

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

In re:

PROSOMNUS, INC., *et al.*,¹

Debtors.

Chapter 11

Case No. 24-10972 (JTD)

(Joint Administration Requested)

**MOTION OF DEBTORS FOR ENTRY OF INTERIM AND FINAL ORDERS
AUTHORIZING (I) CONTINUED USE OF EXISTING CASH MANAGEMENT
SYSTEM, INCLUDING MAINTENANCE OF EXISTING BANK ACCOUNTS,
CHECKS, AND BUSINESS FORMS, AND (II) CONTINUATION OF
EXISTING DEPOSIT PRACTICES**

The above-captioned debtors and debtors in possession (the “**Debtors**”) hereby move this Court (the “**Motion**”) for entry of an interim order (the “**Interim Order**”) and a final order (the “**Final Order**”), pursuant to sections 105(a), 363, and 364 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “**Bankruptcy Code**”); Rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”); and Rule 2015-2 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “**Local Rules**”), (i) authorizing, but not directing, the Debtors to continue to maintain and use their existing cash management system, including maintenance of existing bank accounts, checks, and business forms, (ii) granting the Debtors a temporary suspension of certain bank account and related requirements of the Office of the United States Trustee for the District of Delaware (the “**U.S. Trustee**”) to the extent that such requirements are inconsistent with the Debtors’ practices under their existing cash management system or other actions described herein,

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number are: ProSomnus, Inc. (8216), ProSomnus Holdings, Inc. (3855), and ProSomnus Sleep Technologies, Inc. (0766). The location of the Debtors’ principal place of business and the Debtors’ mailing address is 5675 Gibraltar Dr., Pleasanton, California 94588.



(iii) authorizing, but not directing, the Debtors to continue to maintain and use their existing deposit practices, (iv) authorizing the Debtors to pay ordinary course fees and service charges in connection with the maintenance of their existing cash management system, including prepetition fees, and (v) authorizing and directing all banks with which the Debtors maintain accounts to continue to maintain, service, and administer such accounts and authorize third-party payroll and benefits administrators and providers to prepare and issue checks on behalf of the Debtors. In support of the Motion, the Debtors rely upon the *Declaration of Brian Dow, Chief Financial Officer of the Debtors, in Support of Chapter 11 Petitions and First Day Pleadings*, filed with the Court concurrently herewith (the “**First Day Declaration**”).² In further support of the Motion, the Debtors, by and through their undersigned counsel, respectfully represent:

JURISDICTION AND VENUE

1. This Court has jurisdiction to consider this Motion under 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated as of February 29, 2012. This is a core proceeding under 28 U.S.C. § 157(b). In accordance with Local Rule 9013-1(f), the Debtors consent to entry of a final order if it is determined that the Court lacks Article III jurisdiction to enter such final order or judgment absent consent of the parties. Venue of these cases and the Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicates for the relief requested herein are Bankruptcy Code sections 105(a), 363, and 364, Bankruptcy Rules 6003 and 6004, and Local Rule 2015-2.

² Capitalized terms used but not otherwise defined herein have the meanings ascribed to such terms in the First Day Declaration.

BACKGROUND

A. General Background

3. On the date hereof (the “**Petition Date**”), each of the Debtors filed a voluntary petition in this Court commencing a case for relief under chapter 11 of the Bankruptcy Code (the “**Chapter 11 Cases**”). The factual background regarding the Debtors, including their business operations, their capital and debt structures, and the events leading to the filing of the Chapter 11 Cases, is set forth in detail in the First Day Declaration and fully incorporated herein by reference.

4. Concurrently with the filing of this Motion, the Debtors have requested procedural consolidation and joint administration of the Chapter 11 Cases pursuant to Bankruptcy Rule 1015(b). The Debtors continue to manage and operate their business as debtors in possession pursuant to Bankruptcy Code sections 1107 and 1108. No trustee or examiner has been requested in the Chapter 11 Cases and no committees have yet been appointed.

B. The Debtors’ Cash Management System and the Debtors’ Existing Bank Accounts

5. In the ordinary course of their business, the Debtors maintain a cash management system (the “**Cash Management System**”) that is integral to the operation and administration of their business. The Cash Management System allows the Debtors to (i) monitor and control all of the Debtors’ cash receipts and disbursements, (ii) identify the cash requirements of the Debtors, and (iii) transfer cash as needed to respond to the cash requirements of the Debtors.

6. The Cash Management System is managed by the Debtors and ensures accurate cash forecasting and reporting and the monitoring of the collection and disbursement of funds to and from the Bank Accounts (as defined below).

7. As of the Petition Date, the Debtors maintain four (4) bank accounts, which are described in further detail on the schedule attached hereto as Schedule 1³ and below (each a “**Debtor Bank Account**”, and collectively, the “**Bank Accounts**”), and which are held at Wells Fargo Bank, N.A. (“**Wells Fargo**”).⁴

8. Wells Fargo is designated as an authorized depository by the Office of the United States Trustee for the District of Delaware pursuant to the Operating Guidelines and Reporting Requirements for Debtors in Possession and Trustees (the “**U.S. Trustee Guidelines**”). Furthermore, The Debtors believe that Wells Fargo is a well-capitalized and financially stable institution and therefore the Debtors should be authorized to maintain the Bank Accounts at Wells Fargo without jeopardizing any parties in interest.

9. A demonstrative chart of the Cash Management System is attached hereto as Schedule 2 (the “**Flow of Funds Chart**”).

Overview of Cash Management System

10. The Bank Accounts are primarily used to (i) pay operating expenses, and (ii) receive payments from customers and other parties. The Debtors routinely deposit, withdraw, and otherwise transfer money to, from, and between certain of the Bank Accounts by various methods, including by wire transfer, internal transfer, automatic clearing house transfer, and checks (collectively, the “**Ordinary Transfer Methods**”).

³ The Debtors believe, and have undertaken reasonable efforts to ensure, that Schedule 1 lists all of the bank accounts that comprise the Debtors’ Cash Management System. In the event that any bank account has been inadvertently omitted from Schedule 1, the Debtors request that the relief sought by this Motion be deemed to apply to such account.

⁴ The Debtors’ Operating Account and Collections Account (as defined below) are subject to a Deposit Account Control Agreement in favor of Wilmington Trust as Collateral Agent.

Cash Collection and Distribution Process.

11. Customer payments and other receivables are deposited into the account ending (2213) (the “**Collection Account**”). Funds in the Collection Account are automatically swept into the account ending (5978) (the “**Operating Account**”) on a nightly basis. The Debtors use the Operating Account as their centralized operating and disbursement account. The Operating Account is used to pay the Debtors’ operating expenses, including vendors, payroll, insurance, and other disbursements.

12. The account ending (1953) (the “**Purchasing Card Collateral Account**”) serves as collateral for the Debtors’ Purchasing Cards (as defined below). The account ending (0579) (the “**HQ Collateral Account**”) serves as collateral for the lease of the Debtors’ corporate headquarters located at 5675 Gibraltar Dr., Pleasanton, California 94588 (the “**Headquarters Lease**”).

13. As part of the Cash Management System, in the ordinary course of business, Wells Fargo provides the Debtors with access to corporate purchasing cards used by the Debtors’ employees pursuant to a corporate purchasing card program (the “**Purchasing Cards**”). The Purchasing Cards are secured in the amount of \$75,000 through the funds held in the Purchasing Card Collateral Account and are used to provide employees with the ability to cover certain payments for employment related expenses and other necessary and approved company expenditures.

14. The use of corporate credit cards and similar payment methods is widespread at companies across the United States as a means of facilitating day-to-day business activities. As a result, the Debtors believe that they do not require the Court’s approval to continue utilizing the Purchasing Cards. However, in the event the Court finds that such transactions do not fall within the ordinary course of business, the Debtors request authority, pursuant to sections 105(a) and

363(b)(1) of the Bankruptcy Code, to continue using the Purchasing Cards. Subject to any DIP Order (as defined below), the Debtors also request authority to pay all obligations, including prepetition obligations related to the Debtors' use of the Purchasing Cards (the "**Purchasing Card Obligations**").

15. As the foregoing overview reflects, the Cash Management System is specifically designed for administering the Debtors' business and cannot be altered without significant disruption to the Debtors' business operations and material distraction to the Debtors' management, or breaching the Debtors' agreements in connection with such accounts. Any change in the Debtors' existing Cash Management System would further disrupt the Debtors' ability to collect receivables from private payors and applicable insurance providers. The Debtors, therefore, request that the Court authorize them to continue using the existing Cash Management System, and to transfer funds into, out of, and through the Cash Management System using the Ordinary Transfer Methods in accordance with the agreements governing the Bank Accounts, including, without limitation, any prepetition cash management agreements, bank account terms and conditions, or treasury services agreements (collectively, the "**Bank Account Agreements**").

Vendor Disbursements

16. In most instances, the Debtors have their external vendors set up through the online bill payment platform *bill.com*. The relevant vendor invoices are processed and paid via *bill.com* from funds drawn from the Operating Account. Certain other vendors (e.g. professionals) are paid directly from the Operating Account.

Employee Disbursements

17. TriNet HR III, Inc., TriNet HR Employer Group Canada, Inc., and EuroDev Services B.V. (collectively, the "**PEO Providers**"), draw payroll disbursements out of the

Operating Account on a bi-weekly, semi-monthly, and monthly basis, depending on the relevant employee's employment agreement.

RELIEF REQUESTED

18. By this Motion, the Debtors seek entry of the Interim Order and the Final Order, substantially in the forms of Exhibit A and Exhibit B, respectively, attached hereto, (i) authorizing, but not directing, the Debtors to continue to maintain and use their existing Cash Management System, including maintenance of the Bank Accounts and existing checks and business forms, (ii) granting the Debtors a temporary suspension of certain bank account and related requirements of the U.S. Trustee to the extent that such requirements are inconsistent with the Debtors' practices under their Cash Management System or other actions described herein, (iii) authorizing, but not directing, the Debtors to continue to maintain and use their existing deposit practices, (iv) authorizing the Debtors to pay ordinary course fees, including prepetition fees, and (v) authorizing and directing all banks with which the Debtors maintain accounts to continue to maintain, service, and administer such accounts and authorize third-party payroll and benefits administrators and providers to prepare and issue checks on behalf of the Debtors.

BASIS FOR RELIEF

A. The Debtors Should Be Authorized to Continue to Use Their Existing Cash Management System and the Bank Accounts

19. The Cash Management System is an ordinary course, customary, and essential business practice, the continued use of which is essential to the Debtors' business operations during the Chapter 11 Cases and their goal of maximizing value for the benefit of all parties in interest. To require the Debtors to adopt a new cash management system at this early and critical stage would be expensive, impose needless administrative burdens, and cause undue disruption. Any disruption in the collection of funds as currently implemented would adversely (and potentially

irreparably) affect the Debtors' ability to maximize estate value. Moreover, such a disruption would be wholly unnecessary because the Cash Management System provides a valuable and efficient means for the Debtors to address their cash management requirements and, to the best of the Debtors' knowledge, the Bank Accounts are held at financially stable institutions insured in the United States by the Federal Deposit Insurance Corporation ("FDIC"). For the aforementioned reasons, maintaining the existing Cash Management System without disruption is in the best interests of the Debtors, their estates, and all interested parties. Accordingly, the Debtors request that they be allowed to maintain and continue to use the Cash Management System, including maintenance of their existing Bank Accounts.

20. As part of the relief requested herein, and to ensure that their transition into chapter 11 is as smooth as possible, the Debtors seek entry of interim and final orders authorizing the Debtors to (i) maintain and continue to use the Bank Accounts, including but not limited to those accounts listed on Schedule 1 hereto, in the same manner and with the same account numbers, styles, and document forms as are currently employed, (ii) deposit funds in and withdraw funds from the Bank Accounts in the ordinary course by all usual means, including checks, wire transfers, drafts, and electronic fund transfers or other items presented, issued, or drawn on the Bank Accounts, (iii) pay ordinary course fees incurred in connection with the Bank Accounts, including prepetition fees (the "**Bank Fees**"), (iv) perform their obligations under the documents and agreements governing the Bank Accounts, and (v) for all purposes, treat the Bank Accounts as accounts of the Debtors in their capacity as debtors in possession.

21. If the relief requested herein is granted, the Debtors will implement appropriate mechanisms to ensure that no payments will be made on any debts incurred by the Debtors prior to the Petition Date, other than those authorized by order of the Court, including any order

approving debtor-in-possession financing (a “**DIP Order**”). To prevent the possible inadvertent payment of prepetition claims against the Debtors, except those otherwise authorized by order of the Court, including any DIP Order, the Debtors will work closely with Wells Fargo to ensure appropriate procedures are in place to prevent prepetition checks issued by the Debtors from being honored absent this Court’s approval and to ensure that no third-party with automatic debit capabilities is able to debit amounts attributable to the Debtors’ prepetition obligations.

22. The Debtors request that no Bank (as defined below) that implements such handling procedures and then honors a prepetition check or other item drawn on any account that is the subject of this Motion at the direction of the Debtors to honor such prepetition check or item be deemed to be liable to the Debtors or to their estates on account of such prepetition check or other item being honored postpetition. The Debtors believe that such flexibility is necessary to induce the continued provision of critical cash management services to the Debtors throughout the Chapter 11 Cases.

23. The Debtors further request that they be authorized to implement such reasonable changes to the Cash Management System as the Debtors may deem necessary or appropriate, including, without limitation, closing any of the Bank Accounts and opening any additional bank accounts following the Petition Date (the “**New Accounts**”) wherever the Debtors deem that such accounts are needed or appropriate and whether or not the banks in which the accounts are opened are designated approved depositories in the District of Delaware. Notwithstanding the foregoing, any New Accounts that the Debtors open will be at banks (each a “**Bank**”, and together with Wells Fargo, the “**Banks**”) that have executed a Uniform Depository Agreement with the U.S. Trustee, or at such banks that are willing to execute such an agreement, and any New Accounts that the Debtors open will be (i) with a bank that is organized under the laws of the United States of

America or any state therein and that is insured by the FDIC, and (ii) designated a “Debtor in Possession” account by the relevant bank. The Debtors request that the relief sought by this Motion extend to any New Accounts and that any order approving this Motion provide that the New Accounts are deemed to be Bank Accounts that are similarly subject to the rights, obligations, and relief granted in such order. Prior to closing any Bank Account or opening any New Account, the Debtors will provide notice to the U.S. Trustee, counsel to the DIP Lenders, counsel to the Prepetition Agents, and counsel to any official committee of unsecured creditors appointed in the Chapter 11 Cases. In furtherance of the foregoing, the Debtors also request that the Banks be authorized to honor the Debtors’ requests to open or close (as the case may be) such Debtors’ Bank Account(s) or New Account(s).

24. Subject to any DIP Order, the Debtors request authority to pay all accrued and unpaid Bank Fees. Payment of any prepetition Bank Fees is in the best interests of the Debtors and all parties in interest in these Chapter 11 Cases, as it will prevent unnecessary disruptions to the Cash Management System and ensure that the Debtors’ receipt of funds is not delayed. Further, because Bank Account providers and credit and debit card processors likely have setoff rights for the Bank Fees, payment of prepetition Bank Fees will not prejudice any parties in interest in these cases.

25. Additionally, within fifteen (15) days after the date of entry of an interim or final order granting this Motion, the Debtors will (i) contact the Banks, (ii) provide each Bank with the Debtors’ employer identification numbers, and (iii) identify each of the Bank Accounts held at such Bank as held by a debtor in possession in a bankruptcy case.

26. In the interest of maintaining the continued and efficient operation of the Cash Management System during the pendency of the Chapter 11 Cases, the Debtors request that the

Banks be authorized and directed to continue to administer, service, and maintain the Bank Accounts as such accounts were administered, serviced, and maintained prepetition, without interruption and in the ordinary course (including making deductions for Bank Fees), and, when requested by the Debtors in their sole discretion (subject to any DIP Order), to honor any and all checks, drafts, wires, electronic fund transfers, or other items presented, issued, or drawn on the Bank Accounts on account of a claim against the Debtors arising on or after the Petition Date.

B. The Debtors Should Be Granted Authority to Continue to Use Existing Checks and Business Forms

27. Local Rule 2015-2(a) provides:

Where the debtor uses preprinted checks, upon motion of the debtor, the Court may, without notice and hearing, permit the debtor to use its existing checks without the designation “Debtor-in-Possession” and use its existing bank accounts. However, once the debtor’s existing checks have been used, the debtor shall, when reordering checks, require the designation “Debtor-in-Possession” and the corresponding bankruptcy number on all such checks.

Del. Bankr. L.R. 2015-2(a).

28. To minimize expenses to their estates, the Debtors seek authorization to continue using all checks substantially in the forms existing immediately prior to the Petition Date, without reference to the Debtors’ status as debtors in possession; *provided, however*, that in the event a Debtor generates new checks during the pendency of the Chapter 11 Cases other than from its existing stock of checks, such checks will include a legend referring to the Debtors as a “Debtor in Possession.” The Debtors also seek authority to use all correspondence and other business forms (including, without limitation, letterhead, purchase orders, and invoices) without reference to the Debtors’ status as debtors in possession.⁵

⁵ Although the operating guidelines established for a debtor in possession by the U.S. Trustee would require the Debtors to obtain and use new checks bearing the “Debtor in Possession” designation, the Debtors do not believe that such guidelines impose any limitation on the Debtors’ other correspondence and business forms. Nevertheless, out of

29. Changing the Debtors' existing checks, correspondence, and other business forms would be expensive, unnecessary, and burdensome to the Debtors' estates. Further, such changes would disrupt the Debtors' business operations and would not confer any benefit upon parties that deal with the Debtors. For these reasons, the Debtors request that they be authorized to use their existing check stock, correspondence, and other business forms without being required to place the label "Debtor in Possession" on any of the foregoing.

C. The Debtors Should Be Granted a Temporary Suspension of Certain Requirements of the U.S. Trustee Guidelines

30. The Debtors further request, pursuant to Bankruptcy Code sections 105(a) and 363, that this Court grant a temporary suspension of certain bank account and related requirements of the U.S. Trustee to the extent that such requirements are inconsistent with (i) the Debtors' existing practices under the Cash Management System, or (ii) any action taken by the Debtors in accordance with any order granting this Motion or any other order entered in the Chapter 11 Cases. To supervise the administration of the Chapter 11 Cases, the U.S. Trustee has established certain operating guidelines for debtors in possession. These requirements (the "**UST Requirements**") require chapter 11 debtors to, among other things: (i) close all existing bank accounts and open new debtor in possession bank accounts, (ii) establish one debtor in possession account for all estate monies required for the payment of taxes, including payroll taxes, (iii) maintain a separate debtor in possession account for cash collateral, and (iv) obtain checks for all debtor in possession accounts that bear (a) the designation "Debtor In Possession," (b) the bankruptcy case number, and (c) the type of account. The UST Requirements are designed to clearly demarcate prepetition transactions and operations from postpetition transactions and operations, and to prevent the

an abundance of caution, the Debtors seek explicit authority to continue using their existing correspondence and business forms without reference to the Debtors' status as debtors in possession.

inadvertent postpetition payment of prepetition claims. As set forth above, the Debtors submit that (i) they are able to work with the Banks to ensure that this goal of separation between the prepetition and postpetition periods is observed, and (ii) enforcement of certain of these UST Requirements would disrupt the Debtors' operations and impose an undue financial burden on the Debtors' estates.

31. It would be onerous for the Debtors to meet the UST Requirement to close all existing bank accounts and open a new debtor in possession account. Indeed, this requirement would unnecessarily inconvenience the Debtors.

32. Further, it would be unnecessary and inefficient to require the Debtors to abide by the UST Requirement to establish specific debtor in possession accounts for tax payments (including payroll taxes) and to deposit in such accounts sufficient funds to pay any tax liability (when incurred) associated with the Debtors' payroll and other tax obligations. The Debtors can pay their tax obligations most efficiently from their existing Bank Accounts in accordance with their existing practices, and the U.S. Trustee will have wide latitude to monitor the flow of funds into and out of such accounts through required monthly operating reports. The creation of new debtor in possession accounts designated solely for tax obligations would be unnecessarily burdensome and inefficient.

33. In addition, it is unnecessary to require the Debtors to abide by the UST Requirement to establish specific debtor in possession accounts for cash collateral. As set forth in the *Motion of Debtors for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Obtain Senior Subordinate Secured Postpetition Financing and (B) Utilize Cash Collateral, (II) Granting Liens and Superpriority Administrative Expense Claims, (III) Modifying the Automatic Stay, (IV) Scheduling a Final Hearing, and (V) Granting Related Relief* (the "**DIP Motion**") filed

concurrently herewith, the Debtors have provided significant safeguards to ensure that parties with security interests in the Debtors' cash collateral are adequately protected and that such parties have been provided with notice of the proposed use of such cash collateral.

D. The Debtors Should Be Authorized to Continue Their Deposit Practices

34. As part of the Cash Management System, the Debtors and third-party payors routinely deposit funds into the Bank Accounts (the "**Deposit Practices**"). The Debtors request authorization to continue to deposit funds in accordance with the Deposit Practices under the Cash Management System, subject to any reasonable changes the Debtors may implement to the Cash Management System.

E. The Debtors Should Be Authorized to Continue to Use Debit, Wire, and Automatic Clearing House Payments

35. As detailed above, in the ordinary course of operating their business, the Debtors pay many of their business expenses by debit, wire, automatic clearing house payment, and other similar electronic methods, including by making payments to vendors and other parties through the online bill payment platform *bill.com*. The Debtors rely on these payment methods to efficiently manage their accounts payable as well as save time and costs associated with traditional paper payment methods. The Debtors' ability to conduct transactions by electronic methods is critical to the Debtors' ordinary course business operations as a going concern and ensures limited additional costs and burdens to the Debtors. Thus, the Debtors request a waiver of the UST Guidelines, as applicable, to grant the Debtors the authority to continue paying expenses as detailed herein, as such expenses come due.

APPLICABLE AUTHORITY

A. The Bankruptcy Code Permits the Debtors to Continue to Use the Cash Management System and the Bank Accounts

36. Bankruptcy Code section 363(c)(1) authorizes a debtor in possession to “use property of the estate in the ordinary course of business without notice or a hearing.” 11 U.S.C. § 363(c)(1). The purpose of section 363(c)(1) is to provide a debtor in possession with the “flexibility to engage in ordinary transactions” required to operate its business without unneeded oversight by its creditors or the court. *In re Roth Am., Inc.*, 975 F.2d 949, 952 (3d Cir. 1992) (“Section 363 is designed to strike [a] balance, allowing a business to continue its daily operations without excessive court or creditor oversight and protecting secured creditors and others from dissipation of the estate’s assets.”); *In re Nellson Nutraceutical, Inc.*, 369 B.R. 787, 796 (Bankr. D. Del. 2007). The authority granted by Bankruptcy Code section 363(c)(1) extends to a debtor in possession’s continued use of its customary cash management system and, thus, supports the relief requested. *See, e.g., Charter Co. v. Prudential Ins. Co. Am. (In re Charter Co.)*, 778 F.2d 617, 621 (11th Cir. 1985) (indicating that an order authorizing the debtor to employ a cash management system that was “usual and customary in the past” was “entirely consistent” with Bankruptcy Code section 363(c)(1)); *Amdura Nat’l Distrib. Co. v. Amdura Corp. (In re Amdura Corp.)*, 75 F.3d 1447, 1453 (10th Cir. 1996) (included within the scope of Bankruptcy Code section 363(c) is a debtor’s ability to continue “routine transactions” necessitated by a debtor’s cash management system).

37. Even if continuation of the Cash Management System and other relief requested herein were outside of the ordinary course of business, the Court may grant such relief pursuant to section 363(b) of the Bankruptcy Code. Section 363(b) of the Bankruptcy Code provides, in relevant part, that “[t]he [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). Under section

363 of the Bankruptcy Code, a court may authorize a debtor to pay certain prepetition claims where a sound business purpose exists for doing so. *See In re BNP Petroleum Corp.*, 642 F. App'x. 429, 435 (5th Cir. 2016); *In re Cont'l Air Lines, Inc.*, 780 F.2d 1223, 1226 (5th Cir. 1986). In applying the business judgment rule, “courts are adjured to defer to the debtor in possession or trustee; if a valid business reason is shown for a transaction, the transaction is to be presumed appropriate.” *In re Pilgrim's Pride Corp.*, 401 B.R. 229, 237 (Bankr. N.D. Tex. 2009).

38. Moreover, Bankruptcy Code section 364(a) authorizes a debtor in possession to obtain unsecured credit and incur unsecured debt in the ordinary course of business without notice and a hearing. *See* 11 U.S.C. § 364(a). This provision further supports the relief requested, and provides the Debtors with the ability, to the extent necessary, to obtain unsecured credit and incur unsecured debt in the ordinary operation of the Cash Management System.

39. Bankruptcy Code section 105(a) also authorizes this Court to permit the Debtors to continue to use the Cash Management System, including maintenance of their existing Bank Accounts. Bankruptcy Code section 105(a) vests in this Court the power to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” The continuation of the Cash Management System, including the continued use of the Bank Accounts, is essential to the efficient administration of the Chapter 11 Cases and to the Debtors’ efforts to maximize estate value for all parties in interest. Indeed, one court, in another context, has recognized that a centralized cash management system “allows efficient utilization of cash resources and recognizes the impracticalities of maintaining separate cash accounts for the many different purposes that require cash.” *In re Columbia Gas Sys., Inc.*, 136 B.R. 930, 934 (Bankr. D. Del. 1992), *aff'd in part and rev'd in part*, 997 F.2d 1039 (3d Cir. 1993). Therefore, the relief requested is appropriate under Bankruptcy Code section 105(a).

40. Maintaining the Cash Management System and Bank Accounts without disruption is in the best interests of the Debtors, their estates, and all interested parties. Based on the foregoing, the Court should grant the Debtors the authority under Bankruptcy Code sections 363(c) and 105(a) to continue the collection, concentration, and disbursement of cash under their Cash Management System.

B. This Court Should Temporarily Suspend the UST Requirements to Permit the Debtors to Continue to Use the Cash Management System

41. The continuation of the Cash Management System, as requested in this Motion, is consistent with the Debtors' authority to use property of their estates in the ordinary course of business pursuant to Bankruptcy Code section 363(c)(1). Accordingly, this Court should grant the Debtors a temporary suspension of the UST Requirements to the extent that such requirements conflict with the Debtors' existing practices under the Cash Management System or any action taken by the Debtors in accordance with any order granting this Motion or any other order entered in the Chapter 11 Cases.

42. Moreover, compelling the Debtors to alter their current cash management practices and to modify the Cash Management System to comply with the UST Requirements would risk severe disruption to the Debtors' business and jeopardize the Debtors' ability to maximize value for all parties in interest. *Cf. In re Gaylord Container Corp.*, 1993 WL 188671, at *3, 13 (E.D. La. 1993) (adopting the bankruptcy court's findings of fact and conclusions of law, which included a finding that the banking requirements of the Office of the United States Trustee for the District of Louisiana "represent a substantial burden on any debtor and, in this case, resulted in the incurrence of extraordinary unquantifiable costs by [the debtor] associated with the confusion engendered by the implementation of new policies and procedures to comply with such rules, and due to the substantial restrictions that such rules placed on the debtor's treasury functions"). This factor alone

justifies the relief that the Debtors are seeking. *See* 11 U.S.C. § 105(a) (“The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.”).

C. Bankruptcy Rule 6003 Has Been Satisfied and Bankruptcy Rule 6004 Should Be Waived

43. Certain isolated aspects of the relief requested herein may, if granted, be subject to Bankruptcy Rule 6003. Pursuant to Bankruptcy Rule 6003, a court may grant such relief if it is necessary to avoid immediate and irreparable harm. The Debtors submit that the facts set forth herein demonstrate that the relief requested is necessary to avoid immediate and irreparable harm to the Debtors and, thus, Bankruptcy Rule 6003 has been satisfied.

44. Additionally, to the extent that any aspect of the relief sought herein constitutes a use of property under Bankruptcy Code section 363(b), the Debtors seek a waiver of the fourteen-day stay under Bankruptcy Rule 6004(h). As described above, the relief that the Debtors seek in this Motion is immediately necessary for the Debtors to be able to continue to operate their businesses and preserve the value of their estates. The Debtors thus submit that the requested waiver of the fourteen-day stay imposed by Bankruptcy Rule 6004(h) is appropriate.

RESERVATION OF RIGHTS

45. Nothing contained herein is intended or should be construed as an admission of the validity of any claim against the Debtors; a waiver of the Debtors’ rights to dispute any claim; or an approval, assumption, or rejection of any agreement, contract, or lease under Bankruptcy Code section 365. Likewise, if this Court grants the relief sought herein, any payment made pursuant to the Court’s order is not intended and should not be construed as an admission as to the validity of any claim or a waiver of the Debtors’ rights to dispute such claim subsequently.

NOTICE

46. Notice of this Motion has been or will be provided to: (a) the United States Trustee for the District of Delaware; (b) the holders of the twenty (20) largest unsecured claims on a consolidated basis against the Debtors; (c) counsel to the Prepetition Agents; (d) counsel to the Sponsoring Noteholders and proposed DIP Lenders; (e) counsel to the proposed DIP Agent; (f) the Internal Revenue Service; (g) the United States Securities and Exchange Commission; (h) the Office of the United States Attorney for the District of Delaware; (i) the Banks; (j) the PEO Providers; (k) *bill.com*; and (l) all parties entitled to notice pursuant to Bankruptcy Rule 2002. Notice of this Motion and any order entered hereon will be served in accordance with Local Rule 9013-1(m). In light of the nature of the relief requested herein, the Debtors submit that no other or further notice is necessary.

NO PRIOR REQUEST

47. No previous request for the relief sought herein has been made to this Court or any other court.

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WHEREFORE, the Debtors respectfully request that the Court enter the Interim Order and the Final Order, substantially in the forms attached hereto as Exhibit A and Exhibit B, respectively, granting the relief requested in the Motion and such other and further relief as may be just and proper.

Dated: May 7, 2024
Wilmington, Delaware

Respectfully submitted,

POLSINELLI PC

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SCHEDULE 1

Schedule of Bank Accounts

Financial Institution	Account Number (Last 4 Digits)	Account Holder	Account Type
Wells Fargo	*2213	ProSomnus Sleep Technologies, Inc.	Collections Account
Wells Fargo	*5978	ProSomnus Sleep Technologies, Inc.	Operating Account
Wells Fargo	*1953	ProSomnus Sleep Technologies, Inc.	Purchasing Card Collateral Account
Wells Fargo	*0579	ProSomnus Sleep Technologies, Inc.	HQ Collateral Account

SCHEDULE 2

Flow of Funds Chart

ProSomnus Cash Management System

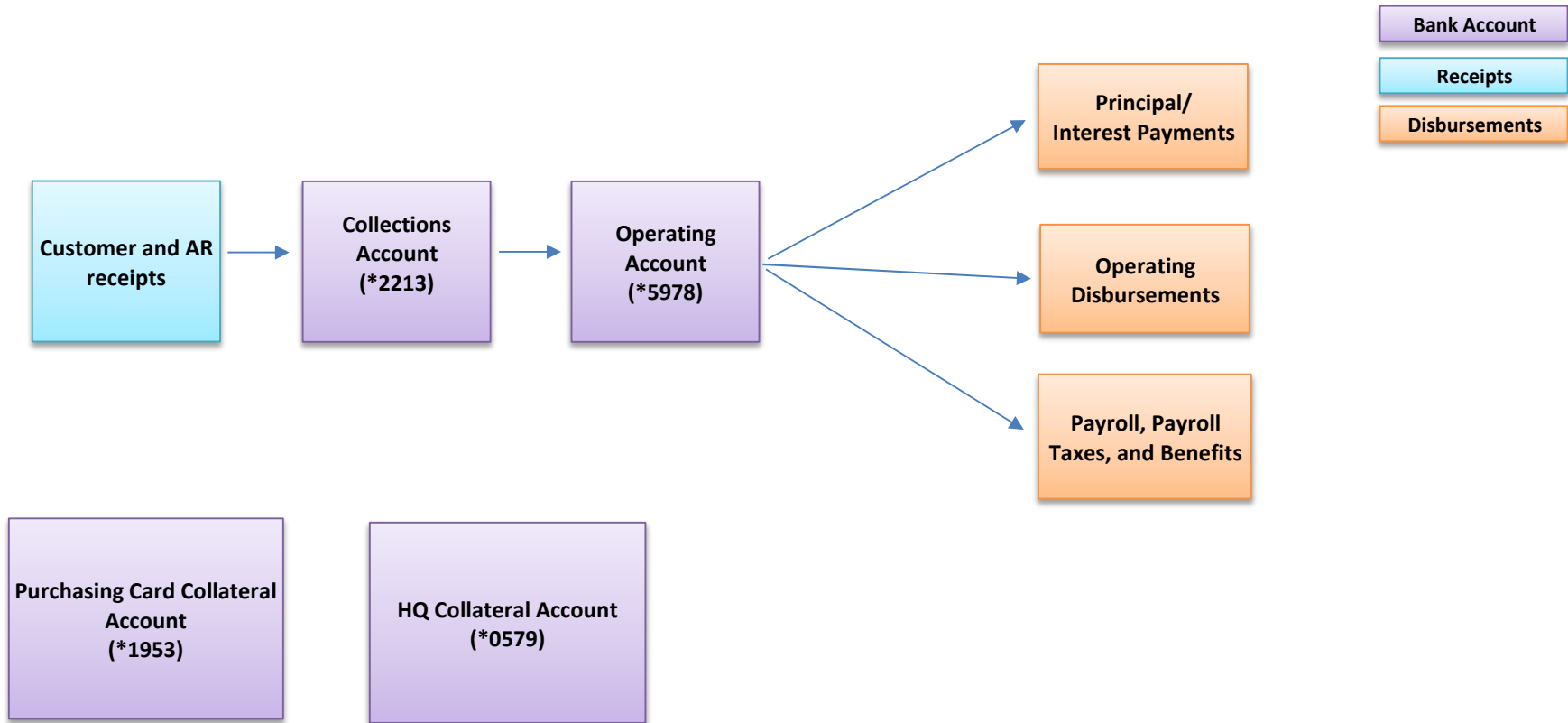


EXHIBIT A

Proposed Interim Order

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

In re:

PROSOMNUS, INC., *et al.*,¹

Debtors.

Chapter 11

Case No. 24-10972 (JTD)

(Joint Administration Requested)

Re: Docket No. __

INTERIM ORDER AUTHORIZING (I) CONTINUED USE OF EXISTING CASH MANAGEMENT SYSTEM, INCLUDING MAINTENANCE OF EXISTING BANK ACCOUNTS, CHECKS, AND BUSINESS FORMS, AND (II) CONTINUATION OF EXISTING DEPOSIT PRACTICES AND RELATED RELIEF

Upon the motion (the “**Motion**”)² of the Debtors for entry of an interim order (this “**Interim Order**”), pursuant to Bankruptcy Code sections 105(a), 363, and 364, Bankruptcy Rules 6003 and 6004, and Local Rule 2015-2 (i) authorizing, but not directing, the Debtors to continue to maintain and use their existing Cash Management System, including maintenance of the Bank Accounts and existing checks and business forms, (ii) granting the Debtors a temporary suspension of certain bank account and related requirements of the U.S. Trustee to the extent that such requirements are inconsistent with the Debtors’ practices under their Cash Management System or other actions described in the Motion or this Interim Order, (iii) authorizing, but not directing, the Debtors to continue to maintain and use their existing deposit practices, (iv) authorizing the Debtors to pay ordinary course Bank Fees, including prepetition fees, and (v) authorizing and directing all banks with which the Debtors maintain accounts to continue to maintain, service, and

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number are: ProSomnus, Inc. (8216), ProSomnus Holdings, Inc. (3855), and ProSomnus Sleep Technologies, Inc. (0766). The location of the Debtors’ principal place of business and the Debtors’ mailing address is 5675 Gibraltar Dr., Pleasanton, California 94588.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

administer such accounts and authorize third-party payroll and benefits administrators and providers to prepare and issue checks on behalf of the Debtors; and the Court having reviewed the Motion and the First Day Declaration; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order of Reference from the United States District Court for the District of Delaware dated as of February 29, 2012; and the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), and that the Debtors consent to entry of a final order under Article III of the United States Constitution; and the Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and upon the record herein; and after due deliberation thereon; and good and sufficient cause appearing therefor, it is hereby

ORDERED, ADJUDGED, AND DECREED THAT:

1. The Motion is GRANTED on an interim basis, as set forth herein.
2. The Debtors are authorized to continue to use their existing Cash Management System, as described in the Motion, and shall maintain detailed records reflecting all transfers of funds under the terms and conditions provided for by the existing agreements with the institutions participating in the Cash Management System, except as provided by this Interim Order. The Debtors shall maintain records with respect to all transactions and transfers, so that all transactions can be readily ascertained, traced, properly recorded, and distinguished between prepetition and postpetition transactions, and shall include a detailed accounting of any intercompany transactions between the Debtors in the Debtors' monthly operating reports.
3. The Debtors are authorized to (i) continue to use any and all of the Bank Accounts in existence as of the Petition Date that are set forth on Schedule 1 to the Motion, in the same

manner and with the same account numbers, styles, and document forms as are currently employed, (ii) deposit funds in and withdraw funds from the Bank Accounts in the ordinary course by all usual means, including checks, wire transfers, drafts, and electronic fund transfers or other items presented, issued, or drawn on the Bank Accounts, (iii) pay ordinary course Bank Fees in connection with the Bank Accounts, including any fees arising prior to the Petition Date in an aggregate amount not to exceed \$10,000, (iv) perform their obligations under the documents and agreements governing the Bank Accounts, and (v) for all purposes, treat the Bank Accounts as accounts of the Debtors in their capacities as debtors in possession.

4. Within fifteen (15) days after entry of this Interim Order, the Debtors shall (i) contact the Banks, (ii) provide each Bank with the Debtors' employer identification numbers, and (iii) identify each of the Bank Accounts held at such Bank as being held by a debtor in possession in a bankruptcy case and provide the case number.

5. Pursuant to Local Rule 2015-2(a), the Debtors are authorized to continue to use their existing checks, correspondence, and other business forms without alteration or change and without the designation "Debtor in Possession" or a bankruptcy case number imprinted upon them. Notwithstanding the foregoing, once a Debtors' existing checks have been used, the Debtors shall, when reordering checks, require the designation "Debtor in Possession" and the corresponding bankruptcy case number on all checks; *provided that*, with respect to checks that the Debtors or their agents print themselves, the Debtors shall begin printing the "Debtor in Possession" legend and the bankruptcy case number on such items within ten (10) days of the date after entry of this Interim Order.

6. The Debtors are authorized to continue to utilize all third-party providers necessary for the administration of their Cash Management System, including the PEO Providers and their

bill payment platform, *bill.com*. In addition, the Debtors are authorized, but not directed, to pay all prepetition or postpetition amounts due to such third-party providers.

7. Effective as of the Petition Date, and subject to the terms of this Interim Order and any other order of this Court, including any DIP Order, the Banks are authorized and directed to continue to administer, service, and maintain the Bank Accounts as such accounts were administered, serviced, and maintained prepetition, without interruption and in the ordinary course (including making deductions for Bank Fees), and, when requested by the Debtors in their sole discretion, to honor any and all checks, drafts, wires, electronic fund transfers, or other items presented, issued, or drawn on the Bank Accounts on account of a claim against the Debtors arising on or after the Petition Date; *provided, however*, that unless otherwise ordered by the Court, no checks, drafts, electronic funds transfers (excluding any electronic funds transfer that the Banks are obligated to settle), or other items presented, issued, or drawn on the Bank Accounts on account of a claim against the Debtors arising prior to the Petition Date shall be honored.

8. The Debtors shall implement appropriate mechanisms to ensure that no payments will be made on any debts incurred by the Debtors prior to the Petition Date, other than those authorized by this order of the Court, including any DIP Order. The Banks shall implement reasonable handling procedures designed to effectuate the terms of this Interim Order. No Bank that implements such handling procedures and then honors a prepetition check or item drawn on any account that is the subject of this Interim Order at the direction of the Debtors to honor such prepetition check or item shall be deemed to be liable to the Debtors or their estates on account of such prepetition check or item being honored postpetition or otherwise in violation of this Interim Order.

9. The Debtors are authorized to implement such reasonable changes, consistent with this Interim Order, to the Cash Management System as the Debtors may deem necessary or appropriate, including, without limitation, closing any of the Bank Accounts or opening any New Accounts wherever the Debtors deem that such accounts are needed or appropriate. Notwithstanding the foregoing, the Debtors shall open such New Account(s) at banks that have executed a Uniform Depository Agreement with the U.S. Trustee for the District of Delaware, or at such banks that are willing to immediately execute such an agreement and any New Account that the Debtors open in the United States shall be (i) at one of the existing Banks or with a bank that is organized under the laws of the United States of America or any state therein, and that is insured by the FDIC or the Federal Savings and Loan Insurance Corporation, and (ii) designated a “Debtor in Possession” account by the relevant bank. The New Accounts are deemed to be Bank Accounts and are similarly subject to the rights, obligations, and relief granted in this Interim Order. The Banks are authorized to honor the Debtors’ requests to open or close (as the case may be) such Bank Account(s) or New Account(s). In the event that the Debtors open or close any Bank Accounts(s) or New Account(s), such opening or closing shall be timely indicated on the Debtors’ monthly operating reports and the Debtors shall give fifteen (15) days’ prior notice via electronic mail to counsel to the U.S. Trustee, counsel to the Prepetition Agents, counsel to the DIP Lenders, and counsel to any official committee of unsecured creditors appointed in these Chapter 11 Cases before opening or closing accounts. This period may be shortened by agreement of the aforementioned parties.

10. The Debtors are authorized to deposit funds in accordance with existing practices under the Cash Management System as in effect as of the Petition Date, subject to any reasonable changes, consistent with this Interim Order, to the Cash Management System that the Debtors may

implement, and, to the extent such practices are inconsistent with the requirements of Bankruptcy Code section 345(b), the Debtors have an extension to comply with such requirements per paragraph 14 of this Interim Order.

11. Neither the provisions contained herein, nor any actions or payments made by the Debtors pursuant to this Interim Order, shall be deemed an admission as to the validity of the underlying obligation or a waiver of any rights the Debtors may have to dispute such obligation on any ground that applicable law permits.

12. The requirements of Bankruptcy Rule 6003(b) are satisfied because the relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtors.

13. Notwithstanding Bankruptcy Rule 6004(h), to the extent applicable, this Interim Order shall be effective and enforceable immediately upon entry hereof.

14. To the extent the Bank Accounts are determined to not comply with the requirements set forth in Bankruptcy Code section 345, the Debtors have a 30-day extension to comply with the same, without prejudice to the Debtors' rights to seek a further waiver.

15. Notwithstanding the Debtors' use of a consolidated Cash Management System, the Debtors shall calculate any quarterly fees due under 28 U.S.C. § 1930(a)(6) based on the disbursements of each Debtor, regardless of which Debtor makes the payments.

16. The Debtors are hereby authorized to take such actions and to execute such documents as may be necessary to implement the relief granted by this Interim Order.

17. The final hearing (the "**Final Hearing**") to consider the entry of a final order granting the relief requested in the Motion shall be held on _____, **2024**, at _____ **m. Prevailing Eastern Time.**

18. Any objection to the entry of a final order granting the relief requested in the Motion shall be filed with the Court and served on the following parties **no later than 4:00 p.m. Prevailing Eastern Time on _____, 2024**, (a) the Debtors, c/o ProSomnus, Inc., 5675 Gibraltar Dr., Pleasanton, California 94588; (b) proposed counsel to the Debtors, Polsinelli PC, 222 Delaware Avenue, Suite 1101, Wilmington, Delaware 19801, Attn: Shanti M. Katona (skatona@polsinelli.com) and Katherine M. Devanney (kdevanney@polsinelli.com); (c) counsel to the Sponsoring Noteholders and proposed DIP Lenders, Kilpatrick Townsend & Stockton LLP, 1114 Avenue of the Americas, New York, New York 10036, Attn: David M. Posner (dposner@ktslaw.com) and Gianfranco Finizio (gfinizio@ktslaw.com) and Morris James LLP, 500 Delaware Avenue, Suite 1500, Wilmington, Delaware 19801, Attn: Eric J. Monzo (emonzo@morrisjames.com) and Brya M. Keilson (bkeilson@morrisjames.com); (d) counsel to the Prepetition Agents, Alston & Bird LLP, 1120 South Tryon Street, Suite 300, Charlotte, North Carolina 28203-6818, Attn: Adam Smith (adam.smith@alston.com) and Lauren McHale (lauren.mchale@alston.com); (e) counsel to the proposed DIP Agent, Seward & Kissel LLP, One Battery Park Plaza, New York, NY 10004, Attn: Gregg Bateman (bateman@sewkis.com); and (f) the Office of the United States Trustee, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801, Attn: Jon Lipshie (jon.lipshie@usdoj.gov).

19. Nothing in the Motion or this Interim Order, or the Debtors' payment of any claims pursuant to this Interim Order, shall be deemed or construed as: (i) an admission as to the validity of any claim or lien against the Debtors or their estates, (ii) a waiver of the Debtors' rights to dispute any claim or lien, (iii) an approval or assumption of any agreement, contract, or lease pursuant to Bankruptcy Code section 365, (iv) an admission of the priority status of any claim, whether under Bankruptcy Code section 503(b)(9) or otherwise, or (v) a modification of the

Debtors' rights to seek relief under any section of the Bankruptcy Code on account of any amounts owed or paid to any third party.

20. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation and/or interpretation of this Interim Order.

EXHIBIT B

Proposed Final Order

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

In re:

PROSOMNUS, INC., *et al.*,¹

Debtors.

Chapter 11

Case No. 24-10972 (JTD)

(Joint Administration Requested)

Re: Docket Nos. __

**FINAL ORDER AUTHORIZING (I) CONTINUED USE OF EXISTING CASH
MANAGEMENT SYSTEM, INCLUDING MAINTENANCE OF EXISTING BANK
ACCOUNTS, CHECKS, AND BUSINESS FORMS, AND (II) CONTINUATION OF
EXISTING DEPOSIT PRACTICES AND RELATED RELIEF**

Upon the motion (the “**Motion**”)² of the Debtors for entry of a final order (this “**Final Order**”), pursuant to Bankruptcy Code sections 105(a), 363, and 364, Bankruptcy Rules 6003 and 6004, and Local Rule 2015-2, (i) authorizing, but not directing, the Debtors to continue to maintain and use their existing Cash Management System, including maintenance of the Bank Accounts and existing checks and business forms, (ii) granting the Debtors a temporary suspension of certain bank account and related requirements of the U.S. Trustee to the extent that such requirements are inconsistent with the Debtors’ practices under their Cash Management System or other actions described in the Motion or this Final Order, (iii) authorizing, but not directing, the Debtors to continue to maintain and use their existing deposit practices, (iv) authorizing the Debtors to pay ordinary course Bank Fees, including prepetition fees, and (v) authorizing and directing all banks with which the Debtors maintain accounts to continue to maintain, service, and administer such

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² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

accounts and authorize third-party payroll and benefits administrators and providers to prepare and issue checks on behalf of the Debtors; and the Court having reviewed the Motion, the First Day Declaration, and the Interim Order entered on _____ 2024; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order of Reference from the United States District Court for the District of Delaware dated as of February 29, 2012; the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and the Debtors consent to entry of a final order under Article III of the United States Constitution; and the Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and upon the record herein; and after due deliberation thereon; and good and sufficient cause appearing therefor, it is hereby

ORDERED, ADJUDGED, AND DECREED THAT:

1. The Motion is GRANTED on a final basis, as set forth herein.
2. All objections to the entry of this Final Order, to the extent not withdrawn or settled, are overruled.
3. The Debtors are authorized to continue to use their existing Cash Management System, as described in the Motion, and shall maintain detailed records reflecting all transfers of funds under the terms and conditions provided for by the existing agreements with the institutions participating in the Cash Management System, except as provided by this Final Order. The Debtors shall maintain records with respect to all transactions and transfers, so that all transactions can be readily ascertained, traced, properly recorded, and distinguished between prepetition and postpetition transactions, and shall include a detailed accounting of intercompany transactions between the Debtors in the Debtors' monthly operating reports.

4. The Debtors are authorized to (i) continue to use any and all of the Bank Accounts in existence as of the Petition Date that are set forth on Schedule 1 to the Motion, in the same manner and with the same account numbers, styles, and document forms as are currently employed, (ii) deposit funds in and withdraw funds from the Bank Accounts in the ordinary course by all usual means, including checks, wire transfers, drafts, and electronic fund transfers or other items presented, issued, or drawn on the Bank Accounts, (iii) pay ordinary course Bank Fees in connection with the Bank Accounts, including any fees arising prior to the Petition Date, (iv) perform their obligations under the documents and agreements governing the Bank Accounts, and (v) for all purposes, treat the Bank Accounts as accounts of the Debtors in their capacities as debtors in possession.

5. The Debtors shall have (i) contacted each Bank, (ii) provided the Bank with each of the Debtors' employer identification numbers, and (iii) identified each of the Bank Accounts held as such Bank as being held by a debtor in possession in a bankruptcy case and provided the case number.

6. Pursuant to Local Rule 2015-2(a), the Debtors are authorized to continue to use their existing checks, correspondence, and other business forms without alteration or change and without the designation "Debtor in Possession" or a bankruptcy case number imprinted upon them. Notwithstanding the foregoing, once a Debtors' existing checks have been used, the Debtors shall, when reordering checks, require the designation "Debtor in Possession" and the corresponding bankruptcy case number on all checks; *provided that*, with respect to checks that the Debtors or their agents print themselves, the Debtors shall have begun printing the "Debtor in Possession" legend and the bankruptcy case number on such items.

7. The Debtors are authorized to continue to utilize all third-party providers necessary for the administration of their Cash Management System, including the PEO Providers and their bill payment platform, *bill.com*. In addition, the Debtors are authorized, but not directed, to pay all prepetition amounts or postpetition amounts due to such third-party providers.

8. Effective as of the Petition Date, and subject to the terms of this Final Order and any other order of this Court, including any DIP Order, the Banks are authorized and directed to continue to administer, service, and maintain the Bank Accounts as such accounts were administered, serviced, and maintained prepetition, without interruption and in the ordinary course (including making deductions for Bank Fees), and, when requested by the Debtors, to honor any and all checks, drafts, wires, electronic fund transfers, or other items presented, issued, or drawn on the Bank Accounts on account of a claim against the Debtors arising on or after the Petition Date; *provided, however*, that unless otherwise ordered by the Court, no checks, drafts, electronic funds transfers (excluding any electronic funds transfer that the Banks are obligated to settle), or other items presented, issued, or drawn on the Bank Accounts on account of a claim against the Debtors arising prior to the Petition Date shall be honored.

9. The Debtors shall implement appropriate mechanisms to ensure that no payments will be made on any debts incurred by the Debtors prior to the Petition Date, other than those authorized by this order of the Court, including any DIP Order. The Banks shall implement reasonable handling procedures designed to effectuate the terms of this Final Order. No Bank that implements such handling procedures and then honors a prepetition check or item drawn on any account that is the subject of this Final Order at the direction of the Debtors to honor such prepetition check or item shall be deemed to be liable to the Debtors or their estates on account of

such prepetition check or item being honored postpetition or otherwise in violation of this Final Order.

10. The Debtors are authorized to implement such reasonable changes, consistent with this Final Order, to the Cash Management System as the Debtors may deem necessary or appropriate, including, without limitation, closing any of the Bank Accounts or opening any New Accounts wherever the Debtors deem that such accounts are needed or appropriate. Notwithstanding the foregoing, the Debtors shall open such New Account(s) at banks that have executed a Uniform Depository Agreement with the U.S. Trustee for the District of Delaware, or at such banks that are willing to immediately execute such an agreement and any New Account that the Debtors open in the United States shall be (i) at one of the existing Banks or with a bank that is organized under the laws of the United States of America or any state therein, and that is insured by the FDIC or the Federal Savings and Loan Insurance Corporation, and (ii) designated a “Debtor in Possession” account by the relevant bank. The New Accounts are deemed to be Bank Accounts and are similarly subject to the rights, obligations, and relief granted in this Final Order. The Banks are authorized to honor the Debtors’ requests to open or close (as the case may be) such Bank Account(s) or New Account(s). In the event that the Debtors open or close any Bank Accounts(s) or New Account(s), such opening or closing shall be timely indicated on the Debtors’ monthly operating reports and the Debtors shall give fifteen (15) days’ prior notice via electronic mail to counsel to the U.S. Trustee, counsel to the Prepetition Agents, counsel to the DIP Lenders, and counsel to any official committee of unsecured creditors appointed in these Chapter 11 Cases before opening or closing the accounts. This period may be shortened by agreement of the aforementioned parties.

11. Nothing in the Motion or this Final Order, or the Debtors' payment of any claims pursuant to this Final Order, shall be deemed or construed as: (i) an admission as to the validity of any claim or lien against the Debtors or their estates, (ii) a waiver of the Debtors' rights to dispute any claim or lien, (iii) an approval or assumption of any agreement, contract, or lease pursuant to Bankruptcy Code section 365, (iv) an admission of the priority status of any claim, whether under Bankruptcy Code section 503(b)(9) or otherwise, or (v) a modification of the Debtors' rights to seek relief under any section of the Bankruptcy Code on account of any amounts owed or paid to any third party.

12. Neither the provisions contained herein, nor any actions or payments made by the Debtors pursuant to this Final Order, shall be deemed an admission as to the validity of the underlying obligation or a waiver of any rights the Debtors may have to dispute such obligation on any ground that applicable law permits.

13. The requirements of Bankruptcy Rule 6003(b) are satisfied because the relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtors.

14. Notwithstanding Bankruptcy Rule 6004(h), to the extent applicable, this Final Order shall be effective and enforceable immediately upon entry hereof.

15. Notwithstanding the Debtors' use of a consolidated Cash Management System, the Debtors shall calculate any quarterly fees due under 28 U.S.C. § 1930(a)(6) based on the disbursements of each Debtor, regardless of which Debtor makes the payments.

16. The Debtors are hereby authorized to take such actions and to execute such documents as may be necessary to implement the relief granted by this Final Order.

17. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation and/or interpretation of this Final Order.