

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
(TAMPA DIVISION)  
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CASE NO: 8:20-bk-03522-MGW

In re:

PROCOM AMERICA, LLC, d/b/a  
Beyond Band of Brothers d/b/a BBOB,

Debtor.

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**CHAPTER 7 TRUSTEE'S AGREED MOTION TO AUTHORIZE  
AND SCHEDULE PRE-SUIT MEDIATION CONFERENCE  
WITH DEBTOR'S FORMER ACCOUNTANTS**

Douglas N. Menchise (the "Trustee"), Chapter 7 Trustee of the above-captioned Debtor ("Procom" or the "Debtor"), pursuant to Section 105 of the Bankruptcy Code, Rules 9019 and 9017 of the Federal Rules of Bankruptcy Procedure, and Rule 502 of the Federal Rules of Evidence, files this Agreed Motion to Authorize and Schedule a Pre-Suit Mediation Conference, and says:

**INTRODUCTION**

1. By this Motion, the Trustee seeks the entry of an Order authorizing the Trustee and the Debtor's former accountants, Renaissance Consulting & Development, LLC and Kevin E. Riggs (collectively, "Renaissance") to attend and participate in a mediation conference with a private mediator.

2. For the reasons set forth herein, good cause exists for the relief sought.

**BACKGROUND**

3. On May 1, 2020, three creditors filed an involuntary petition against Procom [D.E. 1], which was followed by the entry of an Order for Relief on May 8, 2020 [D.E. 9] based upon

the company's consent.

4. Mr. Menchise was appointed trustee pursuant to Section 701 of the Bankruptcy Code, and remains the duly appointed and acting Chapter 7 trustee of the estate of the Debtor.

5. The Trustee and his Court-appointed professionals have been investigating the business and financial affairs of Procom, including potential claims against third parties that provided professional services to Procom, including Renaissance (collectively, the "Claims").

**RELIEF REQUESTED**

6. In a good faith effort to avoid the potential costs and uncertainty attendant to litigation, the Trustee and Renaissance (collectively, the "Parties"), without any admission of fault or liability, seek to engage in pre-suit settlement discussions in respect of the Claims and the defenses thereto, through a formal mediation process and, to this end, the Trustee requests the entry of an agreed order granting this Motion, subject to the following terms and conditions:

- a. A mediation conference shall be scheduled by the Parties via Zoom or other comparable internet-based teleconference platform at a mutually agreeable date and time to occur and be concluded by no later than September 30, 2022, with a private mediator to be selected by the Parties.
- b. The Parties may have any expert/consultant they deem appropriate attend the mediation, subject to the protections of the mediation privilege.
- c. The Parties are authorized to share the contents of their submissions with each of their respective consultants/experts under the protection of the mediation and settlement privileges.
- d. Prior to the scheduled conference, the Parties may exchange documents and information as may be mutually agreed, including mediation statements. The

foregoing disclosures and exchange of mediation statements and information shall in no way serve to discharge the Parties of whatever obligations the mediator may choose to impose as part of their standard procedures.

- e. All documents and information to be exchanged between the Parties shall be subject to confidentiality and claw back relief protections in the event of inadvertent disclosure of privileged, confidential, or work product information.
  - f. Nothing herein shall subject the Trustee or any other party to any motions to compel discovery, sanctions, or similar relief, as the Parties are engaging in a voluntary process, and agree to use reasonable efforts to provide documents and information in preparation for the conference.
  - g. The mediation privilege and the privilege afforded to settlement communications under applicable law shall be in effect and govern all aspects of scheduled conference, including the exchange of all communications, documents, and information leading up to, during, and after the conference (in the event negotiations continue following the conclusion of the scheduled conference).
  - h. Upon motion, the Parties may request that the outside date to complete mediation be extended.
  - i. The cost of a private mediator will be advanced by Renaissance and/or its insurance carrier. In the event a settlement is reached, half the mediator cost will be deducted from the settlement amount and retained by the carrier, unless otherwise agreed to by the Parties.
7. A proposed order granting the relief requested herein is attached to this Motion.

WHEREFORE, the Trustee requests the entry of an order granting the relief requested herein, and for any other relief the Court deems appropriate.

Dated this 19th day of April, 2022.

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via CM/ECF, Email, and/or U.S. Mail to all parties on the below service list this 19th day of May, 2022.

/s/ David C. Cimo  
David C. Cimo

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

In re:

PROCOM AMERICA, LLC, d/b/a  
Beyond Band of Brothers d/b/a BBOB,

Debtor.

**AGREED ORDER GRANTING CHAPTER 7 TRUSTEE'S AGREED MOTION  
TO AUTHORIZE AND SCHEDULE PRE-SUIT MEDIATION CONFERENCE  
WITH DEBTOR'S FORMER ACCOUNTANTS<sup>1</sup>**

THIS MATTER came before the Court on the Agreed Motion (the "Motion") of Douglas N. Menchise (the "Trustee"), Chapter 7 Trustee of the above-captioned Debtor to Authorize and Schedule a Mediation Conference with Debtor's Former Accountants [ECF No. \_\_\_\_].<sup>1</sup> The Court, having reviewed the Motion, finds good cause for the relief sought. Accordingly, it is

ORDERED as follows:

1. The mediation conference to be conducted pursuant to this Order shall be governed

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<sup>1</sup> Unless otherwise denoted, all capitalized terms herein shall have the same meaning as defined in the Motion.

by the following procedures, protocols, and deadlines:

- a. A mediation conference shall be scheduled by the Parties via Zoom or other comparable internet-based teleconference platform at a mutually agreeable date and time to occur and be concluded by no later than September 30, 2022, with a mutually agreed private mediator to be selected by the Parties.
- b. The Parties may have any expert/consultant they deem appropriate attend the mediation subject to the protections of the mediation privilege.
- c. The Parties are authorized to share the contents of their submissions with each of their respective consultants/experts under the protection of the mediation and settlement privileges.
- d. Prior to the scheduled conference, the Parties may exchange documents and information as may be mutually agreed, including mediation statements. The foregoing disclosures and exchange of mediation statements and information shall in no way serve to discharge the Parties of whatever obligations the mediator may choose to impose as part of their standard procedures.
- e. All documents and information to be exchanged between the Parties shall be subject to confidentiality and claw back relief protections in the event of inadvertent disclosure of privileged, confidential, or work product information.
- f. Nothing herein shall subject the Trustee or any other party to any motions to compel discovery, sanctions, or similar relief, as the Parties are engaging in a voluntary process, and agree to use reasonable efforts to provide documents and information in preparation for the conference.
- g. The mediation privilege and the privilege afforded to settlement

communications under applicable law shall be in effect and govern all aspects of scheduled conference, including the exchange of all communications, documents, and information leading up to, during, and after the conference (in the event negotiations continue following the conclusion of the scheduled conference).

- h. Upon motion, the Parties may request that the outside date to complete mediation be extended.
- i. The cost of a private mediator will be paid for by the insurance carrier for Renaissance as a cost advance. In the event a settlement is reached, half the mediator cost will be deducted from the settlement amount and retained by the carrier, unless otherwise agreed to by the Parties.

Attorney David C. Cimo is directed to serve a copy of this Order on interested parties and file a proof of service within 3 days of entry of the Order.