

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

In re: ) Chapter 11  
 )  
AcuSport Corporation, ) Case No. 18-52736  
 )  
Debtor. ) Honorable John E. Hoffman, Jr.

**DEBTOR'S APPLICATION FOR AN ORDER AUTHORIZING DEBTOR TO EMPLOY  
AND RETAIN DONLIN, RECANO & COMPANY, INC. AS NOTICE, CLAIMS AND  
SOLICITATION AGENT, EFFECTIVE *NUNC PRO TUNC* TO THE PETITION DATE**

NOW COMES AcuSport Corporation, debtor and debtor in possession ("*Debtor*") in this chapter 11 case (the "*Case*") and moves this Court for entry of an order employing and retaining Donlin, Recano & Company, Inc. ("*DRC*") as its notice, claims and solicitation agent ("*Notice, Claims and Solicitation Agent*"). In support of this Application (the "*Application*"), Debtor states as follows:

**RELIEF REQUESTED**

1. By this Application, and pursuant to section 156(c) of title 28 of the United States Code and section 503(b) of title 11 of the United States Code (the "*Bankruptcy Code*"), Debtor seeks entry of an order (the "*Proposed Order*")<sup>1</sup> appointing DRC as Notice, Claims and Solicitation Agent in Debtor's Case, effective *nunc pro tunc* to the Petition Date (as defined below), pursuant to that certain Standard Claims Administration and Noticing Agreement (the "*Services Agreement*"), by and between Debtor and DRC, a copy of which is attached hereto as Exhibit 1. In support of the Application, Debtor submits the Declaration of Nellwyn Voorhies, Executive Director of DRC (the "*Voorhies Declaration*"), which is attached hereto as Exhibit 2 and incorporated by reference herein.

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<sup>1</sup> A copy of the Proposed Order will be provided to the Notice Parties (as defined below) and made available on Debtor's bankruptcy case information website at [www.donlinrecano.com/acusport](http://www.donlinrecano.com/acusport).

## **JURISDICTION**

2. This Court has jurisdiction over this Application under 28 U.S.C. § 1334. Venue of this proceeding is proper pursuant to 28 U.S.C. § 1409. This is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

## **BACKGROUND**

3. Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code on May 1, 2018 (the “*Petition Date*”).

4. Debtor has continued in possession of its property and has continued to operate and manage its business as a debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No request has been made for the appointment of a trustee or examiner, and no official committee has been appointed in this case.

5. Additional information about Debtor's business and the events leading up to the Petition Date can be found in the Declaration of John K. Flanagan (the “*Flanagan Declaration*”), filed substantially contemporaneously with the Petition, which is incorporated herein by reference.

6. There are at least 6,000 entities to be noticed. In view of the number of anticipated claimants, Debtor submits that the appointment of a claims, balloting and noticing agent to distribute notices, process all of the proofs of claims filed and assist in the balloting process is both necessary and in the best interests of both Debtor's estate and its creditors.

## **DRC's Qualifications**

7. Debtor proposes to engage DRC to act as Debtor's Notice, Claims and Solicitation Agent. This retention is the most effective and efficient manner of noticing the creditors and parties in interest of the filing of this Case and other developments. In that

capacity, DRC will transmit, receive, docket and maintain proofs of claim filed in connection with this Case.

8. DRC is comprised of leading industry professionals with significant experience in both the legal and administrative aspects of large, complex chapter 11 cases. DRC's professionals have experience in noticing, claims administration, solicitation, balloting and facilitating other administrative aspects of chapter 11 cases and experience in matters of this size and complexity. DRC's professionals have acted as Debtor's counsel or the official claims and noticing agent in other large bankruptcy cases. DRC's active cases include: See e.g., *In re: BCBG Max Azria Global Holdings, LLC, et al.* Case No. 17-10466 (Bankr. S.D.N.Y. 2017); *In re: Bostwick Laboratories, Inc., et al.* Case No. 17-10570 (BLS) (Bankr. D. Del. 2017); *In re: hhGregg, Inc., et al.* Case No. 17-01302-11 (Bankr. S.D. Ind. 2017); *In re: Foundation Healthcare, Inc.*, Case No. 17-42571 (RFN) (Bankr. N.D. Tex. 2017); *In re: Gander Mountain Company, et al.* Case No. 17-30673 (MER) (Bankr. D. Minn. 2017); *In re: Rooster Energy, L.L.C., et al.* Case No. 17-50705 (Bankr. W.D. La. 2017); *In re: Forest Park Medical Center at Southlake, LLC* Case No. 16-40273 (RFN) (N.D. Texas, Fort Worth Division 2016); *In re: Peek Aren't You Curious, Inc.* Case No. 16-30146 (HLB) (Bankr. N.D. Cal.); *In re: Relativity Fashion, LLC, et al.* Case No. 15-11989 (MEW) (Bankr. S.D.N.Y. 2015); *In re: Boomerang Tube, LLC, et al.*, Case No. 15-11247 (MFW) (Bankr. D. Del. 2015); *In re: Seal 123, Inc. et al.*, Case No. 15-10081(CSS) (Bankr. D. Del. 2015); *In re: Cengage Learning, Inc., et al.*, Case No. 13-44106 (ESS) (Bankr. E.D.N.Y. 2013); *In re: Excel Maritime Carriers Ltd., et al.*, Case No. 13-23060 (RDD).

9. By appointing DRC as Notice, Claims and Solicitation Agent in this Case, the distribution of notices, the processing of claims and the solicitation of votes will be expedited and the Clerk of the United States Bankruptcy Court for the Southern District of Ohio ("**Clerk**")

will be relieved of the administrative burden of processing what may be an overwhelming number of claims. Debtor submits, based on all engagement proposals obtained and reviewed, that DRC's rates are competitive and reasonable given DRC's quality of services and expertise. The terms of DRC's retention are set forth in the Services Agreement; *provided, however*, that DRC is seeking approval solely of the terms and provisions as set forth in this Application and the Proposed Order.

### **Services To Be Provided**

10. Specifically, Debtor seeks to engage DRC to provide, to the extent Debtor requests, certain noticing, claims processing and solicitation services including, without limitation:

a. preparing and serving required notices and documents in this Case in accordance with the Bankruptcy Code and the Bankruptcy Rules in the form and manner directed by Debtor and/or the Court, including (i) notice of the commencement of this Case and the initial meeting of creditors under section 341(a) of the Bankruptcy Code, (ii) notice of any claims bar date, (iii) notices of objections to claims and objections to transfers of claims, (iv) notices of hearings on motions filed by the Office of the United States Trustee for the Southern District of Ohio ("**U.S. Trustee**"), (v) notices of transfers of claims, (vi) notices of any hearings on a disclosure statement and confirmation of Debtor's plan of reorganization, including under Bankruptcy Rule 3017(d), (vii) notice of the effective date of any plan and (viii) all other notices, orders, pleadings, publications or other documents as Debtor or Court may deem necessary or appropriate for an orderly administration of this Case.

b. maintaining an official copy of Debtor's schedules of assets and liabilities and statements of financial affairs (collectively, the "**Schedules**"), listing Debtor's known creditors and amounts owed thereto;

c. maintaining (i) a list of all potential creditors, equity holders and other parties in interest and (ii) a "core" mailing list consisting of all parties described in Bankruptcy Rule 2002(i), (j) and (k) and those parties that have filed a notice of appearance pursuant to Bankruptcy Rule 9010 and updating and making said lists available upon request by a party in interest or Clerk;

- d. furnishing a notice to all potential creditors of the last date for filing proofs of claim and a form for filing a proof of claim, after such notice and form are approved by the Court, and notifying the said potential creditors of the existence, amount and classification of their respective claims as set forth in the Schedules, which may be effected by inclusion of such information (or lack thereof, in cases where the Schedules indicate no debt due to the subject party) on a customized proof of claim form provided to potential creditors;
- e. maintaining a post office box or address for the purpose of receiving claims and returned mail and processing all mail received;
- f. for all notices, motions, orders or other pleadings or documents served, preparing and filing or causing to be filed with Clerk an affidavit or certificate of service within seven (7) business days of service which includes (i) either a copy of the notice served or the docket number(s) and title(s) of the pleading(s) served, (ii) a list of persons to whom it was mailed (in alphabetical order) with their addresses, (iii) the manner of service and (iv) the date served;
- g. processing all proofs of claim received, including those received by Clerk, checking said processing for accuracy and maintaining the original proofs of claim in a secure area;
- h. maintaining a claims register for Debtor (the “*Claims Register*”), providing Clerk with a certified, duplicate Claims Register and specifying in the Claims Register the following information for each claim docketed: (i) the claim number assigned, (ii) the date received, (iii) the name and address of the claimant and agent, if applicable, who filed the claim, (iv) the amount asserted, (v) the asserted classification(s) of the claim (e.g., secured, unsecured, priority, etc.), and (vi) any disposition of the claim;
- i. recording all transfers of claims and providing any notices of such transfers as required by Bankruptcy Rule 3001(e);
- j. relocating, by messenger or overnight delivery, all of the court-filed proofs of claim to the offices of DRC, not less than weekly;
- k. upon completion of the docketing process for all claims received to date for each case, turning over to Clerk copies of the Claims Register for Clerk’s review (upon Clerk’s request);

- l. monitoring the Court's docket for all notices of appearance, address changes and claims-related pleadings and orders filed and making necessary notations on and/or changes to the claims register and any service or mailing lists, including to identify and eliminate duplicative names and addresses from such lists;
- m. identifying and correcting any incomplete or incorrect addresses in any mailing or service lists;
- n. assisting in the dissemination of information to the public and responding to requests for the administrative information regarding this Case as directed by Debtor or the Court, including through the use of a case website and/or call center;
- o. if this Case is converted to a case under chapter 7 of the Bankruptcy Code, contacting Clerk's office within three (3) days of notice to DRC of entry of the order converting the case;
- p. thirty (30) days prior to the close of this Case, to the extent practicable, requesting that Debtor submit to the Court a proposed order dismissing DRC as Notice, Claims and Solicitation Agent and terminating its services in such capacity upon completion of its duties and responsibilities and upon the closing of this Case;
- q. within seven (7) days of notice to DRC of entry of an order closing this Case, providing to the Court the final version of the Claims Register as of the date immediately before the close of the Case;
- r. at the close of this Case, boxing and transporting all original documents, in proper format, as provided by Clerk's office, to the appropriate office of the Federal Archives Record Administration, as directed by the Clerk's office;
- s. assisting with, among other things, solicitation, balloting and tabulation of votes, and prepare any related reports, as required in support of confirmation of a chapter 11 plan, and in connection with such services, processing requests for documents from parties in interest, including, if applicable, brokerage firms, bank back-offices and institutional holders;
- t. preparing an official ballot certification and, if necessary, testifying in support of the ballot tabulation results;
- u. assisting with the preparation of Debtor's schedules of assets and liabilities and statements of financial affairs and gathering data in conjunction therewith;

- v. providing a confidential data room, if requested;
- w. managing and coordinating any distributions pursuant to a chapter 11 plan; and
- x. providing such other claims processing, noticing, plan solicitation and related administrative services as may be requested from time to time by Debtor.

11. The Claims Register shall be open to the public for examination without charge during regular business hours and on a case-specific website maintained by DRC.

12. DRC will follow the notice, claims and solicitation procedures that conform to the guidelines promulgated by Clerk, the Judicial Conference of the United States and as may be entered by the Court's order.

### **Professional Compensation**

13. The fees to be charged by DRC in connection with this Case are set forth in the Services Agreement. Debtor proposes that the cost of DRC's services be paid from Debtor's estate pursuant to section 156(c) of title 28 of the United States Code and section 503(b)(1)(A) of the Bankruptcy Code. Debtor respectfully submits that DRC's rates for its services in connection with the notice, claims processing and solicitation services are competitive and comparable to the rates charged by their competitors for similar services.

14. Furthermore, Debtor respectfully submits that the fees and expenses incurred by DRC are administrative in nature and, therefore, should not be subject to the standard fee application procedures for professionals. Specifically, Debtor requests authorization to compensate DRC in accordance with the terms and conditions set forth in the Services Agreement upon DRC's submission to Debtor of invoices summarizing, in reasonable detail, the dates and categories of services rendered and the fees charged and expenses incurred in connection with services provided by DRC to Debtor. DRC will also serve these invoices on

the Office of the United States Trustee for the Southern District of Ohio, counsel to Debtor, counsel to any official committee monitoring the expenses of Debtor and any party-in-interest who specifically requests service of the monthly invoices. If any dispute arises relating to the Services Agreement or the monthly invoices, the parties shall meet and confer in an attempt to resolve the dispute; if no resolution is achieved, the parties may seek resolution of the matter from the Court.

15. Under the terms of the Services Agreement, DRC received a retainer for pre-petition services in the amount of \$20,000 on March 27, 2018. On April 12, 2018, DRC received additional funds in the amount of \$13,996.16 for services rendered during February and March. On April 30, 2018, drew \$8,091.45 from its retainer for services rendered, leaving a balance of \$11,908.55, which will be credited to Debtor for post-petition services provided by DRC.

#### **Indemnification**

16. As part of the overall compensation to DRC under the terms of the Services Agreement, Debtor has agreed to certain indemnification and contribution obligations. The Services Agreement provides that Debtor will indemnify, defend and hold harmless DRC and its members, directors, officers, employees, representatives, affiliates, consultants, subcontractors and agents under certain circumstances specified in the Services Agreement, except in circumstances resulting from DRC's own bad-faith, self-dealing, breach of fiduciary duty (if any), gross negligence, fraud, willful misconduct or as otherwise provided in the Services Agreement or the Proposed Order. Both Debtor and DRC believe that such indemnification obligations are customary, reasonable and necessary to retain the services of a notice, claims and solicitation agent in this Case.

### **DRC's Disinterestedness**

17. Debtor has many creditors, and accordingly, DRC may have rendered and may continue to render services to certain of these creditors. DRC has not and will not represent the separate interests of any such creditor in connection with this case. Additionally, DRC employees may, in the ordinary course of their personal affairs, have relationships with certain creditors of Debtor. For example, one or more of DRC's employees may have obligations outstanding with financial institutions that are creditors of Debtor or may have used Debtor's services.

18. Certain of DRC's professionals were formerly employed by firms that may be creditors or may provide professional services to parties in interest in these cases. Such firms include: Buchanan Ingersoll & Rooney PC; Paul Hastings LLP; Paul, Weiss, Rifkind, Wharton & Garrison LLP; Kaye Scholer LLP; Skadden, Arps, Slate, Meagher & Flom LLP; Sheppard, Mullin, Richter & Hampton LLP; Baker & McKenzie LLP; Clifford Chance LLP; Hughes Hubbard & Reed LLP; Davis Polk & Wardwell LLP; Levene, Neale, Bender, Yoo & Brill L.L.P.; Law Offices of David Carlebach, Esq.; Blank Rome LLP; Anderson Kill P.C.; Willkie Farr & Gallagher LLP; Dechert LLP; Pryor Cashman LLP; Schulte Roth & Zabel LLP; Kurtzman Carson Consultants LLC; Epiq Bankruptcy Solutions, LLC; Rust Consulting/Omni Bankruptcy; and Wells Fargo Bank. Except as disclosed herein, these professionals did not work on any matters involving Debtor while employed by their previous firms. Moreover, these professionals were not employed by their previous firms when these chapter 11 cases were filed.

19. Although Debtor does not propose to employ DRC under section 327 of the Bankruptcy Code, to the best of Debtor's knowledge, information and belief, and except as disclosed in the Voorhies Declaration, DRC has represented that it neither holds nor represents

any interest adverse to Debtor in connection with any matter on which it would be employed and that it is a “disinterested person,” as referenced in section 327(a) of the Bankruptcy Code and as defined in section 101(14) of the Bankruptcy Code, as modified by section 1107(b) of the Bankruptcy Code. DRC will supplement its disclosure to the Court if any facts or circumstances are discovered that would require disclosure.

### **BASIS FOR RELIEF**

20. Although Debtor has not yet filed its schedules of assets and liabilities, it is expected that more than 6,000 parties will require notice of the bankruptcy filing. In view of the number of anticipated claimants and the complexity of Debtor's business, Debtor submits that the appointment of a notice, claims and solicitation agent is both necessary and in the best interests of both Debtor's estate and its creditors. Section 156(c) of title 28 of the United States Code, which governs the staffing and expenses of a bankruptcy court, authorizes the Court to use “facilities” or “services” other than the office of Clerk for administration of bankruptcy cases. It states:

Any court may utilize facilities or services, either on or off the court's premises, which pertain to the provision of notices, dockets, calendars and other administrative information to parties in cases filed under the provisions of title 11, United States Code, where the costs of such facilities or services are paid for out of the assets of the estate and are not charged to the United States. The utilization of such facilities or services shall be subject to such conditions and limitations as the pertinent circuit council may prescribe.

28 U.S.C. § 156(c).

21. Accordingly, section 156(c) of title 28 of the United States Code empowers the Court to utilize outside agents and facilities for notice and claims purposes, provided that Debtor's estate pays the cost of such services. For all of the foregoing reasons, Debtor believes

the retention of DRC as Notice, Claims and Solicitation Agent in this Case is necessary and in the best interests of Debtor, its estate and its creditors. Furthermore, Debtor respectfully submits that the fees and expenses that would be incurred by DRC under the proposed engagement would be administrative in nature and, therefore, should not be subject to standard fee application procedures of professionals.

### **NOTICE**

22. Notice of this Motion has been provided to the following parties or, in lieu thereof, to their counsel, if known: (a) the Office of the United States Trustee for the Southern District of Ohio; (b) Debtor's twenty (20) largest unsecured creditors; and (c) the agent for Debtor's primary secured lender group, Wells Fargo Bank, National Association. Debtor respectfully submits that such notice is appropriate under the circumstances and no other or further notice need be given.

### **REQUEST FOR WAIVER OF MEMORANDUM IN SUPPORT**

23. Debtor requests that the Court deem the contents of this Application to be sufficient for purposes of satisfying the memorandum in support of Rule 9013-1(a) of the Local Bankruptcy Rules for the Southern District of Ohio. The relief requested in the Application raises no novel issues of law.

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WHEREFORE, Debtor respectfully requests that this Court:

- (a) appoint DRC as Notice, Claims and Solicitation Agent in Debtor's Case, effective *nunc pro tunc* to the Petition Date;
- (b) provide that DRC be compensated in accordance with the terms set forth in the Application and Services Agreement;
- (c) waive the requirement that Debtor file a separate memorandum of law in support of the Application as required by Rule 9013-1(a) of the Local Bankruptcy Rules for the Southern District of Ohio;
- (d) provide immediately effective relief, notwithstanding the possible applicability of Federal Bankruptcy Rules 6004(g), 7062, 9014 or otherwise;
- (e) retain jurisdiction over any matters arising from or related to the Application; and
- (f) grant Debtor such other and further relief as is just and proper.

A proposed order is attached hereto as Exhibit 3.

Dated: May 1, 2018

Respectfully submitted,

/s/ Thomas R. Allen

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**EXHIBIT 1 TO APPLICATION TO RETAIN DONLIN, RECANO & COMPANY, INC.**

Standard Claims Administration and Noticing Agreement

## STANDARD CLAIMS ADMINISTRATION AND NOTICING AGREEMENT

TERMS AND CONDITIONS

**Donlin, Recano & Company, Inc.** (hereinafter called “DRC”) agrees to provide AcuSport Corporation, including but not limited to any and all bankruptcy cases filed by any affiliate of AcuSport Corporation (hereinafter called the “Client”) and Client agrees to purchase Services, (as defined below) upon the terms and conditions and other provisions stated herein. Client agrees and understands that none of the services constitute legal advice.

**1. SERVICES:** DRC agrees to provide the Client with consulting services regarding noticing and claims management and reconciliation, and any other services agreed upon by the parties or otherwise required by applicable law, government regulations, or court rules or orders. A more detailed description of the types of services offered by DRC, as well as the fees charged for such services, is annexed hereto as Schedule A.

**2. CHARGES:** All charges shall be based upon the time and materials incurred by DRC, billed at the DRC then prevailing standard rate unless another rate schedule is specifically and mutually agreed upon herein. DRC reserves its rights to adjust its standard rates in January of each year to reflect changes in the business and economic environment. In the event that rates are based other than on time and materials, and such other basis for rates is set forth herein, the Client agrees to pay, in addition to those rates, for all charges, incurred by DRC as a result of Client error or omission as determined by DRC. Such charges shall include but shall not be limited to re-runs and any additional clerical work, phone calls, travel expenses, or any other disbursements. When possible, DRC will notify Client in advance of any additional charges. Checks are accepted subject to collection and the date of collection shall be deemed the date of payment. Any check received from Client may be applied by DRC against any obligation owing by Client to DRC, and an acceptance by DRC of any partial payment shall not constitute a waiver of DRC's right to pursue the collection of any remaining balance. DRC requires advance deposits for all noticing, newspaper publishing or other significant expenditures as defined by DRC. In addition, Client shall reimburse DRC for all actual out-of-pocket expenses reasonably incurred by DRC. The out-of-pocket expenses may include, but are not limited to, postage, delivery services, travel, meals and other similar costs and expenses. In addition to all charges for services and materials hereunder, Client shall pay to DRC all taxes, however designated, levied or based that are applicable to this Agreement or are measured directly by payments made under this Agreement and are required to be collected by DRC or paid by DRC to taxing authorities. This provision, includes but is not limited to, sales, use and excise taxes, but does not include personal property taxes or taxes based on net income. In the event the Client files for protection pursuant to chapter 11 of title 11 of the United States Code, the parties intend that DRC shall be employed pursuant to 28 U.S.C §156(c), and that all fees and expenses due under this agreement shall be paid as administrative expenses of the Client's chapter 11 estate(s). In the event the Client's bankruptcy case(s) is converted to a chapter 7 case(s), any unpaid fees and costs with respect to this Agreement shall be treated as a chapter 11 administrative expense claim.

**3. TRANSPORTATION OF DATA:** Data submitted by the Client to DRC for processing shall be transported at the Client's risk and expense to and from the DRC office. In the event the Client fails to deliver the input data to DRC at the time scheduled, the Client agrees that DRC may extend, as necessary, the time for the completion of processing of such data. Client further agrees that the time for the completion or processing of such data may be extended because of the following holidays in addition to any Bank holidays recognized in the city in which DRC is located: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day. In any event, DRC does not warrant or represent that shipment or availability dates will be met, but will use its best efforts to do so. If DRC is required to stay open to perform required tasks on such days, an additional mutually agreed upon cost may be required by DRC.

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**4. EVERGREEN RETAINER & INVOICES:** At the commencement of this engagement, the Client shall pay to DRC an advance payment retainer (the “Retainer”) in the amount of \$15,000. The Retainer shall be an “evergreen” retainer and shall be applied to the payment of the final invoice from DRC for this engagement. DRC may apply the Retainer to any other invoice in its absolute discretion, and upon notice thereof from DRC, the Client shall replenish the Retainer. Invoices for pre-petition services shall be paid in full, and may be satisfied, in the absolute discretion of DRC, out of the Retainer, which shall be replenished upon notice thereof to the Client. DRC, in its absolute discretion, may suspend or discontinue services after filing of a petition if pre-petition invoices are not paid in full, or if the Retainer is not replenished when request therefore is made. DRC may require the Client to increase the Retainer if the average amount of monthly invoices for three consecutive months is 10% greater than the amount of the Retainer. Client shall pay the charges set forth in Schedule A, attached hereto. DRC shall invoice the Client monthly for all services rendered during the preceding month. Charges for a partial month's service shall be prorated based on a thirty (30) day month. Terms are net 20 days following the date of billing. Failure to pay any fees, costs or other amounts to DRC shall be a breach of this Agreement (a “Failure to Pay”). Notwithstanding anything else contained in this Agreement, in the event of a Failure to Pay, DRC reserves the right to withhold reports and materials of the Client, in addition to all other remedies available to DRC. Upon a Failure to Pay, DRC may assess a late charge at a rate of one and one-half percent (1-1/2%) per month or the highest rate permitted by law, whichever is less, on all unpaid amounts until paid in full. DRC shall also have the right, at its option, to terminate this agreement for non payment of invoices after 30 days from the date unpaid invoices are rendered (a “Non-Payment Breach”). If the invoice amount is disputed, notice shall be given to DRC within ten (10) days of receipt of the invoice by the Client. The undisputed portion of the invoice will remain due and payable. Late charges shall not accrue on any amounts in dispute. Notwithstanding anything contained in this agreement to the contrary, a Failure to Pay shall under no circumstances be construed as an agreement by DRC to reduce or waive DRC’s fees and expenses. The Client shall not agree or otherwise consent to a unilateral reduction or waiver of DRC fees and expenses without the explicit written consent of DRC and any such agreement or consent to such reduction or waiver by the Client without DRC’s explicit written consent shall be deemed null and void and constitute a breach of this Agreement (a “Material Breach”). Notwithstanding anything contained in this agreement to the contrary, upon the occurrence of a Material Breach, DRC shall have the right, at its option, to terminate this agreement upon five (5) business days notice to the Client.

**5. STORAGE:** Client shall assume the risks and DRC shall not be responsible for any damages, liability or expenses incurred in connection with any delay in delivery of or damage to cards, disks, magnetic tapes or any input data furnished by Client unless DRC has agreed in writing to assume such responsibility. Forms storage at DRC beyond a normal 90 day supply will be billed at standard warehousing rates established by DRC.

**6. E-MAIL COMMUNICATIONS:** DRC and the Client and its agents acknowledge that they may wish to communicate electronically with each other at a business e-mail address. However, the electronic transmission of information cannot be guaranteed to be secure or error free and such information could be intercepted, corrupted, lost, destroyed, arrive late or incomplete or otherwise be adversely affected or unsafe to use. It is the responsibility of the party receiving an electronic communication from the other to carry out a virus check on any attachments before launching any documents, whether received on disk or otherwise.

**7. SUPPLIES:** All supplies shall be furnished at Client's expense.

**8. WARRANTY AND RELIANCE:** Client acknowledges and agrees that DRC will take direction from the Client’s representatives, employees, agents and/or professionals (collectively, the “Client Parties”) with respect to services being provided under this Agreement. Client and DRC agree that DRC may rely upon, and the

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Client agrees to be bound by, any requests, advice or information provided by the Client Parties to the same extent as if such requests, advice or information were provided by the Client. DRC shall have the right to rely on the accuracy of all data provided by the Client and the Client Parties to DRC. Client is responsible for the accuracy of all programs, data and other information it submits to DRC. The DRC warranty under this agreement shall be limited to the re-running at its expense, of any inaccurate reports provided that such inaccuracies were caused solely as a result of performance hereunder and provided further that DRC shall receive written notice of such inaccuracies within thirty (30) days of delivery of such report. If said notice is not made to DRC within the prescribed time limit Client is due and liable for all charges. Client agrees that the foregoing constitutes the exclusive remedy available to it.

**9. TERM:** This agreement shall be effective from the date upon which it is accepted by DRC as set forth herein and shall remain in force until terminated by either party upon thirty days' written notice to the other party or by DRC upon occurrence of a Non-Payment Breach or a Material Breach, as defined in paragraph 4 above. Provided, however, that in the event that Client files a petition in bankruptcy, this agreement will only be effective post-petition upon the approval of DRC's retention by the bankruptcy court. As soon as practical after any bankruptcy filing, Client shall bring a motion before the bankruptcy court seeking approval of DRC's retention. In the event that a chapter 7 trustee, chapter 11 trustee or chapter 11 liquidating trustee is appointed, this agreement will remain in effect until an order of the Bankruptcy Court is entered discharging DRC from service and responsibility under this Agreement. The payment obligation and the indemnity obligation set forth in sections 4 and 11 herein, respectively, shall survive termination of this Agreement. In the event this Agreement is terminated, DRC shall coordinate with the Client and, to the extent applicable, the Office of the Clerk of the Bankruptcy Court, for an orderly transfer of record keeping functions and shall provide all necessary staff, services and assistance required for such orderly transfer. Client agrees to pay for such services in accordance with DRC's then existing fees for such services. If termination of this Agreement occurs following entry of an order by the Bankruptcy Court approving DRC's retention under 28 U.S.C. § 156 (c), then the Client shall immediately seek entry of an order (in form and substance reasonably acceptable to DRC) that discharges DRC from service and responsibility under this Agreement and 28 U.S.C. § 156 (c).

**10. TERMS OF AGREEMENT:** The terms of this Agreement prevail over any and all terms contained in Client's purchase order or authorization and no waiver, discharge, or modification of the terms of this Agreement shall bind DRC unless in writing and signed by an authorized representative of DRC.

**11. INDEMNIFICATION:** The Client shall indemnify and hold DRC and its affiliates, officers, directors, agents, employees, consultants, and subcontractors (collectively, the "Indemnified Parties") harmless, to the fullest extent permitted by applicable law, from and against any and all losses, claims, damages, liabilities, costs, obligations, judgments, causes of action, charges (including, without limitation, costs of preparation and attorneys' fees) and expenses as incurred (collectively, "Losses"), arising out of or relating to (a) any breach or alleged breach of this Agreement by Client, or (b) any negligence or willful or reckless actions or misconduct of Client or Client Parties with respect to this Agreement, other than Losses resulting solely from DRC's negligence or misconduct. Without limiting the generality of the foregoing, "Losses" includes any liabilities resulting from claims by third persons against any Indemnified Parties. The Client shall notify DRC in writing promptly of the institution, threat or assertion of any claim of which the Client is aware with respect to the services provided by DRC under this Agreement. Such indemnity shall remain in full force and effect regardless of any investigation made by or on behalf of DRC and shall survive the termination of this Agreement until the expiration of all applicable statutes of limitation with respect to DRC's liabilities.

**12. CONFIDENTIALITY:** Each of DRC and the Client, on behalf of themselves and their respective employees, agents, professionals and representatives, agrees to keep confidential all non-public records, systems, procedures, software and other information received from the other party in connection with the services provided under this Agreement; provided, however, that if either party reasonably believes that it is

## Donlin, Recano & Company, Inc.

required to produce any such information by order of any governmental agency or other regulatory body, it may, upon not less than five (5) business days' written notice to the other party, release the required information.

**13. OWNERSHIP OF PROGRAMS:** Unless otherwise agreed in writing, all programs developed by DRC in connection with any services to be performed under this Agreement shall remain the sole property of DRC. All programs and/or systems documentation in the possession of DRC which DRC has agreed in writing to return to the Client, prepared for the Client by DRC, shall be returned to the Client upon demand providing all charges for such programming and/or systems documentation have been paid in full.

**14. SYSTEMS IMPROVEMENTS:** DRC's policy is to provide continuous improvements in the quality of service to its clients. DRC, therefore, reserves the right to make changes in operating procedures, operating systems, programming languages, application programs, time period of accessibility, equipment, and the DRC data center serving the Client, so long as any such changes do not materially interfere with ongoing services provided to the Client in connection with the Client's chapter 11 case.

**15. UNUSUAL MEASURES:** Where the Client requires measures that are unusual and beyond the normal business practice and hours of DRC such as, but not limited to, CPA Audit, Errors and Omissions Insurance, and/or Off-Premises Storage of Data, the cost of such measures, if provided by DRC, shall be charged to the Client. Said charges may be required in advance if DRC deems it appropriate.

**16. JURISDICTION.** In the event that Client commences a case under title 11 of the United States Code, this Agreement shall be subject to approval by the United States Bankruptcy Court for the district in which the Client commences its case (the "Bankruptcy Court") and such court shall retain jurisdiction over all matters regarding this Agreement.

**17. FORCE MAJEURE.** Whenever performance by DRC of any of its obligations hereunder is substantially prevented by reason of any act of God, strike, lock out or other industrial or transportational disturbance, fire, lack of materials, law, regulation or ordinance, war or war conditions, or by reasons of any other matter beyond DRC's reasonable control, then such performance shall be excused and this Agreement shall be deemed suspended during the continuation of such prevention and for a reasonable time thereafter.

**18. NOTICE.** Any notice or other communication required or permitted hereunder shall be in writing and shall be delivered personally, or sent by registered mail, postage prepaid, or overnight courier. Any such notice shall be deemed given when so delivered personally, or, if mailed, five days after the date of deposit in the United States mail, or, if sent by overnight courier, one business day after delivery to such courier, as follows: if to DRC, to Donlin, Recano & Company, Inc., 6201 15<sup>th</sup> Avenue, Brooklyn, New York, New York 11219, Attention: Nellwyn Voorhies, Esq.; if to the Client, to Bryan Cave LLP, 161 N. Clarke St. Suite 4300, Chicago, Illinois 6060, Attention Jason DeJonker, Esq.

**19. GOVERNING LAW.** This Agreement will be governed by and construed in accordance with the laws of the State of New York (without reference to its conflict of laws provisions).

**20. SEVERABILITY.** All clauses and covenants contained in this Agreement are severable and in the event any of them are held to be invalid by any court, such clause or covenant shall be valid and enforced to the maximum extent as to which it may be valid and enforceable, and this Agreement will be interpreted as if such invalid clauses or covenants were not contained herein.

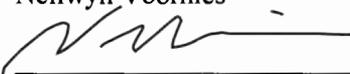
**21. ASSIGNMENT.** This Agreement and the rights and obligations of DRC and the Client hereunder shall bind and inure to the benefit of any successors or assigns thereto.

**Donlin, Recano & Company, Inc.**

**22. GENERAL:** The terms and conditions of this Agreement may be modified by DRC upon one (1) month's prior written notice to Client. Client will not employ any DRC employee within two (2) years from the termination of this Agreement. The term "this Agreement" as used herein includes any future written amendments, modifications, supplements or schedules duly executed by Client and DRC. This Agreement contains the entire agreement between the parties with respect to the subject matter hereof. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one in the same instrument. A facsimile copy, photocopy or imaged copy of this Agreement shall be considered an original copy. The Client shall file an application with the Bankruptcy Court seeking approval of this Agreement (the "Application"), the form and substance of which shall be reasonably acceptable to DRC. If an order is entered approving such Application (the "Order"), any discrepancies between this Agreement, the Application and the Order shall be controlled by the Application and Order.

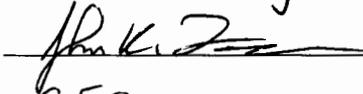
Accepted and Approved:

Donlin, Recano & Company, Inc.  
6201 15<sup>th</sup> Avenue  
Brooklyn, New York 11219

By: Nellwyn Voorhies  
Signature:   
Title: Executive Director  
Date: 4/30/18

Accepted and Approved:

AcuSport Corporation

By: John Flanagan  
Signature:   
Title: CFO  
Date: 2-28-2018

This Agreement is subject to the terms and conditions set forth herein. Client acknowledges reading and understanding it and agrees to be bound by its terms and conditions and further agrees that it is the complete and exclusive statement of the Agreement between the parties, which supersedes all proposals oral or written and other prior communications between the parties relating to the subject matter of this Agreement.

**Donlin, Recano & Company, Inc.**

**SCHEDULE A  
AcuSport Corporation  
Fee Schedule**

<b>Professional Service</b>	<b>Hourly Rates</b>
Senior Bankruptcy Consultant	\$175
Case Manager	\$140
Technology/Programming Consultant	\$110
Consultant/Analyst	\$\$90
Clerical	\$45
<b>Noticing Service</b>	
Laser Printing/ Photocopies	\$.08 per Image
Personalization/ Labels	WAIVED
Fax (Incoming)	WAIVED
Fax Noticing	\$.08 per Page
Postage and Overnight Delivery	At Cost
Electronic Noticing	WAIVED
Publication Services	At Cost
<b>Solicitation, Balloting, Schedule/SOFA</b>	
Print and Mail Ballots/Plan Disbursements	Print/hourly fees above – Plan/DS media varies
Set-up Tabulation & Vote Verification	\$90 - \$175 as needed
Public Securities Solicitation	N/A
Schedule/SOFA preparation	\$90 - \$195 per Hour
<b>Claims Docketing and Management</b>	
Website Development	\$90 per Hour
Web Hosting	WAIVED
Creditor Data Storage/ Electronic Document Storage	\$.05 per record monthly
Document Imaging	\$.08 per Image
Electronic Claims filing	No Set-up charge or per claim charge
<b>Data Room Services</b>	
DRC DocuLinks™ Virtual Data Room Services	Hosting WAIVED
Data Room Development	\$90 per Hour
<b>Miscellaneous</b>	
Crisis Communications and Messaging	\$395 per hour
Out-of-Pocket Expenses (including any required travel)	At Cost
Call Center Operators	\$65 per hour

**EXHIBIT 2 TO APPLICATION TO RETAIN DONLIN, RECANO & COMPANY, INC.**

Declaration of Nellwyn Voorhies

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

EXHIBIT 2

In re:	)	Chapter 11
	)	
AcuSport Corporation,	)	Case No. ___-_____
	)	
Debtor.	)	Honorable _____

**DECLARATION OF NELLWYN VOORHIES IN SUPPORT OF  
DEBTOR'S APPLICATION FOR ENTRY OF AN ORDER AUTHORIZING  
DEBTOR TO EMPLOY AND RETAIN DONLIN, RECANO & COMPANY, INC.  
AS NOTICE, CLAIMS AND SOLICITATION AGENT, EFFECTIVE  
NUNC PRO TUNC TO THE PETITION DATE**

I, Nellwyn Voorhies, being duly sworn, state the following under penalty of perjury:

1. I am the Executive Director of Donlin, Recano & Company, Inc. (“**DRC**”), a chapter 11 administrative services firm whose offices are located at 6201 15<sup>th</sup> Avenue, Brooklyn, New York 11219. Except as otherwise noted, I have personal knowledge of the matters set forth herein, and if called and sworn as a witness, I could and would testify competently thereto. I submit this Declaration in support of the above-captioned debtor's (“**Debtor**”) Application for Entry of an Order Authorizing Debtor to Employ and Retain DRC as Notice, Claims and Solicitation Agent, Effective *Nunc Pro Tunc* to the Petition Date (the “**Application**”)<sup>1</sup> to which this declaration is attached. Except as otherwise noted, I have personal knowledge of the matters set forth herein.

2. DRC is comprised of leading industry professionals with significant experience in both the legal and administrative aspects of large, complex chapter 11 cases. DRC’s professionals have experience in noticing, claims administration, solicitation, balloting and facilitating other administrative aspects of chapter 11 cases and experience in matters of this size and complexity. DRC’s professionals have acted as counsel for debtors or the official claims and noticing agent in other large bankruptcy cases. DRC’s active cases

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<sup>1</sup> Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Application.

include: *See e.g., In re: BCBG Max Azria Global Holdings, LLC, et al.* Case No. 17-10466 (Bankr. S.D.N.Y. 2017); *In re: Bostwick Laboratories, Inc., et al.* Case No. 17-10570 (BLS) (Bankr. D. Del. 2017); *In re: hhGregg, Inc., et al.* Case No. 17-01302-11 (Bankr. S.D. Ind. 2017); *In re: Foundation Healthcare, Inc.,* Case No. 17-42571 (RFN) (Bankr. N.D. Tex. 2017); *In re: Gander Mountain Company, et al.* Case No. 17-30673 (MER) (Bankr. D. Minn. 2017); *In re: Rooster Energy, L.L.C., et al.* Case No. 17-50705 (Bankr. W.D. La. 2017); *In re: Forest Park Medical Center at Southlake, LLC* Case No. 16-40273 (RFN) (N.D. Texas, Fort Worth Division 2016); *In re: Peek Aren't You Curious, Inc.* Case No. 16-30146 (HLB) (Bankr. N.D. Cal.); *In re: Relativity Fashion, LLC, et al.* Case No. 15-11989 (MEW) (Bankr. S.D.N.Y. 2015); *In re: Boomerang Tube, LLC, et al.,* Case No. 15-11247 (MFW) (Bankr. D. Del. 2015); *In re: Seal 123, Inc. et al.,* Case No. 15-10081(CSS) (Bankr. D. Del. 2015); *In re: Cengage Learning, Inc., et al.,* Case No. 13-44106 (ESS) (Bankr. E.D.N.Y. 2013); *In re: Excel Maritime Carriers Ltd., et al.,* Case No. 13-23060 (RDD).

3. As agent and custodian of Court records pursuant to 28 U.S.C. § 156(c), DRC will perform, at the request of the Office of the Clerk of the Bankruptcy Court (the “*Clerk*”), the services specified in the Application and the Services Agreement. In addition, at Debtor's request, DRC will also perform any related administrative, technical and support services as specified in the Application and the Services Agreement. In performing such services, DRC will charge Debtor the rates set forth in the Services Agreement, which is attached as Exhibit 1 to the Application.

4. DRC represents, among other things, the following:
  - a. DRC is not a creditor of Debtor;
  - b. DRC will not consider itself employed by the United States government and shall not seek any compensation from the United States government in its capacity as the Notice, Claims and Solicitation Agent in this Case;

- c. By accepting employment in this Case, DRC waives any rights to receive compensation from the United States government in connection with this Case;
- d. In its capacity as the Notice, Claims and Solicitation Agent in this Case, DRC will not be an agent of the United States and will not act on behalf of the United States;
- e. DRC will not employ any past or present employees of Debtor in connection with its work as the Notice, Claims and Solicitation Agent in this Case;
- f. DRC is a “disinterested person” as that term is defined in section 101(14) of the Bankruptcy Code with respect to the matters upon which it is engaged;
- g. In its capacity as Notice, Claims and Solicitation Agent in this Case, DRC will not intentionally misrepresent any fact to any person;
- h. DRC shall be under the supervision and control of the Clerk’s office with respect to the receipt and recordation of claims and claim transfers;
- i. DRC will comply with all requests of the Clerk’s office and the guidelines promulgated by the Judicial Conference of the United States for the implementation of 28 U.S.C. § 156(c); and
- j. None of the services provided by DRC as Notice, Claims and Solicitation Agent in this Case shall be at the expense of the Clerk’s office.

5. Although Debtor does not propose to retain DRC under section 327 of the Bankruptcy Code pursuant to the Application, I caused to be submitted for review by our conflicts system the names of all known potential parties in interest (the “*Potential Parties in Interest*”) in this Case. The list of Potential Parties in Interest was provided by Debtor and included, among other parties, Debtor, non-debtor affiliates, current and former directors and officers of Debtor, significant stockholders, secured creditors, lenders, Debtor's 20 largest unsecured creditors and other parties. The results of the conflict check were compiled and reviewed by DRC professionals under my supervision. At this time, and as set forth in further detail herein, DRC is not aware of any relationship that would present a disqualifying conflict of interest. Should DRC discover any new relevant facts or

relationships bearing on the matters described herein during the period of its retention, DRC will use reasonable efforts to file promptly a supplemental declaration.

6. Certain of DRC's professionals were formerly employed by firms that may be creditors or may provide professional services to parties in interest in this Case. Such firms include: Buchanan Ingersoll & Rooney PC; Paul Hastings LLP; Paul, Weiss, Rifkind, Wharton & Garrison LLP; Kaye Scholer LLP; Skadden, Arps, Slate, Meagher & Flom LLP; Sheppard, Mullin, Richter & Hampton LLP; Baker & McKenzie LLP; Clifford Chance LLP; Hughes Hubbard & Reed LLP; Davis Polk & Wardwell LLP; Levene, Neale, Bender, Yoo & Brill L.L.P.; Law Offices of David Carlebach, Esq.; Blank Rome LLP; Anderson Kill P.C.; Willkie Farr & Gallagher LLP; Dechert LLP; Pryor Cashman LLP; Schulte Roth & Zabel LLP; Kurtzman Carson Consultants LLC; Epiq Bankruptcy Solutions, LLC; Rust Consulting/Omni Bankruptcy; and Wells Fargo Bank. Except as disclosed herein, these professionals did not work on any matters involving Debtor while employed by their previous firms. Moreover, these professionals were not employed by their previous firms when this Case was filed.

7. To the best of my knowledge, and based solely upon information provided to me by Debtor, and except as provided herein, neither DRC, nor any of its professionals, has any materially adverse connection to Debtor, its creditors or other relevant parties. DRC may have relationships with certain of Debtor's creditors as vendors or in connection with cases in which DRC serves or has served in a neutral capacity as Claims and Noticing Agent and/or administrative advisor for another chapter 11 debtor.

8. DRC has and will continue to represent clients in matters unrelated to this Case. In addition, DRC and its personnel have, and will continue to have, relationships personally and in the ordinary course of business with certain vendors, professionals and other parties in interest that may be involved in Debtor's chapter 11 case. DRC may also provide professional services to entities or persons that may be creditors or parties in

interest in this Case, which services do not directly relate to, or have any direct connection with, this Case or Debtor.

9. DRC and its personnel in their individual capacities regularly utilize the services of law firms, accounting firms and financial advisors. Such firms engaged by DRC or its personnel may appear in chapter 11 cases representing Debtor or parties in interest. All engagements where such firms represent DRC or its personnel in their individual capacities are unrelated to this Case.

10. To the best of my knowledge, information and belief, insofar as I have been able to ascertain after reasonable inquiry:

- a. neither DRC nor any of its personnel has any materially adverse connection with Debtor, its creditors, the Office of the United States Trustee or any employees thereof, or any party in interest herein;
- b. DRC and its personnel are “disinterested persons,” as that term is defined in section 101(14) of the Bankruptcy Code, except that DRC was employed by Debtor prior to the Petition Date as allowed under section 1107(b) of the Bankruptcy Code; and
- c. neither DRC nor any of its personnel hold or represent an interest materially adverse to Debtor's estate in connection with any matter upon which DRC would be employed. Should DRC discover any new relevant facts or relationships bearing on the matters described herein during the period of its retention, DRC will use reasonable efforts to file promptly a supplemental declaration.

11. DRC is an affiliate of American Stock Transfer & Trust Company, LLC (“AST”). AST is a global financial communications and stakeholder management company. Within the AST corporate structure, DRC operates as a separate and independent legal entity. Given the legal and operational separateness of DRC from AST, DRC does not believe that any relationships that AST and its affiliates maintain would create an interest of DRC that would be materially adverse to Debtor’s estate or any class of creditors or equity security holders.

12. No personnel of DRC is related or connected to any United States Bankruptcy Judge or the United States Trustee for the Southern District of Ohio or to any employee in the offices thereof.

13. There is no agreement or understanding between DRC and any other person or entity (other than affiliates, employees and contractors) for sharing compensation received or to be received for services rendered by DRC in connection with this Case.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on May 1, 2018



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Nellwyn Voorhies  
Executive Director  
Donlin, Recano & Company, Inc.

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

In re: ) Chapter 11  
 )  
AcuSport Corporation, ) Case No. 18-52736  
 )  
Debtor. ) Honorable John E. Hoffman, Jr.

**ORDER AUTHORIZING DEBTOR TO EMPLOY AND RETAIN DONLIN, RECANO &  
COMPANY, INC. AS NOTICE, CLAIMS AND SOLICITATION AGENT, EFFECTIVE  
NUNC PRO TUNC TO THE PETITION DATE**

Upon the Application (the “*Application*”)<sup>1</sup> of AcuSport Corporation, the debtor and debtor in possession (“*Debtor*” or “*AcuSport*”) in this chapter 11 case (the “*Case*”) for entry of an order pursuant to 28 U.S.C. § 156(c) and 11 U.S.C. §503(b) for authority to retain Donlin, Recano & Company, Inc. as notice, claims and solicitation agent, effective *nunc pro tunc* to the Petition Date; the Court having reviewed the Application and having heard the statements of

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<sup>1</sup> All capitalized terms used herein but not defined shall have the meanings given them in the Application.

counsel in support of the relief requested therein at a hearing before the Court (the “*Hearing*”); and upon the Flanagan Declaration and the Voorhies Declaration; and the Court having found and concluded that (i) it has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, (ii) this is a core proceeding, (iii) notice of the Application was sufficient under the circumstances, and (iv) the legal and factual bases set forth in the Application, the Flanagan Declaration, the Voorhies Declaration, and at the Hearing establish just cause for the relief granted herein; and this Court having determined that granting the relief requested in the Application is in the best interests of Debtor, its estate and its creditors; and after due deliberation and sufficient cause appearing therefore;

IT IS ORDERED that:

1. The Application is granted.
2. Pursuant to 28 U.S.C. §156(c) and 11 U.S.C. §503(b), Debtor is authorized to employ and retain DRC as its notice, claims and solicitation agent on the terms set forth in the Application, the Services Agreement and the Voorhies Declaration, *nunc pro tunc* to the Petition Date.
3. Debtor shall be, and is hereby, authorized to compensate DRC for its services and reimburse DRC for any related expenses in accordance with applicable provisions of the Services Agreement without the need for DRC to file any fee applications or otherwise seek Court approval for the compensation of its services and reimbursement of its expenses, and such fees and expenses of DRC shall be treated as administrative expenses of Debtor’ chapter 11 estate and shall be paid by Debtor in the ordinary course of business
4. DRC shall serve invoices, summarizing, in reasonable detail, the dates and categories of services rendered and the fees charged and expenses incurred, on the Office of

the United States Trustee for the Southern District of Ohio, counsel to Debtor, counsel to any official committee monitoring the expenses of Debtor and any party-in-interest who specifically requests service of the monthly invoices.

5. The Court shall retain jurisdiction over any matters arising from or relating to the implementation and interpretation of this Order.

6. The requirement pursuant to Local Bankruptcy Rule 9013-1(a) that Debtor file a memorandum of law in support of the Application is hereby waived.

7. Notwithstanding the possible applicability of Federal Bankruptcy Rules 6004(g), 7062, 9014 or otherwise, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

IT IS SO ORDERED.

Submitted By:

/s/ Thomas R. Allen

Thomas R. Allen (0017513)  
Richard K. Stovall (0029978)  
J. Matthew Fisher (0067192)  
Erin L. Gapinski (0084984)  
ALLEN KUEHNLE STOVALL & NEUMAN LLP  
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Columbus, Ohio 43215  
Tel: (614) 221-8500  
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stovall@aksnlaw.com  
fisher@aksnlaw.com  
gapinski@aksnlaw.com

*Proposed Local Counsel for Debtor and  
Debtor in Possession, AcuSport Corporation*

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and

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*Proposed Counsel for Debtor and  
Debtor in Possession, AcuSport Corporation*