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Proposed Attorneys for the Debtors

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

<p>In re:</p> <p>PolarityTE, Inc., a Delaware corporation</p> <p style="text-align: center;">Debtor</p>	<p>Case No. 23-bk-22358-KRA</p> <p>Case No. 23-bk-22360-KRA</p> <p>Case No. 23-bk-22361-KRA</p>
<p>In re:</p> <p>PolarityTE, MD Inc., a Nevada corporation</p> <p style="text-align: center;">Debtor</p>	<p>Chapter 11</p> <p>Judge Kevin R. Anderson</p>
<p>In re:</p> <p>PolarityTE, Inc., a Nevada corporation</p> <p style="text-align: center;">Debtor</p>	<p style="text-align: center;">THIS FILING RELATES TO ALL DEBTORS¹</p>

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are PolarityTE, Inc. (9524); PolarityTE MD, Inc. (1555); and PolarityTE, Inc. (6882). The location of the Debtors’ service address is 1960 S. 4250 W., Salt Lake City, UT 84104.



**DEBTORS' MOTION FOR ENTRY OF AN ORDER AUTHORIZING
RETENTION, EMPLOYMENT, AND COMPENSATION OF CERTAIN
PROFESSIONALS USED BY THE DEBTORS IN THE ORDINARY
COURSE OF BUSINESS**

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MEMORANDUM OF POINTS AND AUTHORITIES

By this motion (the “**Motion**”), the above captioned debtors and debtors in possession (the “**Debtors**”), hereby apply (this “**Application**”) for entry of an order substantially in the form attached as Exhibit A hereto authorizing the Debtors to retain and compensate professionals used by the Debtors in the ordinary course of business, and in support, respectfully state as follows.

MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF RELIEF REQUESTED

By this Application, the Debtors request authority under [Csections 105\(a\), 327, 330 and 331 of title 11 of the United States Code](#) (the “**Bankruptcy Code**”) authorizing them to retain, employ, and compensate professionals used by the Debtors in the ordinary course of business.

II. JURISDICTION

1. The Court has jurisdiction over this matter under [28 U.S.C. §§ 157 and 1334](#). This matter is a core proceeding within the meaning of [28 U.S.C. § 157\(b\)\(2\)](#).

2. The Debtors’ principal offices and principal place of business are located in Salt Lake City, Utah, within the District of Utah, and, therefore, venue is proper in this District under [C28 U.S.C. §§ 1408\(1\) and 1409](#).

3. The bases for the relief requested herein are [Csections 105\(a\), 327, 330, and 331 of title 11 of title 11 of the Bankruptcy Code](#) and [CRule 2014 of the Federal Rules of Bankruptcy Procedure](#) (the “**Bankruptcy Rules**”).

III. BACKGROUND

A. General Background

4. Debtors PolarityTE MD, Inc., a Nevada corporation (1555) (“**PTE MD**”); and PolarityTE, Inc., a Nevada corporation (6882) (“**PTE NV**”), are wholly owned subsidiaries of PolarityTE, Inc. (9524) (“**PTE**”), a Delaware corporation and publicly traded company.

The Debtors are a clinical stage biotechnology company with a promising product, SkinTE (“**SkinTE**”). SkinTE is a human cellular and tissue-based product derived and grown from a patient’s own skin to regenerate full-thickness skin with all of its layers (epidermis, dermis and hypodermis) and appendages (hair follicles and glands). SkinTE has been used to treat complex wounds, including both acute and chronic wounds, and can be used in addition to and/or in place of split-thickness skin grafting, full-thickness grafting, temporizing skin coverage and/or skin substitute products.

5. Previously the Debtors were selling SkinTE under the U.S. Food and Drug Administration’s (“**FDA**”) 361 HCT/P pathway governed by **U**21 C.F.R. 1271. SkinTE was earning revenue, which partially offset its operating expenses. However, based on FDA guidance, since May 2021, the Debtors have been conducting the first of two more-rigorous clinical trials under the FDA’s 351 Biologic pathway, from which they derive no revenue. On this pathway, the Debtors will not be generating revenue again until obtaining FDA approval, which it anticipates in 2026.

6. The Debtors cannot suspend their current clinical trial regime without jeopardizing FDA approval. But the Debtors are unable to continue to fund the clinical trials and will shortly run out of cash.

7. Rather than abandon the clinical trials and their promising product, on June 6, 2023 (the “**Petition Date**”), each of the Debtors filed a petition for relief under chapter 11 of the Bankruptcy Code (the “**Chapter 11 Cases**”) in the United States Bankruptcy Court for the District of Utah (the “**Bankruptcy Court**”). The Debtors will seek to sell their assets, including the ongoing clinical trials, to the highest bidder who can maximize the value of the assets and, presumably, will have funding to allow the clinical trials to go forward and eventually monetize the SkinTE product. Without this relief, the Debtors will be forced to close the clinical trials due to lack of funding, which will greatly reduce the potential value of their assets and delay, perhaps for years, the availability of the SkinTE product.

8. Additional information about the Debtors and their business and the facts and circumstances leading to the filing of the petition for relief are set forth in the Declaration of Richard Hague in Support of Chapter 11 Petition and First Day Motions (the “**First Day Declaration**”) filed on the Petition Date. Additional facts specific to the Motion are set forth below.

IV. FACTS SPECIFIC TO THE APPLICATION

A. Services to Be Provided and Relief Requested

9. The Debtors customarily retain the services of the following attorneys and other professionals to represent them in the ordinary course of their businesses unrelated to the Chapter 11 Cases (the “**Ordinary Course Professionals**”).

(a) **Crowell & Moring.** Crowell & Moring is the Debtors’ primary patent counsel, both in the United States and overseas, for the Debtors’ Minimally Polarized Functional Units technology used or useful in connection with SkinTE. Crowell & Moring are presently assisting the Debtors with divisional filings in progress in other countries. Filings in

foreign jurisdictions are handled by local agents who pay filing and other maintenance fees and then bill Crowell & Moring for reimbursement, who in turn bills the Debtors for reimbursement. The last 12 months' average billings for Crowell & Moring have been approximately \$10,150 per month.

(b) **Panitch Schwarze Belisario & Nadel, LLP (“Panitch”).** Panitch is the Debtors' primary patent counsel for the Skin Biopsy device (referred to in the Debtors' Securities and Exchange Commission (“SEC”) filings and other business material as the “Point of Care Device”). A provisional patent for the device was filed July 11, 2022, and a formal patent application must be filed on or before July 10, 2023, to preserve the Debtors' patent rights to the device. This device could add substantial value to the Debtors' future business operations. The estimated cost of filing the United States application is \$3,100, including \$680 in basic Patent Office filing fees, \$800 in Patent Office fees for extra claims, and \$1,600 in Panitch's professional fees. The estimated cost of filing a PCT application (for foreign patent protection) is about \$5,100, including \$3,900 in filing fees and \$1,200 in Panitch's professional fees. The last 12 months' average billings for Panitch have been approximately \$1,650 per month.

(c) **Dorsey & Whitney (“Dorsey”).** Dorsey has been counsel to the Debtors assisting in corporate and transaction work, including negotiating the terms of the APA with the Stalking Horse Bidder, and drafting related agreements and documents. Dorsey also handles the Debtors' SEC filings. The last 12 months' average billings for Dorsey have been approximately \$30,650 per month.

(d) **Murgitroyd.** Murgitroyd is an international practice of intellectual property attorneys, headquartered in Glasgow, Scotland, U.K. In addition to legal service,

Murgitroyd offers a global renewal solution in which Murgitroyd keeps a docket of a company's patent, trademark, and design renewals in 270 countries and manages all aspects of the renewal payment process so that the Debtors receive a bill for renewal payments made by Murgitroyd and Murgitroyd's service fee. Paying renewal fees is critical to preserving the value of the Debtors' estate attributable to its IP. The last 12 months' average billings for Murgitroyd have been approximately \$1,650 per month.

(e) **Mark Lehman.** Mr. Lehman is a licensed Utah attorney and former shareholder at Parsons Behle & Latimer until August 2018, when he became Chief Legal Officer of the Debtors. Mr. Lehman retired in March 2023. Since his retirement, Mr. Lehman has been engaged as an independent consultant to assist the Debtors under a consulting agreement. The agreement describes Mr. Lehman's services as "(i) act as a clerk or scribe with respect to the preparation of disclosure schedules or schedules of assets or liabilities for an asset purchase agreement and related transaction documents, and (ii) and provide such other services as may be reasonably requested by Company and accepted by Independent Contractor." Mr. Lehman is paid hourly at \$150/hour. Mr. Lehman has a long history with the Debtors and substantial knowledge of the Debtors' commercial agreements and relationships and will be crucial for continuity to continue his services post-Petition Date and to find contracts and information in PTE records needed in the bankruptcy process. During the two months of his service as an independent contractor for the Debtors, Mr. Lehman's average billings have been approximately \$10,600 per month.

(f) **EisnerAmper.** EisnerAmper is the Debtors' independent public accounting firm that audits the annual financial statements and reviews the quarterly financial statements that the Debtors are required to include the periodic reports filed with the SEC. The

services of EisnerAmper are necessary to the filing of any periodic reports the Debtors must file with the SEC during the bankruptcy proceeding. The last 12 months' average billings for EisnerAmper have been approximately \$8,400 per month.

(g) **Connor Group.** Connor Group assists the Debtors with the preparation of all financial portions of the periodic reports the Debtors file with the SEC, including the financial statements, footnotes to the financial statements, and Management's Discussion and Analysis of Financial Condition and Results of Operations. The services of Connor Group are necessary to the filing of any periodic reports the Debtors must file with the SEC during the bankruptcy proceeding. The last 12 months' average billings for Connor Group have been approximately \$16,550 per month.

(a) **Scalar LLC.** Scalar LLC provides valuation services with respect to the PTE's common stock purchase warrants, which is required to be reported in the financial statements included in the periodic reports filed by Debtors with the SEC. The services of Scalar LLC are necessary to the filing of any periodic reports the Debtors must file with the SEC during the bankruptcy proceeding. The last 12 months' average billings for Scalar LLC have been approximately \$1,875 per month.

(b) **Dr. Ned Swanson.** Dr. Swanson is a member of the Data Management Safety Board, which is a board that performs specific review functions required for the clinical trial being conducted by the Debtors. Dr. Swanson also provides consulting services as requested on various aspects of the on-going clinical trial. The last 12 months' average billings for Mr. Swanson have been approximately \$8,100 per month.

V. **RELIEF REQUESTED**

By this Application, the Debtors seek authorization (a) to retain the Ordinary Course Professionals as of the Petition Date under [Section 327 of the Bankruptcy Code](#) without separate, formal retention applications for each Ordinary Course Professional and (b) to pay the Ordinary Course Professionals under [Sections 330 and 331 of the Bankruptcy Code](#) for post-Petition Date services rendered and expenses incurred, subject to certain limits set forth below, without the necessity of additional Court approval.

In contrast to the relief sought for the Ordinary Course Professionals, the Debtors have filed (or will file) retention applications for professionals that the Debtors seek to employ in connection with the conduct of these chapter 11 cases (the “**Chapter 11 Professionals**”). The Chapter 11 Professionals will be compensated and reimbursed only in accordance with applicable provisions of the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, the Local Rules of the United States Bankruptcy Court for the District of Utah, the United States Trustee Fee Guidelines, and only after separate approval of their fees under noticed applications and any orders entered in these cases governing professional compensation and reimbursement for services rendered and charges and disbursements incurred.

Although the Debtors believe that some of the Ordinary Course Professionals are not “professional persons” as contemplated by [Section 327 of the Bankruptcy Code](#) and, thus, that no retention or payment authorization is necessary, out of an abundance of caution the Debtors seek an order authorizing the retention and payment of Ordinary Course Professionals in this case.

Certain of the Ordinary Course Professionals may hold unsecured claims against the Debtors. The Debtors do not believe, however, that any of the Ordinary Course Professionals

have an interest materially adverse to the Debtors, their estates, creditors, or shareholders and, thus, the Debtors seek their continued retention and services during the pendency of the Chapter 11 Cases. It is anticipated, too, that most of the Ordinary Course Professionals' services will cease upon consummation of the proposed sale of the Debtors' assets.

VI. BASIS FOR RELIEF

The Debtors will continue to require the services of the Ordinary Course Professionals while operating as debtors in possession under the Bankruptcy Code. The Ordinary Course Professionals provide vital services that preserve and enhance the value of the Debtors' estates, which is vital to its efforts to market and sell its assets for the highest and best value for the benefit of its creditors and other stakeholders. The Debtors' estates would be irreparably harmed by the loss of the services that the Ordinary Course Professionals provide due to forfeiture of valuable intellectual property rights and lack of regulatory compliance. The work of the Ordinary Course Professionals is directly related to preserving the value of the Debtors' estates. The fees and expenses incurred by the Ordinary Course Professionals are relatively small in comparison to the value that is created and preserved by their services. Their services are anticipated to continue only for a few months, at most, until the Debtors sell their assets.

Requiring each of the Ordinary Course Professionals or Debtors to (a) prepare and submit separate applications, declarations, and proposed retention orders for each Ordinary Course Professional; (b) wait until such order is approved before such Ordinary Course Professional continues to render services; and (c) withhold payment of the normal fees and expenses of the Ordinary Course Professionals until they comply with the compensation and reimbursement procedures applicable to Chapter 11 Professionals would be burdensome and risky for the Ordinary Course Professionals and the Debtors. There would be a significant risk that some

Ordinary Course Professionals would be unwilling to provide services and that others would suspend services pending approval. Since many of the matters are active on a day-to-day basis, any delay or need to replace professionals could have significant adverse consequences. If the Debtors were forced to hire different professionals to replace the Ordinary Course Professionals, the expertise and background knowledge of the Ordinary Course Professionals with respect to the particular matters for which they were responsible prior to the Petition Date would be lost, and the Debtors' estates undoubtedly would incur additional and unnecessary expenses to retain other professionals without such background and expertise and pay for them to come up to speed. It is, therefore, in the best interests of the Debtors' estates to avoid any disruption to the professional services required in the day-to-day operation of the Debtors' businesses.

In addition, requiring the Ordinary Course Professionals to file retention pleadings and participate in the payment approval process along with the Chapter 11 Professionals would unnecessarily burden the Clerk's Office, the Court and the U.S. Trustee, while adding significantly to the administrative costs of these Chapter 11 Cases without any corresponding benefit to the Debtors' estate.

VII. PROCEDURES

A. Proposed Retention Procedures

The Debtors propose that it be permitted to continue to employ and retain all Ordinary Course Professionals. However, each Ordinary Course Professional will be required to file, within twenty (20) days of the entry of the Order granting this Application, a Declaration of Ordinary Course Professional, substantially in the form of the declaration attached as Exhibit B to the Application, (the "**Declaration**"), as applicable, with this Court. Each Ordinary Course Professional will file the Declaration on the docket of this Court, which will automatically give

notice to the Court and any party that has appeared in this case, including the U.S. Trustee, the Debtors and their counsel, any official committee, and any other parties that have appeared and requested notice.

The Debtors further request that upon filing of a Declaration, any parties in interest will have ten days to object to the Ordinary Course Professional's retention (the "**Objection Deadline**"). The objection must be filed on the docket on or before the Objection Deadline. If any such objection cannot be resolved and withdrawn within ten days after filing, counsel for the Debtors will seek to schedule for a hearing before the Court within a reasonable time, subject to the Court's schedule. If no objection is received by the Objection Deadline, or if an objection is withdrawn, the Debtors will be authorized to retain and compensate the Ordinary Course Professional without further order of the Court.

The Debtors request that they be authorized to employ and retain additional Ordinary Course Professionals, not currently listed herein, as future circumstances require ("**Additional Ordinary Course Professional**"), without the need to file individual retention applications or provide further hearing or notice to any party, by filing on the Court's docket a supplement (the "**Supplement**").

The Debtors propose that, as with the Ordinary Course Professionals, each Additional Ordinary Course Professional be required to file and serve a Declaration within twenty days after the filing of the Supplement. Any objecting party would then have ten days after filing of each Declaration to object to the retention of the Additional Ordinary Course Professional. The objection must be filed on the docket on or before the Objection Deadline. If any such objection cannot be resolved and withdrawn within ten days after filing, counsel for the Debtors will seek to schedule for a hearing before the Court within a reasonable time, subject to the Court's

schedule. If no objection is received by the Objection Deadline, or if an objection is withdrawn, the Debtors would be authorized to retain the Additional Ordinary Course Professional as a final matter without further order.

B. Proposed Payment Procedures

The Debtors seek authority to pay, without any further application, approval, or order from the Court, the fees and expenses of each Ordinary Course Professional upon submission to, and approval by, the Debtors of an appropriate invoice setting forth in reasonable detail the nature of the post-Petition Date services rendered and expenses incurred.¹ Invoices exceeding the specified dollar amounts, however, will be subject to the approval procedures otherwise applicable to professionals in chapter 11.

The Debtors propose that they be permitted to pay, without formal application to the Court, fees and expenses on an average monthly basis not exceeding 125% of the monthly average for each of the Ordinary Course Professionals. As set forth below:

Professional	Monthly Average	125% of Average
Crowell & Moring	\$10,150	\$12,687.50
Panitch	\$1,650	\$2,062.50
Dorsey	\$30,650	\$38,312.50
Murgitroyd	\$1,650	\$2,062.50
Mark Lehman	\$10,600	\$13,250.00
EisnerAmper	\$8,400	\$10,500.00
Connor Group	\$16,550	\$20,687.50
Scalar LLC	\$1,875	\$2,343.75
Ned Swanson	\$8,100	\$10,125.00
Total:	\$89,625.00	\$112,031.25

The Debtors also propose that aggregate monthly payments to Ordinary Course Professionals for these cases be limited to \$112,031.25 during any given month in these Chapter 11 Cases, unless additional payments are authorized by the Court.

¹ The Debtors expressly reserve the right to dispute any such invoice.

The Ordinary Course Professionals would become subject to Court approval under [C sections 330 and 331 Bankruptcy Code](#), the Federal Rules of Bankruptcy Procedure, the Local Rules of the United States Bankruptcy Court, and such procedures as may be approved by order of the Court for professionals involved in the conduct of these cases, only if such payments exceed the monthly caps above.

C. Quarterly Statements of Payments

The Debtors propose to file with the Court a statement of fees and distributions for each Ordinary Course Professional every 120 days.

VIII. AUTHORITY AND REQUEST FOR RELIEF

Because the Ordinary Course Professionals' employment relates only indirectly to the Debtors' work, because the Ordinary Course Professionals are afforded only marginal discretion in performing their work, and because the Ordinary Course Professionals will not be involved in administering these Chapter 11 Cases, the Debtors do not believe that the Ordinary Course Professionals are "professionals" within the meaning of [C section 327 of the Bankruptcy Code](#) whose retention must be approved by this Court. *See, e.g.,* [In re Johns-Manville Corp.](#), 60 B.R. 612, 619–20 (Bankr. S.D.N.Y. 1986) (clarifying that only those professionals involved in the actual reorganization effort, rather than the debtor's ongoing business, require approval under [C section 327 of the Bankruptcy Code](#)); [In re Seatrain Lines, Inc.](#), 13 B.R. 980, 981 (Bankr. S.D.N.Y. 1981) ("[P]ersons in occupations ordinarily considered professions are not necessarily professionals whose retention by the estate requires court approval. For the purposes of [C section 327\(a\)](#), 'professional person' is limited to persons in those occupations which play a central role in the administration of the debtor proceeding.").

Nevertheless, out of an abundance of caution, the Debtors seek the relief requested herein to avoid any subsequent controversy as to the Debtors' employment and payment of the Ordinary Course Professionals during these Chapter 11 Cases. The Debtors shall seek specific Court authority under [Section 327 of the Bankruptcy Code](#) to employ any other professionals involved in the actual administration of these Chapter 11 Cases.

Relief similar to that requested herein has been granted by courts in other substantial chapter 11 cases. *See, e.g., In re Delphi Corp.*, Case No. 05-44481 (Bankr. S.D.N.Y. Nov. 4, 2005); *In re Winn-Dixie Stores, Inc.*, Case No. 05-11063 (Bankr. S.D.N.Y. Mar. 4, 2005); *In re FiberMark, Inc.*, Case No. 04-10463 (Bankr. D. Vt. April 27, 2004); *In re WorldCom, Inc.*, Case No. 02-13533 (Bankr. S.D.N.Y. Sept. 4, 2002); *In re Kmart Corp.*, Case No. 02-02474 (Bankr. N.D. Ill. Jan. 25, 2002); *In re Pathmark Stores, Inc.*, Case No. 00-2963 (Bankr. D. Del. July 13, 2000); and *In re The Grand Union Co.*, Case No. 00-39613 (Bankr. D.N.J. Oct. 3, 2000). The Debtors believe that the requested procedures are appropriate and in the best interests of their estates and their creditors. Thus, the Debtors request that this Court enter the Order approving the procedures as set forth in this Motion.

IX. NOTICE

No trustee or examiner has been appointed in these Chapter 11 Cases. The Debtors have provided notice of this Motion to (a) the Office of the United States Trustee for the District of Utah; (b) the parties listed on the Combined List of Creditors Holding the 20 Largest Unsecured Claims for the Debtors; (c) all ECF notice parties; (d) the United States Internal Revenue Service; (e) the Utah Tax Commission; and (f) all parties on the Debtors' combined mailing matrix. In light of the nature of the relief requested in this Motion, the Debtors respectfully submit that no further notice is necessary.

No prior application for the relief sought in this Motion has been made to this Court or any other court in connection with these Chapter 11 Cases.

X. CONCLUSION

WHEREFORE, for the reasons set forth herein, the Debtors respectfully requests entry of an order substantially in the form of the proposed order attached as Exhibit A hereto, authorizing the Debtors to retain, employ and compensate professionals utilized by the Debtors in the ordinary course of business, as well as such other and further relief as is just and proper.

DATED June 6, 2023.

/s/ Brian M. Rothschild

Brian M. Rothschild

Darren Neilson

Simeon Brown

PARSONS BEHLE & LATIMER

Proposed Attorneys for the Debtors

EXHIBIT A

PROPOSED ORDER

Order prepared and submitted by:
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Brian M. Rothschild, USB #15316
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Proposed Attorneys for the Debtors

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

In re: PolarityTE, Inc., a Delaware corporation Debtor	Case No. 23-bk-22358-KRA Case No. 23-bk-22360-KRA Case No. 23-bk-22361-KRA
In re: PolarityTE, MD Inc., a Nevada corporation Debtor	Chapter 11 Judge Kevin R. Anderson

In re: PolarityTE, Inc., a Nevada corporation Debtor	THIS ORDER RELATES TO ALL DEBTORS¹
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ORDER AUTHORIZING RETENTION, EMPLOYMENT, AND COMPENSATION OF CERTAIN PROFESSIONALS USED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS

Upon the application (the “**Application**”)² of the above-captioned debtors and debtors in possession (the “**Debtors**”) seeking entry of an order pursuant to [sections 105\(a\), 327, 328, 330 and 363 of title 11 of the United States Code](#), [11 U.S.C. §§ 101](#), et seq. (the “**Bankruptcy Code**”), authorizing the Debtors to retain, employ, and pay certain professionals in the ordinary course of business without further order of the Court; and the Court, having reviewed the Application and having heard the statements of counsel in support of the relief requested in the Application at the hearing before the Court (the “**Hearing**”), finds that the Court has jurisdiction over this matter pursuant to [28 U.S.C. §§ 157 and 1334](#), that this is a core matter pursuant to [28 U.S.C. § 157\(b\)\(2\)](#), that notice of the Application and the Hearing were sufficient under the circumstances and that no further notice need be given; and the legal and factual bases set forth in the Application and at the Hearing establish just cause for the relief granted herein,

IT IS HEREBY ORDERED AS FOLLOWS:

1. The Application is granted as provided herein.

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are PolarityTE, Inc. (9524); PolarityTE MD, Inc. (1555); and PolarityTE, Inc. (6882). The location of the Debtors’ service address is 1960 S. 4250 W., Salt Lake City, UT 84104.

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

2. The Debtors are authorized, but not compelled, to retain and employ, pursuant to [Sections 105\(a\), 327, 328 and 330 of the Bankruptcy Code](#) effective as of the Petition Date, the following:

Crowell & Moring
Panitch
Dorsey
Murgitroyd
Mark Lehman
EisnerAmper
Connor Group
Scalar LLC
Ned Swanson

(the “**Ordinary Course Professionals**”), without the need to file separate, formal retention applications, or obtain retention orders, for each such Ordinary Course Professional, or with respect to professionals not listed above, such later date identified in this Order.

3. Within five (5) business days after the date of entry of this Order, the Debtors shall send this Order and the form of Declaration attached to the Application upon each Ordinary Course Professional.

4. On the later of (a) twenty (20) days after entry of an order by this Court granting the Application, or (b) prior to the payment of any Ordinary Course Professional for services provided to the Debtors following the Petition Date, each Ordinary Course Professional shall file on the docket of this Court, a Declaration of Ordinary Course Professional, substantially in the form of the declaration attached as Exhibit B to the Application, (the “**Declaration**”), which includes the following information: (i) a description of the effort(s) that were taken to search for connections with parties in interest; (ii) a description of the proposed scope of services to be provided by the Ordinary Course Professional; (iii) the rate(s) proposed to be charged for the services; (iv) all information otherwise required to be disclosed pursuant to [Federal Rule of](#)

[Bankruptcy Procedure 2014](#), certifying that such Ordinary Course Professional does not represent or hold any interest adverse to the Debtors or their estates for the matter on which the professional is to be employed; and (v) to the extent that the Ordinary Course Professional was not providing services as of the Petition Date, the date on which such services began post-petition.

5. Any parties in interest shall have ten (10) days after service of each Ordinary Course Professional's Affidavit (the "**Objection Deadline**") to object to the retention of such professional. Any such objections must be filed on the docket of this court on or before the Objection Deadline. If any such objection is filed and cannot be resolved and/or withdrawn within fifteen (15) days after service of such objection, this Court shall adjudicate the matter at a hearing within reasonable time. If no timely objection is filed and received, or if any objection is withdrawn, the Debtors shall be authorized to retain the Ordinary Course Professional as a final matter without further order of this Court. Nothing herein shall preclude an Ordinary Course Professional from applying to the Court, pursuant to [Sections 330 and 331 of the Bankruptcy Code](#), for compensation for all work performed on behalf of the Debtors from the Petition Date through the date that any such retention request is denied by the Court or withdrawn by the Debtors.

6. The Debtors may not make any payments to any Ordinary Course Professionals until (a) the Ordinary Course Professional has filed the Affidavit and the Objection Period has expired with no related objections having been filed, or (b) if a related objection is filed, until such objection is resolved or withdrawn, or such retention is approved by the Court.

7. The Debtors are authorized, without need for further hearing or order from this Court, to employ and retain Ordinary Course Professionals not currently listed herein to the

Application by filing on the Court’s docket a supplement (the “**Supplement**”) listing the name of the professional, together with a brief description of the services to be rendered, and by otherwise complying with the terms of this Order.

8. Without further order of this Court, the Debtors are authorized, but not required, to pay to each Ordinary Course Professional one hundred twenty-five percent (125%) of each Ordinary Course Professional’s fees and expenses, not to exceed \$112,031.25 in any given month, in the manner customarily made by the Debtors prepetition. Each Ordinary Course Professional must submit reasonably detailed billing statements indicating the nature of the services rendered, calculated in accordance with such professional’s standard billing practices (without prejudice to the Debtors’ normal right to dispute any such billing statements).

9. The Debtors are authorized and empowered to make payments up to 125% of the monthly average per Ordinary Course Professional (collectively, the “**Monthly Cap**”) as set forth below:

Professional	Monthly Average	125% of Average
Crowell & Moring	\$10,150	\$12,687.50
Panitch	\$1,650	\$2,062.50
Dorsey	\$30,650	\$38,312.50
Murgitroyd	\$1,650	\$2,062.50
Mark Lehman	\$10,600	\$13,250.00
EisnerAmper	\$8,400	\$10,500.00
Connor Group	\$16,550	\$20,687.50
Scalar LLC	\$1,875	\$2,343.75
Ned Swanson	\$8,100	\$10,125.00
Total:	\$89,625.00	\$112,031.25

10. The Debtors are further authorized and empowered to make payments of \$112,031.25 during any given month during the course of these chapter 11 proceedings for post-petition compensation of post-petition fees, plus payment of costs and disbursements, made by the Debtors in the full amount billed by any such Ordinary Course Professional, upon receipt

therefrom of reasonably detailed invoices indicating the nature of the services rendered and calculated in accordance with such Ordinary Course Professional's standard billing practices (without prejudice to the Debtors' normal right to dispute any such invoices), provided, however, that compensation paid to an Ordinary Course Professional is authorized as a final matter pursuant to the provisions set forth below.

11. All payments to any one Ordinary Course Professional shall be subject to [sections 328\(c\) and section 330 of the Bankruptcy Code](#), which provide generally that the Court may deny allowance of compensation for services and reimbursement of expenses if such professional person represents or holds an interest adverse to the interest of the Debtors' estates with respect to the matter on which such professional person is employed or for the reasons set forth in [section 330](#). All payments to an Ordinary Course Professional are further subject to the Federal Rules of Bankruptcy Procedure, the Local Rules of Bankruptcy Practice and Procedures of the United States Bankruptcy Court for the District of Utah, and such procedures as may be implemented by order of this Court for professionals involved in the conduct of these Cases, if payments to any such Ordinary Course Professional exceed the caps established in this Order in any one month period.

12. Notwithstanding the foregoing, the monthly caps established above shall specifically not apply to any contingent fee amounts received by Ordinary Course Professionals from recoveries realized on behalf of the Debtors.

13. In the event an Ordinary Course Professional seeks more than the Monthly Cap in a single month during the pendency of these chapter 11 cases, then such Ordinary Course Professional shall file a fee application in accordance with the Federal Rules of Bankruptcy Procedure, the Local Rules of Bankruptcy Practice and Procedure for the United States

Bankruptcy Court for the District of Utah, the Fee Guidelines Promulgated by the Executive Office of the United Trustee and any order entered by the Court governing the payment of compensation and reimbursement of expenses in these chapter 11 cases.

14. In the event an Ordinary Course Professional is required to file a fee application by virtue of such Ordinary Course Professional's fees exceeding the Monthly Cap, such Ordinary Course Professional is required to submit a fee application for the applicable month for which its fees exceeded the Monthly Cap. Notwithstanding the requirement in this Order that Ordinary Course Professionals may be required to file fee applications, no Ordinary Course Professional shall be required to file a retention application.

15. The Debtors are authorized to modify or supplement the list of Ordinary Course Professionals from time to time during these chapter 11 cases, as needed, and to file on the Court's docket a Supplement listing Ordinary Course Professionals added to the Ordinary Course Professionals List along with the attendant Ordinary Course Affidavit.

16. If no objection to the retention of an additional Ordinary Course Professional listed on the Supplement is filed on this Court's Docket before the Objection Deadline, the retention of such Ordinary Course Professionals shall be deemed approved by the Court pursuant to [Sections 327 and 328 of the Bankruptcy Code](#) without the need for a hearing, effective as of the Petition Date if filed within 21 days of the Petition Date and, if later, a date that is no earlier than thirty-seven (37) days prior to the filing of the Supplement and accompanying Ordinary Course Affidavit; provided, however, if an objection is served and filed, and cannot be resolved within fifteen (15) days, the matter shall be set for a hearing before the Court, and the Court may determine the effective date thereof.

17. Any Ordinary Course Professional retained pursuant to a Supplement will be paid in accordance with the terms and conditions of this Order; provided, however, that any Ordinary Course Professional added pursuant to a Supplement shall not be employed on a contingency basis without further order of this Court.

18. The right of any party in interest to dispute any invoices shall not be affected or prejudiced in any manner by the relief granted in this Order.

19. All Ordinary Course Professionals who are not law firms and law firm Ordinary Course Professionals who did not represent the Debtors prior to the Petition Date who are employed pursuant to this Order shall, once their employment is effective pursuant to this Order, be deemed to have waived any pre-petition claims they may have against the Debtors.

20. Every one hundred and twenty (120) days (commencing on the first day of the month following the ninetieth day after the entry of this Order), the Debtors shall file with the Court a report summarizing payments to Ordinary Course Professionals (an “**Ordinary Course Professionals Report**”).

21. The Ordinary Course Professionals Report shall include the following information for each Ordinary Course Professional receiving payments from the Debtors during the applicable Reporting Period (as defined below): (i) the name of such Ordinary Course Professional; (ii) the aggregate amounts paid as compensation for services rendered and reimbursement of expenses incurred by such Ordinary Course Professional during the preceding ninety (90) day period ending at the conclusion of the prior calendar month (the “**Reporting Period**”); and (iii) a general description of the services rendered by such Ordinary Course Professional.

22. This Order shall not apply to any professional retained by the Debtors pursuant to a separate order of the Court.

23. Any payment of fees or expenses to any Ordinary Course Professional are subject to this Court's Final Order (I) Authorizing Debtors to Utilize Cash Collateral Pursuant to [C11 U.S.C. § 363](#) and (II) Granting Adequate Protection to Prepetition Secured Parties Pursuant to [C11 U.S.C. §§ 105, 361, 362 and 363](#) (Docket No. 110).

24. This Court shall retain jurisdiction to hear and determine all matters arising from or relating to the interpretation or implementation of this Order.

[END OF DOCUMENT]

###

EXHIBIT B

Form of Affidavit of Disinterestedness for Ordinary Course Professionals

J. Thomas Beckett, USB #5587
 Brian M. Rothschild, USB #15316
 Darren Neilson, USB #15005
PARSONS BEHLE & LATIMER
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Proposed Attorneys for the Debtors

**IN THE UNITED STATES BANKRUPTCY COURT
 FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

In re: PolarityTE, Inc., a Delaware corporation <p style="text-align: center;">Debtor</p>	Case No. 23-bk-22358-KRA Case No. 23-bk-22360-KRA Case No. 23-bk-22361-KRA
In re: PolarityTE, MD Inc., a Nevada corporation <p style="text-align: center;">Debtor</p>	Chapter 11 Judge Kevin R. Anderson
In re: PolarityTE, Inc., a Nevada corporation <p style="text-align: center;">Debtor</p>	THIS FILING RELATES TO ALL DEBTORS¹

DISCLOSURE AFFIDAVIT OF ORDINARY COURSE PROFESSIONAL

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are PolarityTE, Inc. (9524); PolarityTE MD, Inc. (1555); and PolarityTE, Inc. (6882). The location of the Debtors’ service address is 1960 S. 4250 W., Salt Lake City, UT 84104.

AFFIDAVIT

STATE OF UTAH)
) ss:
COUNTY OF SALT LAKE)

I, _____, hereby declare that the following is true to the best of my knowledge, information, and belief:

1. I am a [Position Title] of [Company Name] (“[**Shorthand Company Name**]”) which maintains offices at [insert address].

2. This Affidavit is submitted in connection with an Order of the United States Bankruptcy Court for the District of Utah dated _____, 2023, authorizing the above-captioned debtors and debtors-in-possession (collectively, the “**Debtors**”) to retain certain professionals in the ordinary course of business during the pendency of the Debtors’ chapter 11 cases.

3. [Shorthand Company Name], through me, and members of the firm, have represented and/or advised the Debtors as [Nature of Relationship (Legal Counsel, consultants, vendors, etc.)] with respect to certain aspects of the Debtors’ business, including [description of past services], since _____ [insert date].

4. The Debtors have requested, and [Shorthand Company Name] has agreed, to continue to provide services to the Debtors with respect to such matters. Additionally, the Debtors have requested, and [Shorthand Company Name] proposes to render the following services to the Debtors during these chapter 11 cases:

[Insert description of services.]

5. [Shorthand Company Name]’s current customary [hourly] rates, subject to change from time to time, typically range from \$_____ to \$_____ per hour. In the normal course

of business, [Shorthand Company Name] revises its regular [hourly] rates on _____ of each year and requests that, effective _____ of each year, the aforementioned rates be revised to the regular [hourly] rates which may be in effect at that time.

6. To the best of my knowledge, formed after due inquiry, neither I, [Shorthand Company Name], nor any employee thereof has any connection with the Debtors or currently represent any of their creditors, other parties-in-interest, the United States Trustee, or any person employed by the Office of the United States Trustee with respect to the matters upon which it is to be engaged, and [Shorthand Company Name] does not, by reason of any direct or indirect relationship to, connection with, or interest in the Debtors, hold or represent any interest adverse to the Debtors, their estates, or any class of creditors or equity interest holders, [except _____].

7. Thus, I believe that [Shorthand Company Name]'s work with such entities in matters entirely unrelated to the Debtors is not adverse to the Debtors' interests, or the interests of their creditors, or estates in respect of the matters for which [Shorthand Company Name] will be engaged, nor will such services impair [Shorthand Company Name]'s ability to represent the Debtors in the ordinary course in these chapter 11 cases.

8. In addition, although unascertainable at this time after due inquiry, due to the magnitude of the Debtors' potential universe of creditors and [Shorthand Company Name]'s clients, [Shorthand Company Name] may have in the past represented, currently represent, and may in the future represent entities that are claimants of the Debtors in matters entirely unrelated to the Debtors and their estates. [Shorthand Company Name] does not and will not represent any such entity in connection with these pending chapter 11 cases and does not have any relationship

with any such entity, attorneys, or accountants that would be adverse to the Debtors or their estates.

9. In the past year, [Shorthand Company Name] has rendered services that have not yet been billed or that have been billed but with respect to which payment has not yet been received. [Shorthand Company Name] is currently owed \$ _____ on account of such prepetition services.

10. [(For attorneys only where applicable) Subject to [Csection 327\(e\) of the Bankruptcy Code](#), [Shorthand Company Name] has in the past represented the Debtors and is owed prepetition fees related to that representation. [Shorthand Company Name]'s prepetition services are not directly related to the representation [Shorthand Company Name] will provide Debtors during the course of these pending chapter 11 cases. Thus, I believe that [Shorthand Company Name]'s prepetition fees are not adverse to the Debtors' interests, or the interests of their creditors, or estates in respect of the matters for which [Shorthand Company Name] will be engaged, and it will be in the best interest of the Debtor's estates to employ [Shorthand Company Name] during the ordinary course in these chapter 11 cases.]

11. In light of the foregoing, I believe that [Shorthand Company Name] does not hold or represent any interest materially adverse to the Debtors, their estates, creditors, or equity interest holders with respect to the matters for which the firm will be engaged.

12. Except as set forth herein, no promises have been received by [Shorthand Company Name] or any partner, associate, or other professional thereof as to compensation in connection with these chapter 11 cases other than in accordance with any applicable provisions of the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, the Local Rules of

Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware, and orders of this Court.

13. [Shorthand Company Name] further states that it has not shared, nor agreed to share any compensation received in connection with these chapter 11 cases with another party or person, other than as permitted by [Csection 504\(b\) of the Bankruptcy Code](#) and [CFederal Rule of Bankruptcy Procedure 2016](#).

14. The foregoing constitutes the statement of [Shorthand Company Name] pursuant to [Csections 329 and 504 of the Bankruptcy Code](#) and [CFederal Rules of Bankruptcy Procedure 2014 and 2016\(b\)](#).

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

[NAME]
[ADDRESS]

Sworn to before me this _____ day of _____, 2023

Notary Public