title 11 of the United States Code (the “Bankruptcy Code”) [D.E. 1].

3. On May 8, 2020, the Court entered an Order for Relief [D.E. 9].

4. Thereafter, Mr. Menchise was appointed trustee pursuant to Section 701 of the Bankruptcy Code (“Trustee”), and remains the duly appointed and acting trustee of the Estate of the Debtor.

5. In administering the estate, the Trustee and his general counsel have reason to believe that potential claims may exist against the Debtor’s former management and other third parties warranting, in the Trustee’s business judgment, the retention of special litigation on a contingency fee basis to investigate, and if appropriate, prosecute any and all such claims.

RELIEF REQUESTED

6. Subject to the terms and conditions set forth below, the Trustee seeks to retain CMM as special litigation counsel on a 40% contingency fee basis to represent him in this case to investigate, and if appropriate, prosecute: (a) claims against former insiders, officers, directors, managers, owners, shareholders, members, partners, employees, or control persons of the Debtor, (and each of its respective affiliates, agents, owners, and/or control persons); (b) claims against former professionals of the Debtor and its affiliates, including auditors, accountants, bookkeepers, attorneys, financial brokers, and investment advisors; (c) Chapter 5 avoidance claims, and claim objections involving the claims described in (a) and (b) above; (d)

insurance recovery claims, including coverage litigation and bad faith claims involving the claims described in (a) and (b) above; and (c) any and all other litigation claims as may be directed by the Trustee and agreed to by the Applicant (collectively, the “Litigation Claims”).

7. Pursuant to Section 327(a) of the Bankruptcy Code, the Trustee, “with the court’s approval, may employ one or more attorneys, . . . that do not hold or represent an interest adverse to the estate, and that are disinterested persons, to represent or assist the trustee in carrying out the trustee’s duties.” 11 U.S.C. § 327(a).

8. Pursuant to Section 328(a) of the Bankruptcy Code, the Trustee, “with the court’s approval, may employ or authorize the employment of a professional person under section 327 . . . of this title, as the case may be, on any reasonable terms and conditions of employment, including on a retainer, on an hourly basis, on a fixed or percentage fee basis, or on a contingent fee basis.” 11 U.S.C. § 328(a).

9. The Trustee needs experienced counsel to investigate and possibly pursue the Litigation Claims. CMM’s attorneys are experienced and well regarded in the fields of complex bankruptcy and commercial litigation, and regularly represent fiduciaries and litigants in such matters throughout the United States. CMM’s attorneys have an excellent reputation for the services that the firm proposes to render, and CMM are well qualified to assist the Trustee in this case. Accordingly, the Trustee submits that his retaining CMM as special litigation counsel to investigate and, if appropriate, pursue and/or prosecute the Litigation Claims on a contingency fee basis would be in the best interests of the Estate.

10. The Trustee has reviewed the Affidavit of David C. Cimo, Esquire, a shareholder at CMM (the “Affidavit”), a copy of which are attached hereto as Exhibit A and incorporated herein by reference. To the best of the Trustee’s knowledge, information, and belief, and based entirely and in reliance upon the Affidavit: (i) CMM do not represent or hold any interest adverse

to the Debtor or to the Estate with respect to the matters for which it is to be employed; and (ii) CMM have no connection to the Estate, creditors, interest holders, and/or any related parties, except as may be disclosed in the Affidavit. As explained in the Affidavit, CMM are disinterested persons within the meaning of 11 U.S.C. §101(14). If CMM discover any additional facts bearing on the matters described herein during the period of their retention, they will supplement the information contained in their respective Affidavit.

11. CMM will assist and advise the Trustee solely related to the investigation and, if appropriate, prosecution of the Litigation Claims. The Trustee believes that these services will not duplicate the services that other professionals will be providing to the Estate in this case. CMM will perform only these services, and will not overlap with any of the Trustee's other professionals.

12. CMM's compensation will consist solely of a 40% contingency fee to be calculated based upon gross monetary recoveries or the amount of value provided to the Estate (the "Contingency Fee") with the firms to allocate such fee *pro rata* based upon hourly fees incurred by each applying rates of each firm as may be adjusted annually in the normal course of each firm's practice. In its discretion, the Applicant may advance payment of litigation related costs pertaining to the investigation and/or pursuit of the Litigation Claims, but the Estate shall be responsible for the reimbursement and/or payment of all expert witness and consulting fees and costs, and any and all other normal and customary out-of-pocket expenses incurred in connection with the professional services provided hereunder, including but not limited to travel, court reporter fees, printing, photocopy costs, administrative, and other costs.

13. All requests for payment of CMM's Contingency Fee pursuant to the Order approving this Application shall be filed and approved without the need to file formal fee applications with the Court: (i) by respective motion to approve any and all settlements pursuant to Fed. R. Bank. P. 9019, with the amount of the Contingency Fee sought to be included in both the title and body of the motion; and/or (ii) in a motion seeking payment of the Contingency Fee in the event of payment other than from settlement, i.e., satisfaction of a judgment.

14. Irrespective of the foregoing, Applicant shall file applications for reimbursement of costs and expenses in compliance with the Bankruptcy Rules, the Local Rules of this Court, and Bankruptcy Court and United States Trustee Guidelines.

15. The Local Rules of this Court and guidelines in this District provide various timekeeping requirements for professionals. Because CMM's compensation in this matter consists of the Contingency Fee, the Trustee respectfully requests that the Court exempt them from such requirements.

16. Notice of this Application will be given to the following parties by first class postage-prepaid U.S. mail, electronic mail, and/or hand delivery: (i) the Office of the United States Trustee; (ii) the Debtor; (iii) CMM; and (iv) all parties that have requested notice pursuant to Bankruptcy Rule 2002. The Trustee submits that, in light of the nature of the relief requested, no other or further notice need be given.

WHEREFORE, the Trustee respectfully requests that the Court enter an order, in substantially the form attached: (i) approving this Application; (ii) authorizing him to retain CMM as special litigation counsel to perform the services set forth herein under the terms and conditions set forth herein effective as of July 20, 2020, the date services were first rendered; (iii) authorizing him to pay the Contingency Fee to CMM without further order of the Court; (iv) authorizing CMM to seek payment of costs and expenses, subject to CMM's filing, and

obtaining Court approval, of a fee application under 11 U.S.C. § 330; and (v) granting any such other and further relief that the Court may deem just and proper.

Dated this 6th day of November, 2020.

Respectfully submitted,

SHUMAKER LOOP & KENDRICK,

By: /s/ Steven M. Berman, Esq.

Steven M. Berman, Esq.

Fla. Bar No.: 856290

Email: sberman@shumaker.com

Email: bgasaway@shumaker.com

101 E. Kennedy Blvd., Suite 2800

Tampa, Florida 33602

Phone (813) 229-7600

Counsel for the Trustee

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on November 6, 2020, a true and correct copy of the foregoing Motion for Turnover and to Enforce Automatic Stay was by CM/ECF notice to all counsel of record, United States mail postage prepaid per Limited Notice Order and to:

Procom America, LLC
400 N. Ashley Drive
Suite 1010
Tampa, FL 33602

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

By: /s/ Steven M. Berman, Esq.

Steven M. Berman, Esq.

Exhibit A

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
(TAMPA DIVISION)
www.flmb.uscourts.gov

CASE NO: 8:20-bk-03522-MGW

In re:

PROCOM AMERICA, LLC d/b/a
BEYOND BAND OF BROTHERS
d/b/a BBOB,

Debtor.

_____ /

**DECLARATION UNDER PENALTY
OF PERJURY OF DAVID C. CIMO**

I, David C. Cimo, Esq., hereby declare under penalty of perjury that the following is true to the best of my knowledge, information, and belief:

1. I am a shareholder with the law firm of Cimo Mazer Mark PLLC (“CMM” or the “Applicant”) located in Miami, Florida.

2. My contact information for purposes of receiving notices in this case is:

David C. Cimo, Esq.
CIMO MAZER MARK PLLC
100 SE 2nd Street, Suite 3650
Miami, FL 33131
Tel: 305.374.6482
Cell: 305.439.3429
E-mail: dcimo@cmmlawgroup.com

3. I am an attorney admitted to practice in the State of Florida and the United States District Court for the Middle District of Florida, and am qualified to practice in the U.S. Bankruptcy Court for the Middle District of Florida and other courts.

4. This declaration is made on behalf of myself and CMM in connection with the

Application of Chapter 7 Trustee to Employ CMM as Special Litigation Counsel effective as of July 20, 2020 (the “Application”).

5. Neither I nor the firm hold or represent any interest adverse to the estate, and we are “disinterested person[s]” within the scope and meaning of Sections 101(14) and 327(a) of the Bankruptcy Code with respect to the matters on which CMM will be employed.

6. CMM and its members and associates do not have any connection with the above-captioned Debtor (the “Debtor”), the Debtor’s creditors, any other parties in interest, or their respective attorneys, accountants, or the United States Trustee (the “UST”) or any person employed by the Office of the UST, as contemplated by Bankruptcy Rule 2014(a).

7. Further, CMM and its members and associates: (i) are not creditors, equity security holders or insiders of the Debtor; (ii) are not and were not within two (2) years before the date of the filing of the Debtor’s petition for relief, directors, officers or employees of the Debtor; and (iii) do not have interests materially adverse to the interest of the estate or any class of creditors or equity security holders, by reason of any direct or indirect relationship to, connection with, or interest in the Debtor, or for any other reason.

8. In addition, no member or associate of CMM: (i) is a relative of the bankruptcy judge presiding over this case; (ii) is a relative of the UST in the region in which this case is pending; or (iii) is or has been so connected with the Judge or the UST as to render the employment of CMM in this case improper, as set forth in Bankruptcy Rule 5002.

9. In an abundance of caution and in the interests of full disclosure, CMM discloses that CMM and its attorneys currently represent Larry S. Hyman, as bankruptcy trustee on behalf of a fiduciary estate wholly unrelated this case. Prior to the petition date, Mr. Hyman was the assignee for the benefit of creditors of the Debtor. I submit that the foregoing precautionary

disclosure does not affect or impair the disinterestedness of myself or CMM.

10. No promises have been received by CMM, nor any member or associate thereof as to compensation in connection with this case other than in accordance with the provisions of the Bankruptcy Code. No agreement exists, nor will any be made, to share any compensation received by CMM for its services with any other person or firm.

11. CMM is willing to be retained by the Trustee appointed in this case as his co-special litigation counsel on a contingency fee basis pursuant to the employment terms set forth and described in the Application, and will seek compensation and reimbursement of out-of-pocket expenses in accordance with the terms of the Application.

12. I have reviewed the Application and to the best of my knowledge and belief, the facts set forth therein are true and correct.

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VERIFICATION UNDER PENALTY OF PERJURY

I HEREBY certify, verify, and state under penalty of perjury that the foregoing is true and correct.

EXECUTED on this 13th day of October, 2020.



David C. Cimo, Esq.