

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:

HELIOS AND MATHESON, ANALYTICS, INC.,
a/k/a *MovieFone*, et al.,¹

Debtors.

ALAN NISSELSON, as Chapter 7 Trustee
of HELIOS AND MATHESON ANALYTICS,
INC., a/k/a *MovieFone* and *MoviePass*, Inc.,

v.

Theodore Farnsworth,
Stuart Benson, Mitchell Lowe,
Muralikrishna Gadiyaram,
Parthasarathy Krishnan,
Prathap Singh, Gavriel Ralbag,
Carl Schramm, Christopher Kelly,
Maria Stipp and Joseph Fried

Chapter 7

Case No. 20-10242-smb
(Jointly Administered)

Adv. Proc. No. 20-01182

ORDER AUTHORIZING MEDIATION

WHEREAS, Alan Nisselson (“**Trustee**”), Trustee for the above-captioned jointly administered Debtors’ chapter 7 estates and Plaintiff in the above captioned Adversary Proceeding, filed a *Joint Report Pursuant to Federal Rule of Bankruptcy Procedure 7026 and Request for Adjournment of Date to Answer or Respond and Pre-Trial Conference* (“**Report**”) [Adv. Proc. Doc. 4], jointly with the above-referenced defendants (“**Defendants**”, together with the Trustee, the “**Parties**”), reporting on the Parties’ agreement attached to the Report [Adv. Proc. Doc. 4-1] (the “**Mediation Agreement**”): (i) to mediate this Adversary Proceeding; (ii) to a choice of mediator, David Murphy from Phillips ADR because he has special skills and appropriate

¹ The Debtors in the jointly administered Chapter 7 cases, together with the last four digits of each Debtor’s federal tax identification number, are as follows: Helios and Matheson Analytics, Inc., a/k/a *MovieFone* (9913) (“**HM**”), Zone Technologies, Inc., a/k/a *Red Zone*, a/k/a *Zone Intelligence*, (5124), and *MoviePass*, Inc. (9893) (“**MP**”). The Trustee commenced this adversary on behalf of HM and MP.



experience relevant to the issues raised in the Adversary Proceeding; and (iii) to a mediation briefing schedule and the dates of mediation on September 16, 2020 and September 30, 2020;

WHEREAS, as set forth in the Report, Securities Claimants, with claims against certain of the Defendants in a case pending in the United States District Court for the Southern District of New York (Case No. 1:18-cv-06965) (“**Securities Action**”), and for which certain of the Defendants seek insurance coverage for any resulting liability under the same insurance policies as apply to the Defendants in this Adversary Proceeding, desire to participate in the mediation and have agreed to share the mediation fees, and the Parties have agreed to that participation; and

WHEREAS, on July 1, 2020, the Trustee filed a Motion in the main case (Doc. 98) (the “**Motion**”) for an order authorizing the Trustee to pay the Estates’ share of the fee required to mediate a resolution of this Adversary Proceeding, which relief is subject to a separate order.

NOW, THEREFORE, upon the Parties’ representations and all of the proceedings had before this Court, and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Parties are authorized to mediate a resolution of the Adversary Proceeding.
2. David Murphy of Phillips ADR will act as mediator at the mediation of the Adversary Proceeding.
3. The mediation will be conducted on September 16, 2020 and September 30, 2020.
4. The mediation shall be governed by the provisions of the Mediation Agreement and the rules of this Court.
5. Any discussions among the Parties, any mediation statements or any other documents or information provided to the Mediator or the Parties in the course of the Mediation, and correspondence, draft resolutions, offers, and counteroffers produced for, or as a result of, the

Mediation shall be strictly confidential and shall not be admissible for any purpose and the Parties shall not disclose in any pleading or other submission to any court, any such discussion, mediation statement, other document or information, correspondence, resolution, offer, or counteroffer that may be made or provided in connection with the mediation, provided, however, evidence shall not be excluded or otherwise considered improper on the ground that it was derived from information supplied in the Mediation.

6. The Parties and their respective counsel shall participate in the Mediation in good faith and comply with all directions issued by the Mediator.

7. At the conclusion of the Mediation, the Mediator shall file with the Court a memorandum stating (a) that the Mediator has conducted the Mediation, (b) the names of counsel and principals who participated in the Mediation, (c) the identification of any party that has not acted in good faith during or in connection with the Mediation, and (d) whether the Mediation resulted in a consensual resolution of some or all of the issues subject to the Mediation.

8. The Mediator shall be immune from claims arising out of acts or omissions incident to their service.

9. The Mediation will be conducted in a manner consistent with the Mediation Agreement, Local Bankruptcy Rule 9019-1, General Order M-452, and the Procedures Governing Mediation of Matters and the Use of Early Neutral Evaluation and Mediation/Voluntary Arbitration in Bankruptcy Cases and Adversary Proceedings

10. The Parties shall inform the Court if a need arises for the appointment of an alternative mediator.

11. The Court shall retain jurisdiction to hear and determine all matters arising from the implementation of this Order.

Dated: August 4, 2020
New York, New York

/s/ STUART M. BERNSTEIN
The Honorable Stuart M. Bernstein
United States Bankruptcy Judge