

This order is SIGNED.

Dated: June 16, 2023

Kevin R. Anderson
KEVIN R. ANDERSON
U.S. Bankruptcy Judge



slo

Order prepared and submitted by:

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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>



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
UNDER 11 U.S.C. § 363(c)**

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 under section 363(c) of the Bankruptcy Code 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 jointly administered 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 and 363(c) of the Bankruptcy Code effective as of the Petition Date, the following:

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

(the “**Ordinary Course Professionals**”),³ 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

³ The employment of Dorsey & Whitney under 11 U.S.C. § 327(e) will be approved under separate order after the 21 days required under Bankruptcy Rule 6003(a)

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 \$73,718.75 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
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:	\$58,975.00	\$73,718.75

10. The Debtors are further authorized and empowered to make payments of \$73,718.75 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 section 363(c) 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. 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]

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DESIGNATION OF PARTIES TO RECEIVE NOTICE

Service of the foregoing **ORDER AUTHORIZING RETENTION, EMPLOYMENT, AND COMPENSATION OF CERTAIN PROFESSIONALS USED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS** shall be served to the parties and in the manner designated below:

By Electronic Service: I certify that the parties of record in this case as identified below, are registered CM/ECF users.

- J. Thomas Beckett tbeckett@parsonsbehle.com, ecf@parsonsbehle.com;brothschild@parsonsbehle.com
- Darren B. Neilson dneilson@parsonsbehle.com
- Ellen E. Ostrow eostrow@foley.com, lbailey@foley.com;ellen-ostrow-4512@ecf.pacerpro.com;tschuman@foley.com;docketflow@foley.com
- Brian M. Rothschild brothschild@parsonsbehle.com, ecf@parsonsbehle.com;docket@parsonsbehle.com
- United States Trustee USTPRegion19.SK.ECF@usdoj.gov
- Melinda Willden tr melinda.willden@usdoj.gov, Lindsey.Huston@usdoj.gov;James.Gee@usdoj.gov;Rinehart.Peshell@usdoj.gov;Rachell e.D.Armstrong@usdoj.gov;Brittany.Eichorn@usdoj.gov

The following parties in interest are not registered ECF users and must be notified manually:

Kurtzman Carson Consultants, LLC
222 N Pacific Coast Highway
3rd Floor
El Segundo, CA 90245

Rocky Mountain Advisory, LLC
15 W South Temple
Ste 500
Salt Lake City, UT 84101

Dated this 12th day of June, 2023.

/s/ Brian M. Rothschild
Brian M. Rothschild

In re:
PolarityTE, Inc.
Debtor

Case No. 23-22358-KRA
Chapter 11

CERTIFICATE OF NOTICE

District/off: 1088-2
Date Rcvd: Jun 16, 2023

User: admin
Form ID: pdfor1

Page 1 of 2
Total Noticed: 2

The following symbols are used throughout this certificate:

Symbol Definition

+ Addresses marked '+' were corrected by inserting the ZIP, adding the last four digits to complete the zip +4, or replacing an incorrect ZIP. USPS regulations require that automation-compatible mail display the correct ZIP.

Notice by first class mail was sent to the following persons/entities by the Bankruptcy Noticing Center on Jun 18, 2023:

Recip ID	Recipient Name and Address
op	+ Kurtzman Carson Consultants, LLC, 222 N Pacific Coast Highway, 3rd Floor, El Segundo, CA 90245-5614
fa	+ Rocky Mountain Advisory, LLC, 15 W South Temple, Ste 500, Salt Lake City, UT 84101-1500

TOTAL: 2

Notice by electronic transmission was sent to the following persons/entities by the Bankruptcy Noticing Center.
Electronic transmission includes sending notices via email (Email/text and Email/PDF), and electronic data interchange (EDI).

NONE

BYPASSED RECIPIENTS

The following addresses were not sent this bankruptcy notice due to an undeliverable address, *duplicate of an address listed above, *P duplicate of a preferred address, or ## out of date forwarding orders with USPS.

NONE

NOTICE CERTIFICATION

I, Gustava Winters, declare under the penalty of perjury that I have sent the attached document to the above listed entities in the manner shown, and prepared the Certificate of Notice and that it is true and correct to the best of my information and belief.

Meeting of Creditor Notices only (Official Form 309): Pursuant to Fed .R. Bank. P.2002(a)(1), a notice containing the complete Social Security Number (SSN) of the debtor(s) was furnished to all parties listed. This official court copy contains the redacted SSN as required by the bankruptcy rules and the Judiciary's privacy policies.

Date: Jun 18, 2023

Signature: /s/Gustava Winters

CM/ECF NOTICE OF ELECTRONIC FILING

The following persons/entities were sent notice through the court's CM/ECF electronic mail (Email) system on June 16, 2023 at the address(es) listed below:

Name	Email Address
Brian M. Rothschild	on behalf of Debtor PolarityTE MD Inc. brothschild@parsonsbehle.com, ecf@parsonsbehle.com;docket@parsonsbehle.com
Brian M. Rothschild	on behalf of Debtor PolarityTE Inc. brothschild@parsonsbehle.com, ecf@parsonsbehle.com;docket@parsonsbehle.com
Brian M. Rothschild	on behalf of Debtor PolarityTE Inc., (a Nevada Corporation) (PTE-NV) brothschild@parsonsbehle.com, ecf@parsonsbehle.com;docket@parsonsbehle.com
Darren B. Neilson	on behalf of Debtor PolarityTE Inc., (a Nevada Corporation) (PTE-NV) dneilson@parsonsbehle.com
Darren B. Neilson	on behalf of Debtor PolarityTE MD Inc. dneilson@parsonsbehle.com
Darren B. Neilson	

District/off: 1088-2

User: admin

Page 2 of 2

Date Rcvd: Jun 16, 2023

Form ID: pdfor1

Total Noticed: 2

on behalf of Debtor PolarityTE Inc. dneilson@parsonsbehle.com

Ellen E. Ostrow

on behalf of Interested Party Grander Acquisition LLC eostrow@foley.com,
lbailey@foley.com;ellen-ostrow-4512@ecf.pacerpro.com;tschuman@foley.com;docketflow@foley.com

J. Thomas Beckett

on behalf of Debtor PolarityTE Inc. tbeckett@parsonsbehle.com, ecf@parsonsbehle.com;brothschild@parsonsbehle.com

J. Thomas Beckett

on behalf of Debtor PolarityTE Inc., (a Nevada Corporation) (PTE-NV) tbeckett@parsonsbehle.com,
ecf@parsonsbehle.com;brothschild@parsonsbehle.com

J. Thomas Beckett

on behalf of Debtor PolarityTE MD Inc. tbeckett@parsonsbehle.com, ecf@parsonsbehle.com;brothschild@parsonsbehle.com

Melinda Willden tr

on behalf of U.S. Trustee United States Trustee melinda.willden@usdoj.gov
Lindsey.Huston@usdoj.gov;James.Gee@usdoj.gov;Rinehart.Peshell@usdoj.gov;Rachelle.D.Armstrong@usdoj.gov;Brittany.Eich
orn@usdoj.gov

United States Trustee

USTPRegion19.SK.ECF@usdoj.gov

TOTAL: 12