

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

UBIOME, INC.,¹

Debtor.

Chapter 11

Case No. 19-____ (____)

**DEBTOR’S MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS
AUTHORIZING (A) CONTINUATION OF, AND PAYMENT OF PREPETITION
OBLIGATIONS INCURRED IN THE ORDINARY COURSE OF BUSINESS IN
CONNECTION WITH VARIOUS INSURANCE POLICIES, INCLUDING PAYMENT
OF POLICY PREMIUMS AND BROKER FEES, AND (B) BANKS TO HONOR AND
PROCESS CHECKS AND ELECTRONIC TRANSFER
REQUESTS RELATED THERETO**

uBiome, Inc., the debtor and debtor in possession in the above-captioned chapter 11 case (the “Debtor”) hereby moves the Court (this “Motion”) for entry of an interim order (the “Interim Order”) and a final order (the “Final Order”), substantially in the form annexed hereto as Exhibit A and Exhibit B, respectively, pursuant to sections 105(a), 363(b), and 364 of title 11 of the United States Code (the “Bankruptcy Code”) and Rule 6003(b) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), authorizing the Debtor to (a) continue and renew its insurance policies, or obtain new insurance policies, as needed in the ordinary course of business, and (b) honor all of its prepetition and postpetition insurance obligations in the ordinary course of business. In support of this Motion, the Debtor relies upon and incorporates by reference the *Declaration of Curtis G. Solsvig III in Support of the Debtor’s Chapter 11 Petition and Requests for First Day Relief* (the “First Day Declaration”), which was filed

¹ The Debtor and the last four digits of its taxpayer identification number is: uBiome, Inc. (0019). The Debtor’s headquarters is located at 360 Langton Street, Suite 301, San Francisco, CA 94103.

concurrently herewith.² In further support of this Motion, the Debtor respectfully represents as follows:

JURISDICTION AND VENUE

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334(b) and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated as of February 29, 2012. This is a core proceeding pursuant to 28 U.S.C. § 157(b), and pursuant to Rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), the Debtor consents to the entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution. Venue is proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory and legal predicates for the relief requested herein are sections 105(a), 363(b), and 364 of the Bankruptcy Code and Bankruptcy Rule 6003(b).

BACKGROUND

2. On the date hereof (the “Petition Date”), the Debtor commenced a voluntary case under chapter 11 of the Bankruptcy Code. Pursuant to sections 1107(a) and 1108 of the Bankruptcy Code, the Debtor is continuing to manage its financial affairs as debtor in possession. No trustee, examiner, or official committee of unsecured creditors has been appointed in this chapter 11 case (this “Chapter 11 Case”).

² All capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the First Day Declaration.

3. Information regarding the Debtor's history and business operations, capital structure and primary secured indebtedness, and the events leading up to the commencement of this Chapter 11 Case can be found in the First Day Declaration.

THE DEBTOR'S INSURANCE POLICIES

A. The Debtor's Insurance Policies³

4. In the ordinary course of its business, the Debtor maintains directors and officers liability, employment practices liability, workers' compensation liability, cyber liability, fiduciary liability, umbrella and excess liability, property liability, crime, kidnap and ransom, commercial liability, auto liability and various other insurance programs through several different insurance carriers (collectively, the "Insurers") under the insurance contracts (collectively, the "Insurance Policies") listed on Exhibit C annexed hereto.

5. Under the Insurance Policies, the Debtor is required to pay premiums based on fixed rates set by the Insurers. The Debtor incurs a total of approximately \$930,000 in the aggregate in annual premiums for the Insurance Policies, the majority of which were paid prior to the Petition Date.

B. Broker Fees

6. The Debtor employs Aon Risk Solutions as its insurance broker (the "Broker") to assist it with the procurement and negotiation of the Insurance Policies. The Broker is compensated directly by the insurance carriers on a commission basis.

RELIEF REQUESTED

7. The Debtor seeks entry of the Interim Order and the Final Order authorizing, but not directing, the Debtor to (a) maintain the Insurance Policies without interruption, and to

³ The descriptions of the Insurance Policies herein are intended only as a summary, and the actual terms of such Insurance Policies shall govern in the event of any inconsistency with the descriptions set forth herein.

renew, supplement, modify, or extend (including through obtaining “tail” coverage) the Insurance Policies, or enter into new insurance policies, as needed in the ordinary course of business, and (b) honor all of its prepetition and postpetition Insurance Obligations, under and in connection with the Insurance Policies on an uninterrupted basis and in the ordinary course of business during the administration of this Chapter 11 Case.

8. The Debtor estimates that, as of the Petition Date, approximately \$225,000 remains outstanding on account of the Insurance Obligations, approximately \$115,000 of which will come due in the first thirty (30) days of this Chapter 11 Case. The Debtor seeks authority, but not direction, to pay any Insurance Obligations that may be outstanding, up to an aggregate total of \$225,000, including to the extent that the Debtor might discover and determine, in its discretion, that a payment is necessary to avoid cancellation, default, alteration, assignment, attachment, lapse, or any form of impairment to the coverage, benefits, or proceeds provided under the Insurance Policies.

9. Additionally, the Debtor seeks authority for all banks and financial institutions (collectively, the “Banks”) to receive, process, honor, and pay checks or electronic transfers used by the Debtor to pay the foregoing and to rely on the Debtor’s representations as to which checks are issued and authorized to be paid in accordance with this Motion.

BASIS FOR RELIEF

A. Honoring the Insurance Obligations is Warranted Under Section 363(b) of the Bankruptcy Code

10. Section 363 of the Bankruptcy Code provides, in relevant part, that “[t]he [debtor], after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). Under section 363(b), courts require only that the debtor “show that a sound business purpose justifies such actions.” *Dai-Ichi*

Kangyo Bank, Ltd. v. Montgomery Ward Holding Corp. (In re Montgomery Ward Holding Corp.), 242 B.R. 147, 153 (D. Del. 1999) (citations omitted); *see also In re Phoenix Steel Corp.*, 82 B.R. 334, 335–36 (Bankr. D. Del. 1987); *In re Adelpia Commc'ns Corp.*, No. 02-41729 (REG), 2003 WL 22316543, at *30 (Bankr. S.D.N.Y. Mar. 4, 2003); *Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1070 (2d Cir. 1983). Moreover, “[w]here the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor’s conduct.” *Comm. of Asbestos-Related Litigants v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986) (citation omitted); *see also Stanziale v. Nachtomi (In re Tower Air, Inc.)*, 416 F.3d 229, 238 (3d Cir. 2005) (“Overcoming the presumptions of the business judgment rule on the merits is a near-Herculean task.”).

11. The Debtor has satisfied the business judgment standard. First, the coverage provided under the Insurance Policies is essential for preserving the value of the Debtor’s assets and, in many instances, such coverage is required by various regulations, laws, and contracts that govern the Debtor’s business operations. Indeed, section 1112(b)(4)(C) of the Bankruptcy Code provides that “failure to maintain appropriate insurance that poses a risk to the estate or to the public,” is “cause” for mandatory conversion or dismissal of a chapter 11 case. 11 U.S.C. § 1112(b)(4)(C). Moreover, maintenance of insurance policies is required by the operating guidelines established by the Office of the United States Trustee (the “U.S. Trustee”). *See* 3 United States Trustee Manual, § 3-3.2.3 (Oct. 1998) (“A debtor must obtain appropriate insurance coverage, and documentation regarding the existence of the coverage must be provided to the Office of the United States Trustee as early in the case as possible.”). Second, if the Debtor fails to pay the Insurance Obligations, the Insurers might seek to void the Debtor’s

coverage under the Insurance Policies.⁴ Such a disruption of the Debtor's insurance coverage could expose the Debtor and its estate to serious risks, including, but not limited to: (a) direct liability for the payment of claims that otherwise would have been payable by the Insurers; (b) material costs and other losses that otherwise would have been reimbursed by the Insurers under the Insurance Policies; (c) the loss of good standing certification in jurisdictions that require the Debtor to maintain certain levels of insurance coverage; (d) the inability to obtain similar types of insurance coverage; and (e) higher costs for re-establishing lapsed policies or obtaining new insurance coverage. Any or all of these consequences could cause serious harm to the Debtor's business. Granting the relief requested herein will enhance the likelihood that the Debtor can maximize value through a going concern sale process, thereby furthering the goals of chapter 11: "facilitating the continued operation and rehabilitation of the debtor." *In re Ionosphere Clubs*, 98 B.R. 174, 176 (Bankr. S.D.N.Y. 1989).

12. The Debtor may also need to renew or replace certain of the Insurance Policies during the course of the Chapter 11 Case, or enter into new policies. If the Debtor does not pay the Insurance Obligations, there is a risk that the Insurers will refuse to renew the Insurance Policies.

13. Although the Debtor believes that the renewal, modification, or new execution of the Insurance Policies would constitute ordinary course transactions, which do not require Court approval, the Debtor nevertheless seeks authority to continue to renew and modify the Insurance Policies in order to assure the Debtor's Insurers that the Debtor has full authority with respect to new or modified arrangements without the need to obtain further approval from the Court.

⁴ The Debtor reserves all rights with respect to the Insurance Policies, including the right to oppose any effort by any Insurers to terminate any of the Insurance Policies.

B. Honoring the Insurance Obligations is Warranted Under the Doctrine of Necessity

14. Courts have also authorized payment of prepetition claims in appropriate circumstances pursuant to section 105(a) of the Bankruptcy Code. Section 105(a) of the Bankruptcy Code, which codifies the inherent equitable powers of the bankruptcy court, empowers the bankruptcy court to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). Under section 105(a), courts may permit pre-plan payments of prepetition obligations when such payments are essential to the continued operation of the debtor’s business and, in particular, where nonpayment of a prepetition obligation would trigger a withholding of goods or services essential to the debtor’s business reorganization plan. *See, e.g., In re Ionosphere Clubs*, 98 B.R. at 177 (finding that section 105 empowers bankruptcy courts to authorize payment of prepetition debt when such payment is needed to facilitate the rehabilitation of the debtor).

15. Numerous courts have used their section 105(a) powers under the “doctrine of necessity” to authorize payment of prepetition obligations where, as here, such payment is an essential element of the preservation of the debtor in possession’s potential for rehabilitation. *See In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002) (reasoning that because the debtor in possession has fiduciary duties it must meet, it is logical that the bankruptcy court may “use Section 105(a) of the [Bankruptcy] Code to authorize satisfaction of the prepetition claim in aid of preservation or enhancement of the estate”); *In re Synteen Techs., Inc.*, No. 00-02203-W, 2000 WL 33709667, at *2 (Bankr. D.S.C. Apr. 14, 2000) (noting that courts have permission to “allow payment of a prepetition claim when essential to the continued operation of the debtor” (citation omitted)); *In re Just For Feet, Inc.*, 242 B.R. 821, 824 (D. Del. 1999) (“courts have used their equitable power under section 105(a) . . . to authorize the payment of pre-petition claims when such payment is deemed necessary to the survival of a debtor in a chapter 11

reorganization”); *In re NVR L.P.*, 147 B.R. 126, 127 (Bankr. E.D. Va. 1992) (“Under [section 105] the court can permit pre-plan payment of a prepetition obligation when essential to the continued operation of the debtor”); *In re Eagle-Picher Indus., Inc.*, 124 B.R. 1021, 1023 (Bankr. S.D. Ohio 1991) (approving payment of prepetition unsecured claims of tool makers as “necessary to avert a serious threat to the Chapter 11 process”); *In re Quality Interiors, Inc.*, 127 B.R. 391, 396 (Bankr. N.D. Ohio 1991) (“[P]ayment by a debtor-in-possession of pre-petition claims outside of a confirmed plan of reorganization is generally prohibited by the Bankruptcy Code,” but “[a] general practice has developed . . . where bankruptcy courts permit the payment of certain pre-petition claims, pursuant to 11 U.S.C. § 105, where the debtor will be unable to reorganize without such payment.”).

16. The “doctrine of necessity” is frequently invoked early in reorganization cases, during the so-called “breathing spell,” when preservation of the estate is most critical and often extremely difficult. See 2 Alan N. Resnick & Henry J. Sommer, *Collier on Bankruptcy* ¶ 105.02[4][a] (16th ed. 2018) (discussing cases in which courts have relied upon the “doctrine of necessity” or the “necessity of payment” rule to pay prepetition claims immediately). For example, in *In re Structurlite Plastics Corp.*, the court embraced “the principle that a bankruptcy court may exercise its equity powers under section 105(a) to authorize payment of prepetition claims where such payment is necessary to ‘permit the greatest likelihood of survival of the debtor’” 86 B.R. 922, 931 (Bankr. S.D. Ohio 1988) (quoting *In re Chateaugay Corp.*, 80 B.R. 279, 287 (S.D.N.Y. 1987)). The court explained that “a *per se* rule proscribing the payment of prepetition indebtedness may well be too inflexible to permit the effectuation of the rehabilitative purposes of the Code.” *Id.* at 932. Flexibility of payment is particularly critical when the prepetition creditor provides vital goods or services to the debtor.

17. Honoring the Insurance Obligations is warranted under the doctrine of necessity. As described above, continuation of the Insurance Policies is essential to preserve the value of the Debtor's assets and minimize exposure to risk. Furthermore, insurance coverage is required by the U.S. Trustee as well as various jurisdictions in which the Debtor operates.

C. The Court Should Authorize Applicable Banks to Honor Checks and Electronic Fund Transfers in Accordance with the Motion

18. In connection with the foregoing, the Debtor respectfully requests that the Court (a) authorize all applicable Banks to receive, process, honor, and pay all checks and transfers issued by the Debtor in accordance with this Motion, without regard to whether any checks or transfers were issued before or after the Petition Date, (b) provide that all Banks may rely on the representations of the Debtor with respect to whether any check or transfer issued or made by the Debtor before the Petition Date should be honored pursuant to this Motion (such banks and other financial institutions having no liability to any party for relying on such representations by the Debtor provided for herein), and (c) authorize the Debtor to issue replacement checks or transfers to the extent any checks or transfers that are issued and authorized to be paid in accordance with this Motion are dishonored or rejected by the Banks.

SATISFACTION OF BANKRUPTCY RULE 6003

19. Pursuant to Bankruptcy Rule 6003, the Court may grant relief within 21 days after the filing of the petition regarding a motion to "use, sell, lease, or otherwise incur an obligation regarding property of the estate" only if such relief is necessary to avoid immediate and irreparable harm. Fed. R. Bankr. P. 6003(b). Immediate and irreparable harm exists where the absence of relief would impair a debtor's ability to reorganize or threaten the debtor's future as a going concern. *See In re Ames Dep't Stores, Inc.*, 115 B.R. at 36 n.2 (discussing the elements of "immediate and irreparable harm" in relation to Bankruptcy Rule 4001).

20. Moreover, Bankruptcy Rule 6003 authorizes the Court to grant the relief requested herein to avoid harm to the Debtor's customers and other third parties. Unlike Bankruptcy Rule 4001, Bankruptcy Rule 6003 does not condition relief on imminent or threatened harm to the estate alone. Rather, Bankruptcy Rule 6003 speaks of "immediate and irreparable harm" generally. *Cf.* Fed. R. Bankr. P. 4001(b)(2), (c)(2) (referring to "irreparable harm to the estate"). Indeed, the "irreparable harm" standard is analogous to the traditional standards governing the issuance of preliminary injunctions. *See* 9 Alan N. Resnick & Henry J. Sommer, *Collier on Bankruptcy* ¶ 4001.07[b][3] (16th ed. 2018) (discussing source of "irreparable harm" standard under Rule 4001(c)(2)). Courts will routinely consider third-party interests when granting such relief. *See, e.g., Capital Ventures Int'l v. Argentina*, 443 F.3d 214, 223 n.7 (2d Cir. 2006); *see also Linnemeir v. Bd. of Trs. of Purdue Univ.*, 260 F.3d 757, 761 (7th Cir. 2001).

21. As described herein, the Debtor will suffer immediate and irreparable harm without Court authorization for the relief requested herein. Accordingly, Bankruptcy Rule 6003 has been satisfied and the relief requested herein should be granted.

REQUEST FOR WAIVER OF STAY

22. To implement the foregoing, the Debtor seeks a waiver of any stay of the effectiveness of any order approving this Motion. Pursuant to Bankruptcy Rule 6004(h), any "order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise." The Debtor submits that the relief requested in this Motion is necessary to avoid immediate and irreparable harm to the Debtor for the reasons set forth herein. Accordingly, the Debtor submits that ample cause exists to justify a waiver of the 14-day stay imposed by Bankruptcy Rule 6004(h).

DEBTOR'S RESERVATION OF RIGHTS

23. Nothing contained herein is intended or should be construed as: an admission of the validity of, or a promise to pay with respect to, any claim against the Debtor; a waiver of the Debtor's rights to dispute any claim; or an approval, assumption, or rejection of any agreement, contract, or lease under section 365 of the Bankruptcy Code. The Debtor expressly reserves its rights to contest any invoice or claim on account of any Insurance Policy under applicable law and to assume or reject any agreements with Insurers in accordance with the applicable provisions of the Bankruptcy Code. Likewise, if the Court grants the relief sought herein, any payment made pursuant to the Court's order is not intended and should not be construed as an admission as to the validity of, or a promise to pay with respect to, any claim or a waiver of the Debtor's rights to dispute such claim subsequently.

NOTICE

24. The Debtor will provide notice of this Motion to: (a) the Office of the United States Trustee for the District of Delaware; (b) holders of the 30 largest unsecured claims against the Debtor; (c) counsel to the DIP Financing Parties; (d) the Insurers; (e) the Banks; and (f) all parties that have filed a notice of appearance and request for service of papers pursuant to Bankruptcy Rule 2002. Notice of this Motion and any order entered hereon will be served in accordance with Local Rule 9013-1(m). In light of the nature of the relief requested herein, the Debtor submits that no other or further notice is necessary.

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WHEREFORE, the Debtor respectfully requests that the Court grant the relief requested herein and such other and further relief as the Court may deem just and proper.

Dated: Wilmington, Delaware
September 4, 2019

YOUNG CONAWAY STARGATT & TAYLOR, LLP

/s/ Andrew L. Magaziner

Michael R. Nestor (No. 3526)

Joseph M. Barry (No. 4221)

Andrew L. Magaziner (No. 5426)

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Proposed Counsel to the Debtor and Debtor in Possession

EXHIBIT A

PROPOSED INTERIM ORDER

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

UBIOME, INC.,¹

Debtor.

Chapter 11

Case No. 19-____ (____)

Ref. Docket No. _____

**INTERIM ORDER AUTHORIZING (A) CONTINUATION OF, AND
PAYMENT OF PREPETITION OBLIGATIONS INCURRED IN THE
ORDINARY COURSE OF BUSINESS IN CONNECTION WITH, VARIOUS
INSURANCE POLICIES, INCLUDING PAYMENT OF POLICY PREMIUMS
AND BROKER FEES, AND (B) BANKS TO HONOR AND PROCESS
CHECKS AND ELECTRONIC TRANSFER REQUESTS RELATED THERETO**

Upon the *Debtor's Motion for Entry of Interim and Final Orders Authorizing (A) Continuation of, and Payment of Prepetition Obligations Incurred in the Ordinary Course of Business in Connection With, Various Insurance Policies, Including Payment of Policy Premiums and Broker Fees, and (B) Banks to Honor and Process Checks and Electronic Transfer Requests Related Thereto* (the "Motion")² filed by the above-captioned debtor and debtor in possession (the "Debtor"); and this Court having reviewed the Motion; and this Court having found that it has jurisdiction over this matter pursuant to 28 U.S.C. §§157 and 1334(b), and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated as of February 29, 2012; and this Court having found that venue of this Chapter 11 Case and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that this matter is a core proceeding pursuant to 28 U.S.C. § 157(b); and this Court having determined that it may enter a final order consistent with Article III of the United States Constitution; and it appearing that notice of the Motion has been given as

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² All capitalized terms used and not defined herein shall have the meanings ascribed to them in the Motion.

set forth in the Motion and that such notice is adequate and no other or further notice need be given; and this Court having considered the First Day Declaration; and this Court having determined that the legal and factual basis set forth in the Motion establish just cause for the relief granted herein; and this Court having determined that the relief sought in the Motion is in the best interests of the Debtor and its estate; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED as set forth herein on an interim basis until such time as this Court conducts a final hearing on this matter (the “Final Hearing”).

2. The Final Hearing shall take place on _____, 2019 at __:__ .m. (prevailing Eastern Time). Any objections or responses to the Motion shall be filed on or before 4:00 p.m. (prevailing Eastern Time) _____, 2019 and served on i) proposed counsel for the Debtor, Young Conway Stargatt and Taylor, LLP, 1000 N. King Street, Wilmington, Delaware 19801 (Attn: Joseph M. Mulvihill (email: jmulvihill@ycst.com)); (ii) the United States Trustee, 844 King Street, Suite 2207, Wilmington, Delaware, 19801, Attn: Jane M. Leamy, Esq. (Jane.M.Leamy@usdoj.gov); (iii) counsel for the DIP Financing Parties, (A) Morrison & Foerster LLP, 200 Clarendon St., Boston, MA 02116 (Attn: Alex Rheume) (arheume@mfo.com), and (B) Gibson, Dunn & Crutcher LLP, 200 Park Avenue, New York, NY 10166-0193 (Attn: Jason Goldstein) (jgoldstein@gibsondunn.com); and (d) counsel to any statutory committee appointed in this Chapter 11 Case.

3. The Debtor is authorized to maintain the Insurance Policies without interruption, and to renew, supplement, modify, or extend (including through obtaining “tail” coverage) the Insurance Policies, or enter into new insurance policies, and to incur and pay premiums, claims,

deductibles, retrospective adjustments, administrative fees, broker fees, self-insured and uninsured losses, and any other obligations that are or become due and payable arising thereunder or in connection therewith, in accordance with the same practices and procedures as were in effect prior to the Petition Date.

4. The Debtor is authorized, but not directed, without interruption, to pay, honor, or otherwise satisfy all Insurance Obligations in an amount not to exceed \$115,000, including, without limitation, premiums, claims, deductibles, retrospective adjustments, administrative fees, broker fees (including, without limitation, the Broker Fees), self-insured and uninsured losses, and any other obligations that were due and payable or related to the period prior to the Petition Date on account of the Insurance Policies.

5. The Debtor is authorized to (a) continue, in the ordinary course of business, the Insurance Policies and (b) pay the installment payments under the Insurance Policies, as the same become due in the ordinary course of business.

6. Each Bank is authorized to honor checks presented for payment and all fund transfer requests made by the Debtor, to the extent that sufficient funds are on deposit in the applicable accounts, in accordance with this Order and any other order of this Court.

7. The Debtor is authorized to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests in connection with any Insurance Obligations that are dishonored or rejected.

8. Nothing in the Motion or this Order, or the Debtor's payment of any claims pursuant to this Order, shall be deemed or construed as: (a) an admission as to the validity of, or a promise to pay with respect to, any claim or lien against the Debtor or its estate, (b) a waiver of the Debtor's right to dispute any claim or lien, (c) an admission of the priority status of any

claim, or (d) a modification of the Debtor's rights to seek relief under any section of the Bankruptcy Code on account of any amounts owed or paid on account of any Insurance Policies.

9. Nothing herein shall be deemed to constitute the postpetition assumption of any executory contract under section 365 of the Bankruptcy Code or authority to lift or modify the automatic stay set forth in section 362 of the Bankruptcy Code. To the extent that the Insurance Policies, the Insurance Obligations, or any related contracts or agreements are deemed executory contracts under section 365 of the Bankruptcy Code, neither the relief granted hereby nor any actions or payments made by the Debtor pursuant to this Order shall be deemed an assumption or rejection of any such contract or agreement pursuant to section 365 of the Bankruptcy Code, or that any such contract or agreement is an executory contract under section 365 of the Bankruptcy Code.

10. The requirements set forth in Bankruptcy Rule 6003(b) are satisfied because the relief requested in the Motion, as granted hereby, is necessary to avoid immediate and irreparable harm to the Debtor and its estate.

11. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

12. The Debtor is authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.

13. This Court shall retain exclusive jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: _____, 2019
Wilmington, Delaware

United States Bankruptcy Judge

EXHIBIT B

PROPOSED FINAL ORDER

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

UBIOME, INC.,¹

Debtor.

Chapter 11

Case No. 19-____ (____)

Ref. Docket Nos. _____ & _____

**FINAL ORDER AUTHORIZING (A) CONTINUATION OF, AND PAYMENT OF
PREPETITION OBLIGATIONS INCURRED IN THE ORDINARY COURSE OF
BUSINESS IN CONNECTION WITH, VARIOUS INSURANCE POLICIES,
INCLUDING PAYMENT OF POLICY PREMIUMS AND BROKER FEES, AND
(B) BANKS TO HONOR AND PROCESS CHECKS AND ELECTRONIC TRANSFER
REQUESTS RELATED THERETO**

Upon the *Debtor's Motion for Entry of Interim and Final Orders Authorizing (A) Continuation of, and Payment of Prepetition Obligations Incurred in the Ordinary Course of Business in Connection With, Various Insurance Policies, Including Payment of Policy Premiums and Broker Fees, and (B) Banks to Honor and Process Checks and Electronic Transfer Requests Related Thereto* (the "Motion")² filed by the above-captioned debtor and debtor in possession (the "Debtor"); and this Court having reviewed the Motion; and this Court having found that it has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334(b), and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated as of February 29, 2012; and this Court having found that venue of this Chapter 11 Case and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that this matter is a core proceeding pursuant to 28 U.S.C. § 157(b); and this Court having determined that it may enter a final order consistent with Article III of the United States Constitution; and it appearing that notice of the Motion has been given as

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² All capitalized terms used and not defined herein shall have the meanings ascribed to them in the Motion.

set forth in the Motion and that such notice is adequate and no other or further notice need be given; and this Court having considered the First Day Declaration; and this Court having previously entered that certain *Interim Order Authorizing (A) Continuation of, and Payment of Prepetition Obligations Incurred in the Ordinary Course of Business in Connection With, Various Insurance Policies, Including Payment of Policy Premiums and Broker Fees, and (B) Banks to Honor and Process Checks and Electronic Transfer Requests Related Thereto* [D.I. ___]; and this Court having determined that the legal and factual basis set forth in the Motion establish just cause for the relief granted herein; and this Court having determined that the relief sought in the Motion is in the best interests of the Debtor and its estate; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED as set forth herein on a final basis.
2. The Debtor is authorized to maintain the Insurance Policies without interruption, and to renew, supplement, modify, or extend (including through obtaining “tail” coverage) the Insurance Policies, or enter into new insurance policies, and to incur and pay premiums, claims, deductibles, retrospective adjustments, administrative fees, broker fees, self-insured and uninsured losses, and any other obligations that are or become due and payable arising thereunder or in connection therewith, in accordance with the same practices and procedures as were in effect prior to the Petition Date.
3. The Debtor is authorized, but not directed, without interruption and in its discretion, to pay, honor, or otherwise satisfy all Insurance Obligations in an amount not to exceed \$250,000, including, without limitation, premiums, claims, deductibles, retrospective adjustments, administrative fees, broker fees (including, without limitation, the Broker Fees),

self-insured and uninsured losses, and any other obligations that were due and payable or related to the period prior to the Petition Date on account of the Insurance Policies.

4. The Debtor is authorized to (a) continue, in the ordinary course of business, the Insurance Policies, and (b) pay the installment payments under the Insurance Policies as the same become due in the ordinary course of business.

5. Each Bank is authorized to honor checks presented for payment and all fund transfer requests made by the Debtor, to the extent that sufficient funds are on deposit in the applicable accounts, in accordance with this Order and any other order of this Court.

6. The Debtor is authorized to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests in connection with any Insurance Obligations that are dishonored or rejected.

7. Nothing in the Motion or this Order, or the Debtor's payment of any claims pursuant to this Order, shall be deemed or construed as: (a) an admission as to the validity of, or a promise to pay with respect to, any claim or lien against the Debtor or its estate, (b) a waiver of the Debtor's right to dispute any claim or lien, (c) an admission of the priority status of any claim, or (d) a modification of the Debtor's rights to seek relief under any section of the Bankruptcy Code on account of any amounts owed or paid on account of any Insurance Policies.

8. Nothing herein shall be deemed to constitute the postpetition assumption of any executory contract under section 365 of the Bankruptcy Code or authority to lift or modify the automatic stay set forth in section 362 of the Bankruptcy Code. To the extent that the Insurance Policies, the Insurance Obligations, or any related contracts or agreements are deemed executory contracts under section 365 of the Bankruptcy Code, neither the relief granted hereby nor any actions or payments made by the Debtor pursuant to this Order shall be deemed an assumption or

rejection of any such contract or agreement pursuant to section 365 of the Bankruptcy Code, or that any such contract or agreement is an executory contract under section 365 of the Bankruptcy Code.

9. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

10. The Debtor is authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.

11. This Court shall retain exclusive jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: _____, 2019
Wilmington, Delaware

United States Bankruptcy Judge

EXHIBIT C**INSURANCE POLICIES LIST**

<u>INSURANCE CARRIER</u>	<u>INSURANCE POLICY</u>	<u>POLICY NUMBER</u>	<u>EFFECTIVE DATE; MONTHS COVERED</u>	<u>APPROXIMATE PREMIUM AMOUNT</u>
1. Casualty Policies				
Federal Insurance Company	General Liability	3605-90-97	04/28/2019; 18 months	\$51,470
Federal Insurance Company	Umbrella Liability	7819-03-67	04/28/2019; 18 months	\$6,250
Federal Insurance Company	Auto Liability	7360-89-27	04/28/2019; 18 months	\$3,636
Travelers Bond & Specialty Insurance	Cyber Liability	107094842	5/21/2019; 17 months	\$12,944
Great American Insurance Company	Kidnap, Ransom & Extortion Liability	KR E376858 02 00	8/21/2019; 12 months	\$1,685
Great American Insurance Company	Crime Liability	SAAE37690 10000	8/21/2018; 15 months	\$4,500
Lloyd's of London	Products Liability	W25251180 101	11/1/2018; 12 months	\$38,000
2. Property Policy				
Federal Insurance Company	Property	3605-90-97	04/28/2019; 18 months	Included as part of General Liability Premium
3. Management Liability Policies				
Lloyd's of London	Directors and Officers Liability	FSUSC1903 036	7/10/2019; 12 months	\$675,000
Starstone Specialty Insurance Company	Directors and Officers Supplemental Extended Reporting Period	H89319180 ASP	7/10/2019; 36 months	\$60,000
The Hartford Insurance Company	Management Liability; Fiduciary; and Employment Practices Liability	57-KB- 0336679-19	04/28/2019; 18 months	\$35,485

<u>INSURANCE CARRIER</u>	<u>INSURANCE POLICY</u>	<u>POLICY NUMBER</u>	<u>EFFECTIVE DATE; MONTHS COVERED</u>	<u>APPROXIMATE PREMIUM AMOUNT</u>
4. Workers' Compensation Policies				
Chubb Indemnity Insurance Company	Workers' Compensation	7177-14-40	04/28/2019; 18 months	\$37,033