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*Attorneys for the Debtors*

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

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<p>In re:  PolarityTE, Inc., a Delaware corporation  Debtor</p>	<p>Case No. 23-bk-22358-KRA  Case No. 23-bk-22360-KRA  Case No. 23-bk-22361-KRA</p>
<p>In re:  PolarityTE, MD Inc., a Nevada corporation  Debtor</p>	<p>Chapter 11  Judge Kevin R. Anderson</p>
<p>In re:  PolarityTE, Inc., a Nevada corporation  Debtor</p>	<p><b>THIS FILING RELATES TO ALL DEBTORS<sup>1</sup></b></p>

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**MOTION FOR ORDER APPROVING KEY EMPLOYEE INCENTIVE PLAN**

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<sup>1</sup> 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.



By this motion (the “**Motion**”), the above captioned debtors and debtors in possession PolarityTE, Inc., a Delaware corporation (“**PTE**”), PolarityTE MD, Inc., a Nevada corporation (“**PTE MD**”), and PolarityTE, Inc., a Nevada corporation (“**PTE NV**” and, together with PTE and PTE MD, the “**Debtors**” or each a “**Debtor**”), hereby move the Court for entry of an order in the form attached hereto as Exhibit A, approving a key employee incentive plan (“**KEIP**”) as described below. In support of the Motion, the Debtors rely upon an incorporate by reference the *Declaration of Richard Hauge in Support of Debtors’ Motion for Entry of Order Approving Key Employee Incentive Plan* (the “**Hauge Declaration**”) attached hereto as Exhibit B. In further support of the Motion the Debtors respectfully represent as follows:

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. SUMMARY OF RELIEF REQUESTED**

The Debtors<sup>2</sup> seek an order approving key employee incentive program for seven PTE MD employees (the “**Employees**”). The Employees are critical to the operation of the Debtors during this turbulent time. More importantly, the Employees are key to the transition and migration of the Debtors business to Grander Acquisition LLC (the “**Purchaser**”). The Employees all retain key knowledge and expertise. To entice the Employees to remain with the company during the bankruptcy proceeding and to assist in the sale of the Debtors’ assets to Purchaser, PTE MD has entered into employee incentive agreements with each of the Employees. If such KEIP agreements are not allowed by the Court, these Employees will potentially seek different employment thus leaving the Debtors potentially unable to complete the migration process of the Debtors’ assets to Purchaser.

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<sup>2</sup> While the Motion refers to the Debtors in the plural, the employees subject to the KERP signed retention agreements with PTE MD.

## **II. JURISDICTION**

1. The Bankruptcy 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 in Salt Lake City, Utah, within the District of Utah, and, therefore, venue is proper in this District under 28 U.S.C. §§ 1408(1) and 1409.

3. The bases for the relief requested herein are sections 105, 363(b), and 503(b) and (c)(3) of Title 11 of the United States Code (the "**Bankruptcy Code**") and rule 6004 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**").

## **III. GENERAL BACKGROUND**

4. PTE MD and PTE NV are each wholly owned subsidiaries of PTE, a publicly traded company and are collectively referred to herein as the "Debtors."

5. 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 its layers (epidermis, dermis and hypodermis) and appendages (hair follicles and glands).

6. Previously the Debtors were selling SkinTE under the U.S. Food and Drug Administration's ("**FDA**") 361 HCT/P pathway governed by 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 rigorous clinical trials under the FDA's 351 Biologic pathway, from which they derive no revenue. These clinical trials are extremely expensive. On this pathway, the Debtors' business will not be generating revenue again until obtaining FDA approval, which it anticipates in 2026.

7. 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.

8. Rather than abandon the clinical trials and their promising product, on 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**”).

9. Though the Chapter 11 Cases, the Debtors seek the approval to sell substantially all of their assets to the Purchaser. On June 16, 2023, the Court entered an order approving, among other things, bid procedures for the sale of Debtors’ assets and the sale of Debtors’ assets free and clear of liens, encumbrances, and other interests, at a subsequent hearing (the “**Sale Order**”) (Docket No. 48)<sup>3</sup>.

10. Through the sale of its assets, the clinical trials will continue to move forward and SkinTe will be brought to market.

#### **IV. BACKGROUND SPECIFIC TO THIS MOTION**

11. To maintain the stability of their operations during the Chapter 11 Cases and to provide the critical expertise and support for the migration of the Debtors’ assets and business operations to the Purchaser, Debtors seek authority to implement the KEIP for the benefit of seven key employees.

12. Significantly, the Debtors’ assets are large and technically complex. Furthermore, the sale of these assets requires sophisticated scientific and regulatory compliance and coordination. The Employees could not, therefore, be replaced except through expensive outside

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<sup>3</sup> All references to any docket shall mean Case No. 23-22358 unless otherwise indicated.

contractors. The cost of such contractors would be significantly higher than the cost (including the cost of the Incentive Plan) of existing employees. Also, third party contractors do not possess the historical knowledge of Debtors’ operations and, as a result, would inherently be less efficient in the execution of the necessary work with respect to effectuating the Sale. The Debtors believe that the best efforts of the Employees are necessary to achieving the Sale, and that the best way to help ensure that such efforts are achieved is to motivate the Employees by instituting the KEIP.

13. The KEIP Employees and employment terms are as follows:

<b>Employee Name and Position</b>	<b>Payment Terms</b>
Matt Pheysey QC Lab Manager	In consideration of continued employment through the end of day on July 31, 2023, or at the time of the closing of the sale of Debtor’s assets to Purchaser, whichever occurs first, M. Pheysey shall receive a one-time payment of \$7,000.00.
Dan Greive Sr. Manager, Facilities	In consideration of continued employment through the end of day on July 31, 2023, or at the time of the closing of the sale of Debtor’s assets to Purchaser, whichever occurs first, D. Greive shall receive a one-time payment of \$7,000.00.
Dillon Hall IT Security Engineer	In consideration of continued employment through the end of day on July 31, 2023, or at the time of the closing of the sale of Debtor’s assets to Purchaser, whichever occurs first, D. Hall shall receive a one-time payment of \$7,000.00.
Courtney Cushnir Executive Director of Corporate Operations	In consideration of continued employment through the end of day on July 31, 2023, or at the time of the closing of the sale of Debtor’s assets to Purchaser, whichever occurs first, C. Cushnir shall receive a one-time payment of \$10,000.00.
Gavin Smith Executive Assistant	In consideration of continued employment through the end of day on July 31, 2023, or at the time of the closing of the sale of Debtor’s assets to Purchaser,

	whichever occurs first, G. Smith shall receive a one-time payment of \$7,000.00.
Brandy Hill Director of QC	In consideration of continued employment through the end of day on July 31, 2023, or at the time of the closing of the sale of Debtor’s assets to Purchaser, whichever occurs first, B. Hill shall receive a one-time payment of \$10,000.00.
Alex Salinas Quality Associate III	In consideration of continued employment through the end of day on May 31, 2023, A. Salinas shall receive a one-time payment of \$2,000. A. Salinas shall be entitled to a second payment of \$6,000 in consideration of continued employment through the end of July 31, 2023, or at the time of the closing of the sale of Debtor’s assets to Purchaser, whichever occurs first.

**V. ARGUMENTS AND AUTHORITIES**

**A. Implementation of the KEIP Is Warranted Under Section 363(b)(1) as an Appropriate Exercise of the Debtors’ Business Judgment.**

The Court may authorize the Debtors to implement the Incentive Plan under section 363(b) of the Bankruptcy Code. “The [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), as long as the debtor can “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); *see also Culp v. Stanziale (In re Culp)*, 550 B.R. 683, 697 (D. Del. 2015). Where there is a reasonable basis for a debtor’s business decisions, courts generally do not contradict the proposed course of conduct. *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.”).

The reasonable use of incentives and performance bonuses are considered the proper exercise of a debtor's business judgment. *In re Global Home Prods., LLC*, 369 B.R. 778, 784 (Bankr. D. Del. 2007) (citing *In re U.S. Airways, Inc.*, 329 B.R. 793, 795 (Bankr. E.D. Va. 2005)). Therefore, the implementation of the proposed KEIP is a sound exercise of the Debtors' business judgment and, as such, should be approved under section 363(b) of the Bankruptcy Code. The Employees are essential to the Debtors' operations and their services are necessary to maximize the value of the Debtors' estate. As mentioned above, the Debtors' assets are large and technically complex. The sale of these assets requires sophisticated scientific and regulatory compliance and coordination. The Employees could not, therefore, be replaced except through expensive outside contractors. The cost of such contractors would be significantly higher than the cost (including the cost of the KEIP) of existing employees and would further burden a financially fragile company. Also, third party contractors do not possess the historical knowledge of Debtors' operations and, as a result, would inherently be less efficient in the execution of the necessary work with respect to effectuating the Sale. The Debtors believe that the best efforts of the Employees are necessary to achieving the Sale, and that the best way to help ensure that such efforts are achieved is to motivate the Employees by instituting the KEIP. As a result, the Debtors, in their sound business judgment, believe that the implementation of the KEIP is well justified under the circumstances and will benefit the Debtors' estates and their creditor constituencies.

**B. The KEIP is Warranted Under Section 503(b)(1) as Actual, Necessary Costs and Expenses of Preserving the Debtors' Chapter 11 Estates.**

Section 503(b) of the Bankruptcy Code states in pertinent part that "[a]fter notice and a hearing, there shall be allowed administrative expenses . . . including – (1)(A) the actual necessary costs and expenses of preserving the estate including – (i) wages, salaries, and commissions for services rendered after commencement of the case. . . ." 11 U.S.C. § 503(b); *see also In re APF*

*Co.*, 270 B.R. 567, 570-71 (Bankr. D. Del. 2001) (postpetition employee bonus is an administrative expense claim under section 503(b)(1)(A)). As discussed above, the KEIP is appropriate designed to maximize the value of these estates and are appropriately categorized as wages earned after the Petition Date.

**C. Because the KEIP Is Primarily Incentivizing, It Is Not Subject to Sections 503(c)(1) and (2) of the Bankruptcy Code.**

While the KEIP does provide awards for maintaining employment, the awards were negotiated and implemented with an eye towards the sale of the assets of the Debtors. To this point, each KEIP is tied to and mentions the sale of the assets. At the time the Debtors negotiated each KEIP, it was anticipated that the asset sale would have long been completed before the July 31, 2023 date stated in the KEIPs. The Employees efforts will be critical to whether the Debtors achieve their goal of an asset sale in both maintaining the Debtors operations to the benefit of the Purchaser as well as help in the migration of the assets to the Purchaser. *See* Hauge Declaration.

**D. Because the KEIP Does Not Include Insiders, It Is Not Subject to Sections 503(c)(1) and (2) of the Bankruptcy Code.**

The KEIP is not subject to the restrictions set forth in sections 503(c)(1) and (2) of the Bankruptcy Code because the KEIP is not applicable to any “insiders” (as such term is defined by section 101(31) of the Bankruptcy Code). Generally, the Bankruptcy Code defines an “insider” to include, among other things, “an officer of the debtor” and a “person in control of the debtor.” 11 U.S.C. § 101(31). Courts have also concluded that an employee may be an “insider” if that employee has “at least a controlling interest in the debtor or . . . exercise[s] sufficient authority over the debtor so as to unqualifiably dictate corporate policy and the disposition of corporate assets.” *In re Velo Holdings, Inc.*, 472 B.R. 201, 208 (Bankr. S.D.N.Y. 2012) (citation omitted). An employee’s job title, alone, does not make that employee an “insider” as defined by the Bankruptcy Code. *See In re Borders Grp., Inc.*, 453 B.R. 459, 469 (Bankr. S.D.N.Y. 2011) (noting



that “[c]ompanies often give employees the title ‘director’ or ‘director-level,’ but do not give them decision-making authority akin to an “executive” and concluding that certain “director-level” employees in that case were not insiders); *see also In re Foothills Texas, Inc.*, 408 B.R. 573, 574-75 (Bankr. D. Del. 2009) (noting that the presumption of an officer as an insider based on title may be rebutted with “evidence sufficient to establish that the person holds the title of an officer in name only and, in fact, does not meet the substantive definition of the same, i.e., he or she is not taking part in the management of the debtor.”).

Although certain of the Employees hold titles such as “manager” or “director,” the Debtors do not believe that any of the Employees are insiders. The Debtors operate a large and complex enterprise. Because the Employees perform critical functions and oversee other employees, the Debtors gives the Employees manager or director titles. However, none of the Employees have discretionary control over substantial budgetary amounts or significant control with respect to the Debtors’ corporate policies or governance. *See In re Borders Grp. Inc.*, 453 B.R. 459, 469 (Bankr. S.D.N.Y. 2011) (noting that “[c]ompanies often give employees the title ‘director’ or ‘director-level,’ but do not give them decision-making authority akin to an executive” and concluding that certain “director level” employees in that case were not insiders). Therefore, the Employees are not “insiders” of the Debtors, and the restrictions of section 503(c)(1) of the Bankruptcy Code are inapplicable to the Employees. *See Hauge Declaration.*

**E. The KEIP Are Appropriate Under Section 503(c)(3) Because They Are Justified by the Facts and Circumstances of the Chapter 11 Cases.**

Section 503(c)(3) of the Bankruptcy Code requires non-ordinary course transfers to managers, consultants, and others to be “justified by the facts and circumstances of the case.” 11 U.S.C. § 503(c)(3). In determining whether incentive plans satisfy this standard, courts have generally applied section 363(b)’s “sound business judgment” test. *See, e.g., In re Velo Holdings,*

*Inc.*, 472 B.R. at 212 (noting that the “‘facts and circumstances’ language of section 503(c)(3) creates a standard no different than the business judgment standard under section 363(b)”; *see also In re Mesa Air Grp., Inc.*, 2010 Bankr. LEXIS 3334, at \*3 (“[T]he Debtors have established that the Incentive Payments are “justified by the facts and circumstances of the case” under section 503(c)(3) as they are within the “sound business judgment” of the Debtors); *In re Alpha Nat. Res., Inc.*, 546 B.R. 348, 356 (Bankr. E.D. Va. 2016) (“a majority of courts . . . agree that the ‘facts and circumstances’ test of 503(c)(3) is identical to the business judgment standard under 363(b)(1)”).

The Employees are essential to the Debtors’ operations and their services are necessary to maximize the value of the Debtors’ estate. As mentioned above, the Debtors’ assets are large and technically complex. The sale of these assets requires sophisticated scientific and regulatory compliance and coordination. The Employees could not, therefore, be replaced except through expensive outside contractors. The cost of such contractors would be significantly higher than the cost (including the cost of the KEIP) of existing employees. Also, third party contractors do not possess the historical knowledge of Debtors’ operations and, as a result, would inherently be less efficient in the execution of the necessary work with respect to effectuating the Sale. The Debtors believe that the best efforts of the Employees are necessary to achieving the Sale, and that the best way to help ensure that such efforts are achieved is to motivate the Employees by instituting the KEIP. As a result, the Debtors, in their sound business judgment, believe that the implementation of the KEIP is well justified under the circumstances and will benefit the Debtors’ estates and their creditor constituencies.

**F. Authorization and Approval of the KEIP is Appropriate Under Section 105(a) of the Bankruptcy Code.**

Under section 105(a) of the Bankruptcy Code, “[t]he [C]ourt may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code].”

11 U.S.C. § 105(a). The purpose of section 105(a) is to “assure the bankruptcy court’s power to take whatever action is appropriate or necessary in aid of the exercise of its jurisdiction.” 1 COLLIER ON BANKRUPTCY ¶ 105.01 (15th ed. rev. 2007). Section 105(a) of the Bankruptcy Code thus empowers the Court to issue any order “necessary or appropriate” to allow a debtor in possession to fulfill its duty to preserve the going-concern value of the business, including an order authorizing payment in full or in part of certain prepetition claims of unsecured creditors prior to confirmation of a plan. See *CoServ*, 273 B.R. at 496-97; see also *In re Mirant Corp., et al.*, 296 B.R. 427, 429-30 (Bankr. N.D. Tex. 2003).

The Court may use its power under section 105(a) to authorize the critical payments of prepetition obligations under the “doctrine of necessity.” The United States Court of Appeals for the Third Circuit recognized the doctrine of necessity in *In re Lehigh & New England Railway Co.*, 657 F.2d 570, 581 (3d Cir. 1981). In *In re Lehigh & New England Railway Co.*, the court held that a court may authorize the payment of prepetition claims if the payment was essential to the continued operation of the debtor. *Id.* (stating that courts may authorize payment of prepetition claims when there “is the possibility that the creditor will employ an immediate economic sanction, failing such payment”); see also *In re Penn Cent. Transp. Co.*, 467 F.2d 100, 102 n. 1 (3d Cir. 1972) (recognizing that the doctrine of necessity permits “immediate payment of claims of creditors where those creditors will not supply services or material essential to the conduct of the business until their pre-reorganization claims shall have been paid”); *In re Boston & ME. Corp.*, 634 F.2d 1359, 1382 (1st Cir. 1980) (recognizing the existence of a judicial power to authorize trustees to pay claims for goods and services that are indispensably necessary to the debtor’s continued operation); *CoServ*, 273 B.R. at 497 (noting that “it is only logical that the bankruptcy

court be able to use section 105(a) of the Code to authorize satisfaction of the prepetition claim in aid of preservation or enhancement of the estate”).

The Court’s exercise of its authority under the “doctrine of necessity” is appropriate to carry out specific statutory provisions of chapter 11, specifically Section 503(b)(1), which authorizes the Court to allow a debtor to pay any “actual, necessary costs and expenses of preserving the estate.” 11 U.S.C. § 503(b)(1).

Here, approval of the KEIP is an appropriate use of the Court’s section 105(a) powers because the KEIP is necessary to the continued operation of the Debtors’ business and to the maximization of the value of the Debtors’ chapter 11 estates for all stakeholders.

## **VI. NOTICE**

No trustee or examiner has been appointed in the Chapter 11 Cases. The Debtors have or will provide 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) the United States Securities and Exchange Commission. 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 the Chapter 11 Cases.

## **VII. CONCLUSION**

WHEREFORE, for the reasons set forth herein, the Debtors respectfully request that the Court enter an Order substantially in the form of the Order attached to this pleading as Exhibit A approving and authorizing the KIEP with the Employees, authorizing the Debtors to make the

payments thereunder without further order of the Court, and granting such other further relief as is just and proper.

DATED July [day], 2023.

**PARSONS BEHLE & LATIMER**

/s/

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J. Thomas Beckett  
Brian M. Rothschild  
Darren Neilson

*Attorneys for PolarityTE, Inc., PolarityTE  
MD, Inc., and PolarityTE, Inc.*

**CERTIFICATE OF SERVICE**

I hereby certify that on July 27, 2023, I caused a true and correct copy of **DEBTORS' MOTION FOR ORDER APPROVING KEY EMPLOYEE INCENTIVE PLAN** to be served by electronic mail to:

- J. Thomas Beckett tbeckett@parsonsbehle.com, ecf@parsonsbehle.com;brothschild@parsonsbehle.com
- Gary M. Freedman gary.freedman@nelsonmullins.com, sarah.castillo@nelsonmullins.com;francis.santelices@nelsonmullins.com
- Darren B. Neilson dneilson@parsonsbehle.com
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- Rachel A. Sternlieb rachel.sternlieb@nelsonmullins.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;Rachelle.D.Armstrong@usdoj.gov;Brittany.Eichorn@usdoj.gov

/s/ Darren Neilson

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Darren Neilson

**Exhibit A**  
**Proposed Order**

*Order prepared and submitted by:*  
J. Thomas Beckett, USB #5587  
Brian M. Rothschild, USB #15316  
Darren Neilson, USB #15005  
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ecf@parsonsbehle.com

Attorneys for the Joint Debtors

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

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<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;"><b>THIS FILING RELATES TO ALL DEBTORS<sup>4</sup></b></p>

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<sup>4</sup> 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.



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**ORDER APPROVING DEBTORS' KEY EMPLOYEE INCENTIVE PLAN**

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Upon the motion (the “**Motion**”) filed by the above-captioned debtors and debtors in possession (the “**Debtors**”) seeking entry of an order pursuant to sections 503(c) and 363(b)(1) of the Bankruptcy Code, for entry of an order approving the KEIP; and the Court, having reviewed the Motion and having heard the statements of counsel in support of the relief requested in the Motion at the hearing (the “**Hearing**”), and for cause shown, finds that the Court has jurisdiction over this matter under 28 U.S.C. §§ 157 and 1334, that this is a core matter under 28 U.S.C. § 157(b)(2), that notice of the Motion 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 Motion and at the Hearing establish just cause for the relief granted herein and that such relief is necessary to avoid immediate and irreparable harm to the Debtors’ estates,

**THEREFORE IT IS HEREBY ORDERED AS FOLLOWS:**

1. The Motion is GRANTED as provided herein.
2. Pursuant to sections 503(c) and 363(b)(1) of the Bankruptcy Code, the KEIP is approved.
3. The Debtors are authorized, but not directed, to implement the KEIP and make the payments contemplated thereunder.
4. The Debtors are authorized and empowered to take all actions necessary or appropriate to implement the relief granted in this Order.
5. Notwithstanding Bankruptcy Rules 6004, 7062, or 9014, the terms and conditions of this Order shall be immediately effective upon its entry.

6. The Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

**[END OF DOCUMENT]**

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**Exhibit B**  
**Declaration of Richard Hauge**

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

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

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<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;"><b>THIS FILING RELATES TO ALL DEBTORS<sup>5</sup></b></p>

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**DECLARATION OF RICHARD HAUGE IN SUPPORT OF MOTION FOR ORDER  
APPROVING KEY EMPLOYEE INCENTIVE PLAN**

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<sup>5</sup> 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.

I, Richard Hague, pursuant to 28 U.S.C. § 1746, hereby declare under penalty of perjury:

1. I am President and Chief Executive Officer of each of the Debtors.
2. I submit this declaration in support of the Motion<sup>6</sup>.
3. Prior to the filing the within bankruptcy, Debtors have been in discussions with potentially purchaser of all of the Debtors assets.
4. Fearful that the sale of the Debtors assets would cause a mass exodus of talented and knowledgeable employees.
5. The Debtors identified seven key employees. The Employees are critical to the operation of the Debtors during this turbulent time. The Employees are key to the transition and migration of the Debtors business to the Purchaser. Notwithstanding the above, the Employees are not insiders and do not have discretionary control over substantial budgetary amounts or significant control with respect to the Debtors' corporate policies or governance. The Employees all retain key knowledge and expertise. To entice the Employees to remain with the company during the bankruptcy proceeding and to assist in the sale of the Debtors' assets to Purchaser, PTE MD has entered into employee incentive agreements with each of the Employees. If such KEIP agreements are not allowed by the Court, these Employees will potentially seek different employment thus leaving the Debtors potentially unable to complete the migration process of the Debtors' assets to Purchaser.
6. The Debtors' assets are large and technically complex. The sale of these assets requires sophisticated scientific and regulatory compliance and coordination. The Employees could not, therefore, be replaced except through expensive outside contractors. The cost of such contractors would be significantly higher than the cost (including the cost of the Incentive Plan)

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<sup>6</sup> Any defined term not defined herein shall have the meaning ascribed to it in the Motion.

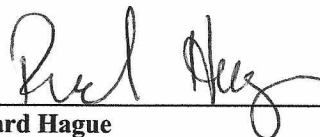
of existing employees. Also, third party contactors do not possess the historical knowledge of Debtors' operations and, as a result, would inherently be less efficient in the execution of the necessary work with respect to effectuating the Sale. The Debtors believe that the best efforts of the Employees are necessary to achieving the Sale, and that the best way to help ensure that such efforts are achieved is to motivate the Employees by instituting the KEIP.

7. The KEIP Employees and employment terms are as follows:

<b>Employee Name and Position</b>	<b>Payment Terms</b>
Matt Pheysey QC Lab Manager	In consideration of continued employment through the end of day on July 31, 2023, or at the time of the closing of the sale of Debtor's assets to Purchaser, whichever occurs first, M. Pheysey shall receive a one-time payment of \$7,000.00.
Dan Greive Sr. Manager, Facilities	In consideration of continued employment through the end of day on July 31, 2023, or at the time of the closing of the sale of Debtor's assets to Purchaser, whichever occurs first, D. Greive shall receive a one-time payment of \$7,000.00.
Dillon Hall IT Security Engineer	In consideration of continued employment through the end of day on July 31, 2023, or at the time of the closing of the sale of Debtor's assets to Purchaser, whichever occurs first, D. Hall shall receive a one-time payment of \$7,000.00.
Courtney Cushnir Executive Director of Corporate Operations	In consideration of continued employment through the end of day on July 31, 2023, or at the time of the closing of the sale of Debtor's assets to Purchaser, whichever occurs first, C. Cushnir shall receive a one-time payment of \$10,000.00.
Gavin Smith Executive Assistant	In consideration of continued employment through the end of day on July 31, 2023, or at the time of the closing of the sale of Debtor's assets to Purchaser, whichever occurs first, G. Smith shall receive a one-time payment of \$7,000.00.
Brandy Hill Director of QC	In consideration of continued employment through the end of day on July 31, 2023, or at the time of the closing of the sale of Debtor's assets to Purchaser, whichever occurs first, B. Hill shall receive a one-time payment of \$10,000.00.
Alex Salinas Quality Associate III	In consideration of continued employment through the end of day on May 31, 2023, A. Salinas shall receive a one-time payment of \$2,000. A. Salinas shall be entitled to a second payment of \$6,000 in consideration of continued employment through the end of July 31, 2023, or at the time of the closing of the sale of Debtor's assets to Purchaser, whichever occurs first.

*I, Richard Hague, hereby declare, under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the foregoing is true and correct.*

DATED July 26, 2024.



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**Richard Hague**  
President and Chief Executive Officer of PTE, PTE  
MD, and PTE NV