

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:

UBIOME, INC.,¹

Debtor.

Chapter 11

Case No. 19-11938 (LSS)

Ref. Docket No. 3

**ORDER AUTHORIZING RETENTION AND APPOINTMENT OF
DONLIN, RECANO & COMPANY, INC. AS CLAIMS AND NOTICING
AGENT FOR THE DEBTOR PURSUANT TO 28 U.S.C. § 156(c),
NUNC PRO TUNC TO THE PETITION DATE**

Upon the application (the "Application")² of uBiome, Inc., the debtor and debtor in possession in the above-captioned chapter 11 case (the "Debtor") for entry of an order pursuant to section 156(c) of title 28 of the United States Code (the "Bankruptcy Code"), Rule 2002 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Rule 2002-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules"), authorizing the Debtor to retain and appoint Donlin, Recano & Company, Inc. ("DRC") as claims and noticing agent in this Chapter 11 Case; and upon consideration of the Voorhies Declaration submitted in support of the Application; and upon consideration of the First Day Declaration; and the Court being satisfied, based on the representations made in the Voorhies Declaration, that DRC does not represent or hold any interest adverse to the Debtor or the Debtor's estate; and it appearing that the Court has jurisdiction to consider the Application pursuant to 28 U.S.C. §§ 1334 and 157, and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware

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

² Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Application.

dated February 29, 2012; and it appearing that the Application is a core matter pursuant to 28 U.S.C. § 157(b)(2) and that the Court may enter a final order consistent with Article III of the United States Constitution; and it appearing that venue of this Chapter 11 Case and of the Application is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that due and adequate notice of the Application has been given under the circumstances, and that no other or further notice need be given; and it appearing that the employment of DRC is in the best interests of the Debtor's estate, its creditors, and other parties in interest; and after due deliberation, and good and sufficient cause appearing therefor, it is hereby

ORDERED, ADJUDGED, AND DECREED THAT:

1. Notwithstanding the terms of the Engagement Agreement attached to the Application, the Application is approved solely as set forth in this Order.
2. The Debtor is authorized to retain DRC effective as of the Petition Date under the terms of the Engagement Agreement, and DRC is authorized and directed to perform noticing services and to receive, maintain, record, and otherwise administer the proofs of claim filed in this Chapter 11 Case, and all related tasks, all as described in the Application.
3. DRC shall serve as the custodian of court records and shall be designated as the authorized repository for all proofs of claim filed in this Chapter 11 Case and is authorized and directed to maintain an official claims register for the Debtor, to provide the Clerk with a certified duplicate thereof upon the request of the Clerk, and to provide public access to every proof of claim unless otherwise ordered by the Court.
4. DRC is authorized and directed to obtain a post office box or address for the receipt of proofs of claim;

5. DRC is authorized to take such other action to comply with all duties set forth in the Application.

6. The Debtor is authorized to compensate DRC in accordance with the terms of the Engagement Agreement upon the receipt of reasonably detailed invoices setting forth the services provided by DRC and the rates charged for each, and to reimburse DRC for all reasonable and necessary expenses it may incur, upon the presentation of appropriate documentation, without the need for DRC to file fee applications or otherwise seek Court approval for the compensation of its services and reimbursement of its expenses.

7. DRC shall maintain records of all services showing dates, categories of services, fees charged and expenses incurred, and shall serve monthly invoices on the Debtor, the office of the United States Trustee, counsel for the Debtor, counsel for any official committee appointed in this Chapter 11 Case, and any party-in-interest who specifically requests service of the monthly invoices.

8. The parties shall meet and confer in an attempt to resolve any dispute that may arise relating to the Engagement Agreement or monthly invoices, and the parties may seek resolution of the matter from the Court if resolution is not achieved.

9. Pursuant to section 503(b)(1)(A) of the Bankruptcy Code, the fees and expenses of DRC under this Order shall be an administrative expense of the Debtor's estate.

10. The portion of section 4 of the Engagement Agreement addressing late charges shall be null, void, and of no further force and effect for postpetition services rendered by DRC.

11. DRC may apply its retainer to all prepetition invoices, which retainer shall be replenished to the original retainer amount, and thereafter, DRC may hold its retainer under the Engagement Agreement during this Chapter 11 Case as security for the payment of fees and

expenses under the Engagement Agreement. Following the termination of the Engagement Agreement, DRC shall return to the Debtor any amount of the retainer that remains.

12. The Debtor shall indemnify DRC under the terms of the Engagement Agreement.

13. DRC shall not be entitled to indemnification, contribution, or reimbursement pursuant to the Engagement Agreement for services other than the services provided under the Engagement Agreement, unless such services and the indemnification, contribution or reimbursement therefore are approved by the Court.

14. Notwithstanding anything to the contrary in the Engagement Agreement, the Debtor shall have no obligation to indemnify DRC, or provide contribution or reimbursement to DRC, for any claim or expense that is either: (i) judicially determined (the determination having become final) to have arisen from DRC's gross negligence, willful misconduct, or fraud; (ii) for a contractual dispute in which the Debtor alleges the breach of DRC's contractual obligations if this Court determines that indemnification, contribution or reimbursement would not be permissible pursuant to *In re United Artists Theatre Co., et al.*, 315 F.3d 217 (3d Cir. 2003); or (iii) settled prior to a judicial determination under (i) or (ii), but determined by this Court, after notice and a hearing, to be a claim or expense for which DRC should not receive indemnity, contribution or reimbursement under the terms of the Engagement Agreement as modified by this Order.

15. If, before the earlier of (i) the entry of an order confirming a chapter 11 plan in this Chapter 11 Case (that order having become a final order no longer subject to appeal) or (ii) the entry of an order closing this Chapter 11 Case, DRC believes that it is entitled to the payment of any amounts by the Debtor on account of the Debtor's indemnification, contribution and/or reimbursement obligations under the Engagement Agreement (as modified by this Order),

including without limitation the advancement of defense costs, DRC must file an application therefore in this Court, and the Debtor may not pay any such amounts to DRC before the entry of an order by this Court approving the payment. This paragraph is intended only to specify the period of time under which the Court shall have jurisdiction over any request for fees and expenses by DRC for indemnification, contribution or reimbursement, and not a provision limiting the duration of the Debtor's obligation to indemnify DRC. All parties in interest shall retain the right to object to any demand by DRC for indemnification, contribution or reimbursement.

16. In the event DRC is unable to provide the services set out in this order, DRC will immediately notify the Clerk and Debtor's attorneys and cause to have all original proofs of claim and computer information turned over to another claims and noticing agent with the advice and consent of the Clerk and Debtor's attorneys.

17. The Debtor may submit a separate retention application, pursuant to Bankruptcy Code section 327 and/or any applicable law, for work that is to be performed by DRC that is not specifically authorized by this Order.


18. The Debtor and DRC are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Application.

19. Notwithstanding any term in the Engagement Agreement to the contrary, the Court retains jurisdiction and power with respect to all matters arising from or related to the implementation of this Order.

20. DRC shall not cease providing claims processing services during this Chapter 11 Case for any reason, including nonpayment, without an order of the Court.

21. In the event of any inconsistency between the Engagement Agreement, the Application and the Order, the Order shall govern.

Dated: Sept. 5, 2019
Wilmington, Delaware



Laurie Selber Silverstein
United States Bankruptcy Judge