

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

<p>In re:</p> <p>HELIOS AND MATHESON, ANALYTICS, INC., <i>a/k/a MovieFone</i>, et al.,¹</p> <p style="text-align: right;">Debtors.</p>
<p>ALAN NISSELSON, as Chapter 7 Trustee of HELIOS AND MATHESON ANALYTICS, INC., <i>a/k/a MovieFone</i> and <i>MoviePass</i>, Inc.,</p> <p style="text-align: center;">v.</p> <p>Theodore Farnsworth, Stuart Benson, Mitchell Lowe, Muralikrishna Gadiyaram, Parthasarathy Krishnan, Prathap Singh, Gavriel Ralbag, Carl Schramm, Christopher Kelly, Maria Stipp and Joseph Fried</p>

Chapter 7
Case No. 20-10242-smb
(Jointly Administered)

Adv. Proc. No. 20-1182-smb

**[PROPOSED] ORDER (I) PURSUANT TO BANKRUPTCY CODE SECTION 105(a)
AND BANKRUPTCY RULE 9019(a) APPROVING A SETTLEMENT
AGREEMENT BETWEEN THE TRUSTEE AND FORMER DIRECTORS AND OFFICERS
OF THE DEBTORS; AND (II) AUTHORIZING PAYMENT OF FEES AND
EXPENSES TO TRUSTEE’S SPECIAL COUNSEL**

Upon the motion dated October 23, 2020 (the “**Motion**”), filed by Alan Nisselson, (the “**Trustee**”), the chapter 7 trustee of the estates of Helios and Matheson Analytics, Inc. (“**Helios**”) and MoviePass, Inc. (“**MoviePass**”) (together, the “**Debtors**”), for entry of an order (I) pursuant to section 105 of title 11 of the United States Code (“**Bankruptcy Code**”) and Federal Rule of Bankruptcy Procedure (“**Bankruptcy Rules**”) 9019(a), approving the compromise and settlement of breach of fiduciary duty and other claims asserted by the Trustee against Theodore Farnsworth,

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), Zone Technologies, Inc., a/k/a Red Zone, a/k/a Zone Intelligence, (5124), and MoviePass, Inc. (9893).



Stuart Benson, Mitchell Lowe, Muralikrishna Gadiyaram, Parthasarathy Krishnan, Prathap Singh, Gavriel Ralbag, Carl Schramm, Christopher Kelly, Maria Stipp and Joseph Fried (the “**D&Os**”), all former directors and officers of Helios and/or MoviePass, as set forth in the Settlement Agreement (the “**Settlement Agreement**”) among the Trustee and the D&Os attached to the Motion as **Exhibit A**; and (II) pursuant to section 328(a) of the Bankruptcy Code, approving and awarding the payment of certain fees and disbursements to the Trustee’s Special Counsel, Reid, Collins & Tsai LLP (“**Reid Collins**”), and a hearing having been held on before the Honorable Stuart M. Bernstein, United States Bankruptcy Judge for the Southern District of New York, and proper notice of the Motion (including the Notice of Hearing form) having been given, and no objections having been received, and sufficient cause having been shown; it is now, hereby

ORDERED that the Settlement Agreement was the product of arms-length negotiations among the Trustee, D&Os and Insurers;

ORDERED that the Settlement Agreement is reasonable and in good faith and approved all respects; and it is further

ORDERED that the automatic stay of Section 362(a) of the Bankruptcy Code (if and to the extent applicable) is modified pursuant to section 105 and section 362(b) of the Bankruptcy Code to permit the Insurers and Insured Persons to use the proceeds of the Policies to make the Settlement Payment (as defined in the Settlement Agreement); and it is further

ORDERED that the Settlement Payment shall be allocated 50% to Helios and 50% to MoviePass; and it is further

ORDERED than upon the consent of the Trustee, the Insurers, and the D&Os, the defined term “Trustee Released Parties” in the Settlement Agreement is hereby clarified to delete the word “insurers” and add the underlined phrase as follows: “the Trustee, the Debtors, the Debtors’

estates, and their respective executors, beneficiaries, heirs, assigns, ~~insurers~~ the Insurers (solely for amounts paid by the Insurers in relation to the Settlement Agreement and the reimbursement of legal fees related thereto), reinsurers, creditors, administrators, representatives, attorneys and agents (collectively, the “**Trustee Released Parties**”); and it is further

ORDERED that upon receipt by the Trustee of the Settlement Payment, the Trustee waives and releases claims of Debtors and their estates to the D&O Policies (as defined in the Order of the Bankruptcy Court at Docket Number 79 filed in the Bankruptcy Cases) or any proceeds therefrom (other than the Settlement Payment) and the automatic stay of Section 362(a) of the Bankruptcy Code (if and to the extent applicable) is modified pursuant to section 105 and section 362(b) of the Bankruptcy Code to allow the D&Os and the Insurers to further exercise all their respective rights and obligations under the D&O Policies without further order of the Bankruptcy Court; and it is further

ORDERED that upon receipt by the Trustee of the Settlement Payment, the reporting requirements established by the Order of the Bankruptcy Court at Docket Number 79 filed in the Bankruptcy Cases are discontinued; and it is further

ORDERED that all collateral attacks on the reasonableness and/or validity of the Settlement Agreement and/or the Settlement Payment thereunder are barred; and it is further

ORDERED that pursuant to the terms of the Engagement Letter, Reid Collins’ fees in the amount of **\$4,200,000.00** and expenses in the amount of **\$7,548.44** are approved, as set forth on the Schedules attached hereto; and it is further

ORDERED that after the Settlement Payment, as defined in the Settlement Agreement, has been made and completed, and such funds becoming good and readily available, Reid Collins shall be paid from the settlement proceeds the amounts of **\$4,200,000.00** in fees and **\$7,548.44** in

expenses; and it is further

ORDERED that this Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order; and it is further

ORDERED, that the Trustee be, and hereby is authorized to take such steps, expend such funds, and do such things, as is necessary to implement the terms and conditions of this Order.

Dated: New York, New York
, 2020

Honorable Stuart M. Bernstein