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United States Trustee, Region 19

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF UTAH**

In re:	Bankruptcy Case No. 23-22358
PolarityTE, Inc., a Delaware corporation;	Bankruptcy Case No. 23-22360
PolarityTE, MD, Inc., a Nevada corporation;	Bankruptcy Case No. 23-22361
PolarityTE, Inc., a Nevada corporation,	Chapter 11
Debtors	Hon. Kevin R. Anderson

**THE UNITED STATES TRUSTEE’S OBJECTION TO 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**

The United States Trustee files this objection (“Objection”) to the 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, filed at Dkt. #9 (the



“Motion”) and states as follows:

1. The Motion requests that the Debtors be authorized to employ Dorsey & Whitney (“Dorsey”) to, among other things, negotiate and draft the terms of the asset purchase agreement by which substantially all of the Debtors’ assets will be sold. *See* Motion at paragraph IV.A.9(c). This transaction is central to this bankruptcy case, as described in the Bid Procedures Motion filed at Dkt. #8.
2. Dorsey has billed the Debtors an average of approximately \$30,650 per month for the past twelve months.
3. Given the centrality of the asset purchase transaction to the success of this bankruptcy case, the U.S. Trustee believes that Dorsey should be employed as special counsel within the meaning of 11 U.S.C. § 327(e) to perform these services.
4. The Motion requests authorization to employ persons under Section 327, without specifying which subparagraph applies to each person to be employed.
5. A professional employed under Section 327(e) is required to file a statement describing any and all connections with the Debtors, creditors and other parties in interest, and to provide information necessary for the Court to determine that the professional “does not represent or hold any interest adverse to the debtor or to the estate with respect to the matter on which such attorney is to be employed” (the “Declaration”). *See* 11 U.S.C. § 327 and Federal Rules of Bankruptcy Procedure 2014.
6. Dorsey has not filed a Declaration.
7. The U.S. Trustee has communicated with proposed counsel for the Debtors and believes that the Declaration will be filed soon.

8. The U.S. Trustee reserves the right to object to Dorsey's employment after the Declaration has been filed.
9. As special counsel, Dorsey will be required to file fee applications pursuant to 11 U.S.C. § 330.
10. The U.S. Trustee objects to the employment of the other parties and professionals described in the Motion under Section 327. It appears that none of the persons described in the Motion meet the definition in 11 U.S.C. § 327(b), i.e., persons employed full-time with the Debtors who are paid a salary. Instead, most appear to be independent contractors or other entities with whom the Debtors have a business relationship, and who are paid hourly. It would not be proper to approve their employment under Section 327(b), or any other subparagraph of Section 327. In addition, employing the described persons under Section 327 necessarily requires fee applications and court approval before they can be paid. The U.S. Trustee respectfully requests that their continued work for the Debtor may be better treated under 11 U.S.C. § 363(c), which allows a debtor to use property of the estate "in the ordinary course of business" and does not require fee applications.

WHEREFORE, the U.S. Trustee objects to the employment of Dorsey until such time as a Declaration is filed and the determination is made that Dorsey meets the standards of 11 U.S.C. § 327(e).

Date: December 4, 2023

UNITED STATES TRUSTEE  
Patrick S. Layng

By: /s/Melinda P. Willden  
MELINDA P. WILLDEN  
Attorney for the United States Trustee

**CERTIFICATE OF SERVICE BY ELECTRONIC NOTICE (CM/ECF)**

I hereby certify that on December 4, 2023, I electronically filed the foregoing document 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.

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**CERTIFICATE OF SERVICE BY MAIL OR OTHER MEANS**

I hereby certify that on December 4, 2023, I uploaded a copy of the foregoing document to BMC Group, Inc., an approved bankruptcy notice provider, and directed that it be sent by first class mail to the parties listed below. Pursuant to the BMC Group, Inc.'s terms of service, documents uploaded for service will be mailed out within one business day of being uploaded.

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NONE

**Mail Service to all Parties in Interest: First-class mail, postage pre-paid, addressed to all parties who do not receive electronic service as set forth herein listed on the Official Court Mailing Matrix dated December 4, 2023 attached hereto:**

NONE

Date: December 4, 2023

/s/ Melinda P. Willden  
Melinda P. Willden