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*Proposed Special Counsel for the Debtors*

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

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<p>In re:</p> <p>PolarityTE, Inc., a Delaware corporation</p> <p style="text-align: center;">Debtor</p>	
<p>In re:</p> <p>PolarityTE, MD Inc., a Nevada 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 style="text-align: center;">Chapter 11</p>
<p>In re:</p> <p>PolarityTE, Inc., a Nevada corporation</p> <p style="text-align: center;">Debtor</p>	<p style="text-align: center;">The Honorable Kevin R. Anderson</p>

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**DECLARATION OF DAVID MARX IN SUPPORT OF APPLICATION TO EMPLOY  
DORSEY & WHITNEY LLP AS SPECIAL COUNSEL TO THE DEBTORS**

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I, David Marx, being of lawful age, do hereby declare and state as follows:

1. This declaration (the "Declaration") is based upon my personal knowledge of the facts set forth herein.



2. I am an attorney licensed to practice law in the State of Utah and the State of Massachusetts.

3. I am a Partner with the law firm of Dorsey & Whitney LLP, 111 South Main Street, 21<sup>st</sup> Floor, Salt Lake City, Utah 84111 (“Dorsey”). I make the statements in this Declaration based upon my personal knowledge and belief.

4. Dorsey is a law firm headquartered in Minneapolis, Minnesota, with offices throughout the United States, including Salt Lake City, Utah, and internationally, having over 575 lawyers. As such, Dorsey has relationships with numerous clients, some of which may be creditors or other parties in interest in these bankruptcy cases. However, neither I nor Dorsey will represent any party adverse to these bankruptcy estates. Also, there may be unrelated matters in which Dorsey has provided and will provide services to various creditors of the Debtors but unrelated to these bankruptcy cases. In my opinion, these former and future representations do not constitute an interest materially adverse to the bankruptcy estates in the above-captioned matters.

5. To the best of my knowledge, except as disclosed herein, I believe that neither I, nor any of the attorneys or other employees of Dorsey, have any connections with the Debtors.

6. To the best of my knowledge, neither I nor Dorsey has any connections with the Court or the Office of the United States Trustee that would prohibit employment under Rule 5002 of the Federal Rules of Bankruptcy Procedure.

7. Debtor PolarityTE, Inc. (“PTE”) is a publicly traded company with approximately 7,376,231 outstanding shares and a large number of shareholders. Because publicly traded shares are tracked by a transfer agent, which knows only the record name of the entities or people

holding the shares of PTE's stock, we do not know whether any of Dorsey's other clients are equity owners of PTE. Through a firm-wide e-mail, information was solicited from all Dorsey attorneys to determine if any attorneys employed by Dorsey are equity security holders of, or former officers or directors of, the Debtors. To date, no Dorsey attorneys have indicated that they hold any equity security interests of the Debtors, or that they were former officers or directors of the Debtors.

8. Dorsey has acted as corporate counsel to the Debtors since April of 2022.

9. Dorsey's post-petition services to the Debtors include 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. Given Dorsey's experience and knowledge of the Debtors, it would be most efficient for the Debtors to retain Dorsey as special counsel to the Debtors to provide the foregoing services.

10. On or about May 25, 2023, Dorsey received a retainer of \$50,000 for services to be performed for the Debtors pre-petition. As of the date of filing, Dorsey was owed approximately \$42,679.33 for services provided to the Debtors pre-petition.

11. Dorsey will seek authorization to apply the retainer to its outstanding pre-petition services in its first fee application to this Court.

12. In my opinion, none of the above creates or constitutes an interest materially adverse to the Debtors' bankruptcy estates with respect to the corporate and transaction matters of the Debtors, and I believe that retention of Dorsey by the Debtors is proper under 11 U.S.C. §§ 327(e) and 328.

13. Dorsey will charge the estate for the time it spends completing the foregoing services at the regular hourly rates of its professionals.

14. The current hourly rates for the Dorsey professionals anticipated to provide services to the Debtors are listed below:

<b>Professional</b>	<b>Position</b>	<b>Hourly Rate</b>
David Marx	Partner, Capital Markets and Corporate Compliance	\$640
Paul Justensen	Senior Attorney, Mergers & Acquisitions	\$550
Megan K. Baker	Senior Attorney, Finance & Restructuring	\$495
Dan Lyman	Associate, Capital Markets & Corporate Compliance	\$545

15. Dorsey will keep detailed and contemporaneous records of time for its services and Dorsey will use the most economical and practical methods when incurring fees and expenses in relation to its services performed.

16. Dorsey will abide by the Bankruptcy Code and any Order this Court may enter in relation to its fee application(s). Dorsey will apply to the Court for allowance of any compensation and reimbursement in this case, and Dorsey understands that its compensation in this case is subject to the prior approval of the Court, after notice and hearing, in accordance with the provisions of the Bankruptcy Code, the Local Rules of this Court, the applicable guidelines issued by the Office of the United States Trustee, and any applicable Order of the Court.

17. Dorsey has not received a separate retainer for its post-petition services for the Debtors, and Dorsey will apply to the Court for final compensation and reimbursement of costs and expenses in accordance with the applicable provisions of the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, and the Local Rules of this Court. Dorsey will not apply any of the pre-petition retainer to post-petition services absent an order of the Court.

18. Dorsey has not entered into any agreement to share compensation as may be awarded to it for services rendered, except as permitted under 11 U.S.C. § 504(b).

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

DATED this 7<sup>th</sup> day of August, 2023.

A handwritten signature in black ink, appearing to read "D. Marx", written over a horizontal line.

David Marx

**CERTIFICATE OF SERVICE, BY NOTICE OF ELECTRONIC FILING**

I hereby certify that on the 7<sup>th</sup> day of August, 2023, I electronically filed the **DECLARATION OF DAVID MARX IN SUPPORT OF APPLICATION TO EMPLOY DORSEY & WHITNEY LLP AS SPECIAL COUNSEL TO THE DEBTORS** with the United States Bankruptcy Court for the District of Utah by using the CM/ECF system. I further certify that the parties of record in this case, as identified below, are registered CM/ECF users and will be served through the CM/ECF system.

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/s/ Megan K. Baker