

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

In re:

PROSOMNUS, INC., *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 24-10972 (JTD)

(Joint Administration Requested)

**MOTION OF DEBTORS FOR ENTRY OF INTERIM AND FINAL ORDERS (I) AUTHORIZING CONTINUATION OF, AND PAYMENT OF PREPETITION OBLIGATIONS INCURRED IN THE ORDINARY COURSE OF BUSINESS IN CONNECTION WITH VARIOUS INSURANCE POLICIES, (II) AUTHORIZING BANKS TO HONOR AND PROCESS CHECKS AND ELECTRONIC TRANSFER REQUESTS RELATED THERETO, (III) PREVENTING INSURANCE COMPANIES FROM GIVING ANY NOTICE OF TERMINATION OR OTHERWISE MODIFYING ANY INSURANCE POLICY WITHOUT OBTAINING RELIEF FROM THE AUTOMATIC STAY, AND (IV) AUTHORIZING THE DEBTORS TO CONTINUE INSTALLMENT PAYMENTS AND BROKERAGE OBLIGATIONS**

The above-captioned debtors and debtors in possession (the “**Debtors**”) hereby move this Court (the “**Motion**”) for entry of an interim order (“**Interim Order**”) and a final order (“**Final Order**”) pursuant to sections 105(a), 362, and 363(b) of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “**Bankruptcy Code**”); Rule 6003(b) of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”); and Rule 9013-1(m) 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 and, to the extent necessary, renew prepetition insurance policies in the ordinary course of business and pay prepetition obligations in respect thereof; (ii) authorizing banks and other financial institutions at which the Debtors hold accounts (collectively, the “**Banks**”) to honor and process check and

<sup>1</sup> 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.



electronic transfer requests related to the foregoing; (iii) preventing insurance companies from giving any notice of termination or otherwise modifying or cancelling any insurance policies without first obtaining relief from the automatic stay imposed by Bankruptcy Code section 362; and (iv) authorizing, but not directing, the Debtors to continue to honor any installment plans and brokerage obligations. In support of this Motion, the Debtors rely upon and incorporate by reference the *Declaration of Brian Dow, Chief Financial Officer of Debtors, in Support of Chapter 11 Petitions and First Day Pleadings*, filed with the Court concurrently herewith (the “**First Day Declaration**”).<sup>2</sup> In further support of this Motion, the Debtors, by and through their undersigned counsel, respectfully represent as follows:

**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) and 363(b), Bankruptcy Rule 6003(b), and Local Rule 9013-1(m).

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<sup>2</sup> Capitalized terms not otherwise defined herein shall 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’ Insurance Policies and Related Payment Obligations

5. In the ordinary course of their business, the Debtors maintain insurance policies with various insurance providers (collectively, the “**Insurers**”) that provide coverage for, among other things, commercial general liability, umbrella liability, professional liability, cyber, errors & omissions, crime, automobile, and directors and officers insurance<sup>3</sup> (each, an “**Insurance Policy**” and collectively, the “**Insurance Policies**”), as summarized in Exhibit C annexed hereto.<sup>4</sup>

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<sup>3</sup> The Debtors utilize a layered directors & officers insurance structure (the “**Layered D&O Policies**”) in which different Insurers provide liability coverage for different tranches of potential directors and officers liability exposure.

<sup>4</sup> The descriptions of the Insurance Policies set forth in this Motion constitute a summary only. The actual terms of the Insurance Policies and related agreements will govern in the event of any inconsistency with the descriptions in this Motion. It is possible that certain of the Debtors’ Insurance Policies may have been inadvertently omitted from the list of Insurance Policies attached hereto as Exhibit C. Accordingly, Exhibit C represents a non-exhaustive list of Insurance Policies and the Debtors reserve the right, pursuant to the terms and conditions of this Motion and without further order from the Court, to amend Exhibit C to add any Insurance Policies that were omitted therefrom. The Debtors request that the relief requested herein apply equally to all such Insurance Policies (the “**Additional Insurance Policies**”). In the event the Debtors add any Additional Insurance Policies to Exhibit C, the Debtors will serve this Motion, any order approving same, and a revised version of Exhibit C upon the issuer(s) of any such

6. On an annual basis, the Debtors incur approximately \$1,135,000.00 in the aggregate in premiums under the terms of their existing Insurance Policies as well as other obligations, including other related fees and costs (collectively, the “**Insurance Obligations**”). In addition, the Debtors may make retroactive adjustments in the ordinary course of business with respect to one or more of the Insurance Policies, as applicable.

7. The Debtors seek authority to pay premiums under the Insurance Policies based on a fixed amount established and billed by each Insurer. Depending on the particular Insurance Policy, premiums are (a) paid upfront in full at a policy’s inception or renewal, or (b) pursuant to monthly installment payments.

**(i) Debtors’ Pre-Paid Policies**

8. A few of the Insurance Policies, such as the Layered D&O Policies, require upfront annual premium payments to be made at the beginning of the applicable policy period. In the ordinary course of business, the Debtors renew annual coverages under many of their policies, including those related to the Layered D&O Policies, cyber liability, and crime, and the Debtors pay the full amount of the premiums owed for such policies due at renewal. Accordingly, as of the Petition Date, the Debtors do not owe unpaid premium amounts on account of policies that require payment in full at the inception of the applicable policy period.

**(ii) The Debtors’ Monthly Installment Payments**

9. The majority of the Debtors’ Insurance Policies, such as professional and commercial liability, errors and omissions, and automobile insurance are paid on a ten-month installment plan, which requires a down payment and then equal payments for the next ten (10)

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Additional Insurance Policies, the Office of the U.S. Trustee, counsel to the Proposed DIP Lender, counsel to the Prepetition Agents, counsel to the Sponsoring Noteholders, and counsel to any official committee(s) appointed in the Debtors’ Chapter 11 Cases.

months of the plan (the “**Installment Payments**”). The down payments were paid prepetition in December 2023. As of the Petition Date, the Debtors are current on the Installment Payments but will incur monthly Insurance Obligations related to the Installment Payments in the course of the Chapter 11 Cases. The Debtors estimate that approximately \$13,600.00 in Installment Payments will come due each month during the Chapter 11 Cases, which the Debtors plan on paying in the ordinary course of business. The Installment Payments are made to the Debtors’ insurance broker, USI Insurance (“**USI**”).

10. If the Debtors are unable to continue to make the Installment Payments, certain Insurers may terminate policies. The Debtors would then be required to obtain replacement insurance on an expedited basis and at a significant cost to the estates. If the Debtors are required to obtain replacement insurance and to pay a lump-sum premium for such Insurance Policy in advance, this payment would likely be greater than what the Debtors are currently scheduled to pay via the Installment Payments. Even if the Insurers were not allowed to terminate, any interruption of payment would have a severe, adverse effect on the Debtors’ ability to find insurance policies in the future.

**(iii) The Debtors’ Broker Services**

11. With respect to certain Insurance Policies, the Debtors retain the services of USI as the broker to assist them with the procurement and negotiation of the Insurance Policies. USI assists the Debtors in obtaining comprehensive insurance coverage for their operations, analyzing the market for available coverage and negotiating policy terms, provisions, and premiums. USI also provides ongoing support through the policy periods. As previously set forth herein, the Debtors make monthly Installment Payments to USI in relation to their Insurance Obligations. The Debtors believe that, as of the Petition Date, no amounts are due to USI. However, monthly Installment Payments due USI will occur each month moving forward. Therefore, out of an

abundance of caution, the Debtors seek authority to honor any amounts owed to USI in relation to, among other items, the Installment Payments to ensure uninterrupted coverage under their Insurance Policies, and to ensure that the Debtors may continue to benefit from USI's services.

**RELIEF REQUESTED**

12. By this Motion, the Debtors request entry of the Interim Order and the Final Order, substantially in the forms of Exhibit A and Exhibit B, respectively, attached hereto, authorizing the Debtors to (i) continue and renew their Insurance Policies, or obtain new insurance policies, as needed in the ordinary course of business, and (ii) honor all of their prepetition and postpetition obligations, including payment of all outstanding prepetition Insurance Obligations (including Installment Payments and brokerage obligations), under and in connection with the Insurance Policies on an uninterrupted basis and in accordance with the same practices and procedures as were in effect before the Petition Date, including premiums arising under the Insurance Policies.<sup>5</sup>

13. The Debtors also seek entry of an order authorizing the Banks to receive, process, honor, and pay checks or electronic transfers used by the Debtors to pay the foregoing and to rely on the representations of the Debtors as to which checks are issued and authorized to be paid in accordance with this Motion.

14. Additionally, the Debtors respectfully request an order preventing the Insurers from giving any notice of termination or otherwise modifying or canceling any Insurance Policies, as applicable, without obtaining relief from the automatic stay.

15. Lastly, the Debtors request authority to honor any amounts owed to its insurance broker, USI, whether related to the Installment Payments or otherwise, to ensure uninterrupted

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<sup>5</sup> Nothing in this Motion should be construed as an assumption of any executory contract or unexpired lease between the Debtors and any other party, nor should it be construed as a rejection of any executory contract or unexpired lease with any creditor. The Debtors reserve the right to contest the amount claimed to be due by any person or entity.

coverage under the Debtors' Insurance Policies, and to ensure that Debtors may continue to benefit from USI's services.

### **BASIS FOR RELIEF**

#### **A. Honoring the Insurance Policy Obligations is Warranted Under Bankruptcy Code Section 363(b)**

16. Bankruptcy Code section 363 provides, in relevant part, that “[t]he trustee, 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(b), courts require only that the debtor “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) (citations omitted); *see also In re Culp*, 550 B.R. 683, 697 (D. Del. 2015) (“If the bankruptcy trustee’s decision evidences a sound business purpose, then the Bankruptcy Court should approve the sale.”); *In re Phoenix Steel Corp.*, 82 B.R. 334, 335–36 (Bankr. D. Del. 1987); *In re Adelphia Commc’ns Corp.*, No. 02-41729 (REG), 2003 WL 22316543, at \*30 (Bankr. S.D.N.Y. Mar. 4, 2003); *Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1070 (2d Cir. 1983). Moreover, “[w]here the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor’s conduct.” *Comm. of Asbestos-Related Litigants v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986) (citation omitted); *see also In re Filene’s Basement, LLC*, No. 11-13511 (KJC), 2014 WL 1713416, at \*12 (Bankr. D. Del. Apr. 29, 2014); *see also 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.”).

17. The Debtors have satisfied the business judgment standard. First, the coverage provided under the Insurance Policies is essential for preserving the value of the Debtors' assets and such coverage is required by various regulations, laws, and contracts that govern the Debtors' business operations. Indeed, Bankruptcy Code section 1112(b)(4)(C) provides that "failure to maintain appropriate insurance that poses a risk to the estate or to the public," is "cause" for mandatory conversion or dismissal of a chapter 11 case. 11 U.S.C. § 1112(b)(4)(C). Moreover, maintenance of insurance policies is required by the operating guidelines established by the Office of the United States Trustee (the "**U.S. Trustee**"). See *3 United States Trustee Manual*, § 3-3.2.3 (Oct. 2020) ("A debtor must obtain appropriate insurance coverage, and documentation regarding the existence of the coverage must be provided to the United States Trustee as early in the case as possible."). Second, if the Debtors fail to perform their obligations under the Insurance Policies, their coverage thereunder could be voided. Such a disruption of the Debtors' insurance coverage could expose the Debtors to serious risks, including but not limited to: (i) direct liability for the payment of claims that otherwise would have been payable by the Insurers; (ii) material costs and other losses that otherwise would have been reimbursed by the Insurers under the Insurance Policies; (iii) the loss of good standing certification in jurisdictions that require the Debtors to maintain certain levels of insurance coverage; (iv) the inability to obtain similar types of insurance coverage; and (v) higher costs for re-establishing lapsed policies or obtaining new insurance coverage. Any or all of these consequences could cause serious harm to the Debtors' business. Granting the relief requested herein will enhance the likelihood of the Debtors' successful rehabilitation, thereby furthering the goals of chapter 11: "facilitating the continued operation and rehabilitation of the debtor." *In re Ionosphere Clubs*, 98 B.R. 174, 176 (Bankr. S.D.N.Y. 1989).



18. The Debtors may also need to renew or replace certain of the Insurance Policies during the course of these Chapter 11 Cases or enter into new policies. If the Debtors do not pay prepetition amounts owing, including upward and/or downward adjustments, in respect of the Insurance Policies, there is a risk that the Insurers will refuse to renew the Insurance Policies.

19. Although the Debtors believe that the renewal, modification, or new execution of the Insurance Policies would constitute ordinary course transactions not requiring Court approval, the Debtors nevertheless seek authority to continue to renew and modify the Insurance Policies in order to assure the Debtors' Insurers that the Debtors have full authority with respect to new or modified arrangements without the need to obtain further approval from the Court.

**B. Honoring the Insurance Policy Obligations is Warranted Under the Doctrine of Necessity**

20. The Court may authorize payment of prepetition claims under Bankruptcy Code section 105(a). Section 105(a), which codifies the equitable powers of the bankruptcy court, empowers courts to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). Under Bankruptcy Code section 105(a), courts may permit pre-plan payments of prepetition obligations when essential to the continued operation of the debtor's business, even though such payment is not explicitly authorized under the Bankruptcy Code. *See, e.g., In re Just for Feet, Inc.*, 242 B.R. 821, 825 (D. Del. 1999). Specifically, the Court may use its power under Bankruptcy Code section 105(a) to authorize payment of prepetition obligations pursuant to the “doctrine of necessity” (also referred to as the “necessity of payment” rule). *In re Ionosphere Clubs, Inc.*, 98 B.R. at 175-76; *see also Official Comm. Of Unsecured Creditors of Motor Coach Indus. Int'l, Inc. v. Motor Coach Indus. Int'l, Inc. (In re Motor Coach Indus. Int'l, Inc.)*, No. 08-12136-BLS, 2009 WL 330993, at \*2 n. 5 (D. Del. Feb. 10, 2009) (“The ‘doctrine of necessity’ or ‘necessity of payment’ doctrine is a general rubric for the

proposition that a court can authorize the payment of prepetition claims if such payment is essential to the continued operation of the debtor.”)

21. The United States Court of Appeals for the Third Circuit recognized the “necessity of payment” doctrine in *In re Lehigh and New England Railway Company*. *In re Lehigh and New England Railway Co.*, 657 F.2d 570, 581 (3d Cir. 1981). The Third Circuit held that a court could authorize the payment of prepetition claims if such payment was essential to the continued operation of the debtor. *Id.* (stating a court may authorize payment of prepetition claims when there “is the possibility that the creditor will employ an immediate economic sanction, failing such payment”); accord *In re Penn Cent. Transp. Co.*, 467 F.2d 100, 102 n.1 (3d Cir. 1972) (holding that the necessity of payment doctrine 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”); see also *Just for Feet, Inc.*, 242 B.R. at 824-26 (noting that the Third Circuit permits debtors to pay prepetition claims that are essential to the continued operation of business); *In re Motor Coach Indus. Int’l, Inc.*, No. 08-12136-BLS, 2009 WL 330993, at \*3 (denying a stay pending appeal on the grounds that there is not a serious basis to challenge the doctrine of necessity in the Third Circuit).

22. Honoring the Debtors’ obligations with regards to the Insurance Policies is warranted under the doctrine of necessity. As described above, continuation of the Insurance Policies is essential to preserve the value of the Debtors’ assets and minimize exposure to risk. Furthermore, insurance coverage is required by the Office of the United States Trustee, as well as various jurisdictions in which the Debtors operate.

**C. The Court Should Authorize Applicable Banks to Honor Checks and Electronic Fund Transfers in Accordance with the Motion**

23. In connection with the foregoing, the Debtors respectfully request that the Court (i) authorize all applicable Banks to receive, process, honor, and pay all checks and transfers issued by the Debtors in accordance with this Motion, without regard to whether any checks or transfers were issued before or after the Petition Date, (ii) provide that all Banks may rely on the representations of the Debtors with respect to whether any check or transfer issued or made by the Debtors before the Petition Date should be honored pursuant to this Motion (such banks and other financial institutions having no liability to any party for relying on such representations by the Debtors provided for herein), and (iii) authorize the Debtors to issue replacement checks or transfers to the extent any checks or transfers that are issued and authorized to be paid in accordance with this Motion are dishonored or rejected by the Banks.

**D. The Automatic Stay**

24. The Debtors also request that the Court (i) prevent the Insurers from giving any notice of termination or otherwise modifying or canceling any Insurance without obtaining relief from the automatic stay imposed by Bankruptcy Code section 362. The purpose of this relief is to aid in the administration of the Debtors' bankruptcy cases and to preserve the value of their business operations. The Debtors' Insurers may be unfamiliar with the protections afforded chapter 11 debtors under Bankruptcy Code section 362, and thus, an order of this Court affirming these protections would help avoid costly and unnecessary litigation.

25. As a result of the commencement of the Debtors' Chapter 11 Cases, and by operation of law pursuant to Bankruptcy Code section 362, the automatic stay prevents all persons from, inter alia, (i) commencing or continuing any judicial, administrative or other proceeding against the Debtors, (ii) taking any action to exercise control over property of the estates, or (iii)

taking any action to collect, assess or recover a claim against the Debtors that arose before the commencement of such cases. *See* 11 U.S.C. § 362(a).

26. The appropriate procedure for obtaining Court approval of termination under an insurance policy is to seek relief from the automatic stay under the provisions of Bankruptcy Code section 362(d)(1), which require the Court to grant relief for “cause.” *In re Adana Mortg. Bankers, Inc.*, 12 B.R. 983, 988 (Bankr. N.D. Ga. 1980).

27. The injunctions contained in Bankruptcy Code section 362 are self-executing and constitute fundamental debtor protections, which, in combination with other provisions of the Bankruptcy Code, provides the Debtors with a “breathing spell” that is essential to the Debtors’ ability to reorganize. *See, e.g., Mar. Elec. Co., Inc. v. United Jersey Bank*, 959 F.2d 1194, 1204 (3d Cir. 1991).

**E. Immediate Relief is Justified**

28. Pursuant to Bankruptcy Rule 6003, the Court may grant relief within twenty-one (21) days after the filing of the petition regarding a motion to “use, sell, lease, or otherwise incur an obligation regarding property of the estate” only if such relief is necessary to avoid immediate and irreparable harm. Fed. R. Bankr. P. 6003(b). Immediate and irreparable harm exists where the absence of relief would impair a debtor’s ability to reorganize or threaten the debtor’s future as a going concern. *See In re Ames Dep’t Stores, Inc.*, 115 B.R. 34, 36 n.2 (Bankr. S.D.N.Y. 1990) (discussing the elements of “immediate and irreparable harm” in relation to Bankruptcy Rule 4001).

29. Moreover, Bankruptcy Rule 6003 authorizes the Court to grant the relief requested herein to avoid harm to the Debtors’ customers and other third parties. Unlike Bankruptcy Rule 4001, Bankruptcy Rule 6003 does not condition relief on imminent or threatened harm to the estate alone. Rather, Bankruptcy Rule 6003 speaks of “immediate and irreparable harm” generally. *Cf.*

Fed. R. Bankr. P. 4001(b)(2), (c)(2) (referring to “irreparable harm to the estate”). Indeed, the “irreparable harm” standard is analogous to the traditional standards governing the issuance of preliminary injunctions. *See* 9 *Alan N. Resnick & Henry J. Sommer, Collier on Bankruptcy* ¶ 4001.07[b][3] (16th ed.) (discussing source of “irreparable harm” standard under Rule 4001(c)(2)). Courts will routinely consider the interests of third-party creditors when granting such relief. *See, e.g., Capital Ventures Int’l v. Argentina*, 443 F.3d 214, 223 n.7 (2d Cir. 2006); *see also Linnemeir v. Bd. of Trs. of Purdue Univ.*, 260 F.3d 757, 761 (7th Cir. 2001).

30. As described herein, the Debtors will suffer immediate and irreparable harm without Court authorization for the relief requested herein. Accordingly, Bankruptcy Rule 6003 has been satisfied and the relief requested herein should be granted.

#### **WAIVER OF BANKRUPTCY RULES**

31. To the extent that any aspect of the relief sought herein is subject to Bankruptcy Rule 6003, the Debtors submit that the Court may grant such relief within twenty-one (21) days after the Petition Date because it is necessary to avoid immediate and irreparable harm. *See* Fed. R. Bankr. P. 6003.

32. In addition, 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 notice requirements under Bankruptcy Rule 6004(a) and the fourteen (14)-day stay under Bankruptcy Rule 6004(h), to the extent applicable. *See* Fed. R. Bankr. P. 6004(a), (h). As described above, the relief that the Debtors seek in this Motion is immediately necessary in order for the Debtors to be able to continue to operate their business and preserve the value of their estates. The Debtors respectfully request that the Court waive the notice requirements imposed by Bankruptcy Rule 6004(a) and the fourteen (14)-day stay imposed by Bankruptcy Rule 6004(h), as the exigent nature of the relief sought herein justifies immediate relief.

**RESERVATION OF RIGHTS**

33. 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. The Debtors expressly reserve their rights to contest any invoice or claim on account of any Insurance Policy under applicable law and to assume or reject any agreements with Insurance Policy providers in accordance with the applicable provisions of the Bankruptcy Code. 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**

34. 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 Insurers; (h) USI; (i) the United States Securities and Exchange Commission; (j) the Office of the United States Attorney for the District of Delaware; (k) any banking or financial institution that holds Debtors' accounts; 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**

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

**WHEREFORE**, the Debtors respectfully request that the Court enter the Interim Order and the Final Order, substantially in the forms of the proposed orders attached hereto as Exhibit A and Exhibit B, 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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*Proposed Counsel to the Debtors and  
Debtors in Possession*

**EXHIBIT A**

Proposed Interim Order



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

In re:

PROSOMNUS, INC., *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 24-10972 (JTD)

(Joint Administration Requested)

**Re: Docket No. \_\_**

**INTERIM ORDER (I) AUTHORIZING CONTINUATION OF, AND PAYMENT OF  
PREPETITION OBLIGATIONS INCURRED IN THE ORDINARY COURSE OF  
BUSINESS IN CONNECTION WITH, VARIOUS INSURANCE POLICIES, (II)  
AUTHORIZING BANKS TO HONOR AND PROCESS CHECKS AND ELECTRONIC  
TRANSFER REQUESTS RELATED THERETO, (III) PREVENTING INSURANCE  
COMPANIES FROM GIVING ANY NOTICE OF TERMINATION OR OTHERWISE  
MODIFYING ANY INSURANCE POLICY WITHOUT OBTAINING RELIEF FROM  
THE AUTOMATIC STAY, AND (IV) AUTHORIZING THE DEBTORS TO CONTINUE  
INSTALLMENT PAYMENTS AND BROKERAGE OBLIGATIONS**

Upon the motion (the “**Motion**”)<sup>2</sup> of the Debtors for an interim order (this “**Interim Order**”), pursuant to sections 105(a), 362, and 363(b) of title 11 of the United States Code (the “**Bankruptcy Code**”), Rule 6003(b) of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and Rule 9013-1(m) 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 continuation of, and payment of prepetition obligations incurred in the ordinary course of business in connection with, various Insurance Policies; (ii) authorizing Banks to honor and process checks and electronic transfer requests related thereto; (iii) preventing Insurers giving

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<sup>1</sup> 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.

<sup>2</sup> All capitalized terms used and not defined herein shall have the meanings ascribed to them in the Motion or First Day Declaration, as applicable.

any notice of termination or otherwise modifying or cancelling any Insurance Policies, as applicable, without first obtaining relief from the automatic stay; and (iv) authorizing the Debtors to continue to honor Installment Payments and brokerage obligations; and the Court having reviewed the Motion and the First Day Declaration; and the Court having jurisdiction over this matter 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 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 therefore, it is hereby

**ORDERED, ADJUDGED AND DECREED THAT:**

1. The Motion is GRANTED on an interim basis, as set forth herein.
2. All objections to the entry of this Interim Order, to the extent not withdrawn or settled, are overruled.
3. The Debtors are authorized, but not directed, without interruption and in accordance with the same practices and procedures as were in effect before the Petition Date, to maintain and honor all of their prepetition Insurance Obligations under or in connection with the Insurance Policies provided, however, that Installment Payments and payments for broker services shall not exceed \$13,600 and \$1,400, respectively, per month.
4. The Debtors are authorized to renew or to obtain new insurance policies or to execute other agreements in connection with the Insurance Policies, provided, however, that the

Debtors shall provide notice, within ten (10) days of the effective date of any action under this paragraph, to the Office of the U.S. Trustee and any official committee appointed in these cases.

5. Each of the Banks is authorized to honor checks presented for payment and all fund transfer requests made by the Debtors, to the extent that sufficient funds are on deposit in the applicable accounts, in accordance with this Interim Order.

6. The Debtors are authorized to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests in connection with any Insurance Obligations that are dishonored or rejected and are authorized to be paid by this Interim Order.

7. Subject to the payment limitations set forth in paragraph 3 of this Interim Order, the Debtors are authorized to continue making all Installment Payments.

8. Subject to the payment limitations set forth in paragraph 3 of this Interim Order, the Debtors are authorized to continue honoring all obligations to USI, including the payment of any fees for current or future Insurance Policies.

9. 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' right to dispute any claim or lien, (iii) an admission of the priority status of any claim, whether under Bankruptcy Code section 503(b)(9) or otherwise, (iv) to the extent that an Insurance Policy is deemed an executory contract within the meaning of Bankruptcy Code section 365, an assumption or adoption of the policy or agreement as an executory contract, 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 on account of any Insurance Policies.

10. The requirements set forth in Bankruptcy Rule 6003(b) are satisfied.

11. Notice of the Motion as provided therein satisfies the requirements of the Bankruptcy Rules and the Local Rules.

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

13. 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.

14. 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.**

15. 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).

16. The 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.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 24-10972 (JTD)

(Joint Administration Requested)

**Re: Docket Nos. \_\_**

**FINAL ORDER (I) AUTHORIZING CONTINUATION OF, AND PAYMENT OF  
PREPETITION OBLIGATIONS INCURRED IN THE ORDINARY COURSE OF  
BUSINESS IN CONNECTION WITH, VARIOUS INSURANCE POLICIES, (II)  
AUTHORIZING BANKS TO HONOR AND PROCESS CHECKS AND ELECTRONIC  
TRANSFER REQUESTS RELATED THERETO, (III) PREVENTING INSURANCE  
COMPANIES FROM GIVING ANY NOTICE OF TERMINATION OR OTHERWISE  
MODIFYING ANY INSURANCE POLICY WITHOUT OBTAINING RELIEF FROM  
THE AUTOMATIC STAY; AND (IV) AUTHORIZING THE DEBTORS TO CONTINUE  
INSTALLMENT PAYMENTS AND BROKERAGE OBLIGATIONS**

Upon the motion (the “**Motion**”)<sup>2</sup> of the Debtors for a final order (this “**Final Order**”), pursuant to sections 105(a), 362, and 363(b) of title 11 of the United States Code (the “**Bankruptcy Code**”), Rule 6003(b) of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and Rule 9013-1(m) 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 continuation of, and payment of prepetition obligations incurred in the ordinary course of business in connection with, various Insurance Policies; (ii) authorizing Banks to honor and process checks and electronic transfer requests related thereto; (iii) preventing the Insurers from giving any notice of termination

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<sup>1</sup> 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.

<sup>2</sup> All capitalized terms used and not defined herein shall have the meanings ascribed to them in the Motion or First Day Declaration, as applicable.

or otherwise modifying or cancelling any Insurance Policies, as applicable, without first obtaining relief from the automatic stay; and (iv) authorizing the Debtors to continue to honor installment plans and brokerage obligations; and the Court having reviewed the Motion, the First Day Declaration, and the Interim Order entered on \_\_\_\_\_, 2024 [Docket No.\_\_\_\_]; and the Court having jurisdiction over this matter 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 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 therefore, 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, but not directed, without interruption and in accordance with the same practices and procedures as were in effect before the Petition Date, to maintain and honor all of their prepetition Insurance Obligations under or in connection with the Insurance Policies provided, however, that Installment Payments and payments for broker services shall not exceed \$13,600 and \$1,400, respectively, per month.



4. The Debtors are authorized to renew or to obtain new insurance policies or to execute other agreements in connection with the Insurance Policies, provided, however, that the Debtors shall provide notice, within ten (10) days of the effective date of any action under this paragraph, to the Office of the U.S. Trustee and any official committee appointed in these cases.

5. Each of the Banks are authorized to honor checks presented for payment and all fund transfer requests made by the Debtors, to the extent that sufficient funds are on deposit in the applicable accounts, in accordance with this Final Order.

6. The Debtors are authorized to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests in connection with any Insurance Obligations that are dishonored or rejected and are authorized to be paid by this Final Order.

7. The Debtors are authorized to continue making all Installment Payments.

8. The Debtors are authorized to continue honoring all obligations to USI, including the payment of any fees for current or future Insurance Policies.

9. 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' right to dispute any claim or lien, (iii) an admission of the priority status of any claim, whether under Bankruptcy Code section 503(b)(9) or otherwise, (iv) to the extent that an Insurance Policy is deemed an executory contract within the meaning of Bankruptcy Code section 365, an assumption or adoption of the policy or agreement as an executory contract, 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 on account of any Insurance Policies.

10. The requirements set forth in Bankruptcy Rule 6003(b) are satisfied.

11. Notice of the Motion as provided therein satisfies the requirements of the Bankruptcy Rules and the Local Rules.

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

13. 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.

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

**EXHIBIT C**

Insurance Policy Summary Table

Type of Liability Coverage	Insurance Carrier(s)	Policy Number	Policy Term	Annual Premium	Monthly Installment Payment
Umbrella Commercial	Travelers	CUP-5X620158-23-I6	11/21/2023 – 11/21/2024	\$8,998.00	\$899.00
Professional Liability	Travelers Property Cas. Co. of America	ZPP16P19650A	11/21/2023 – 11/21/2024	\$56,281.00	\$5,628.00
Commercial Liability Package	Travelers Property Cas. Co. of America	6300X486044TIL23	11/21/2023 – 11/21/2024	\$38,067.00	\$3,806.00
Foreign Liability Package	Travelers Property Cas. Co. of America	ZGC16P19492	11/21/2023 – 11/21/2024	\$2,000.00	\$200.00
Errors & Omissions	Travelers Property Cas. Co. of America	ZPL51N022523I6	11/21/2023 – 11/21/2024	\$29,438.00	\$2,944.00
Business Automobile	Travelers Indemnity Company	BA8S97455A23I6G	11/21/2023 – 11/21/2024	\$1,063.00	\$106.00
Cyber Liability	Obsidian Specialty Insurance Company	OBD-CB-SRY7UIGL-002	11/21/2023 – 11/21/2024	\$7,526.34	Annual Payment
Crime	AIG	01-742-86-84	11/21/2023 – 11/21/2024	\$3,021.00	Annual Payment
Primary D&O	Chubb Custom Insurance	J06140695	12/6/2023 – 12/6/2024	\$438,820.41	Annual Payment
First Excess D&O	Continental Cas. Co.	652483347	12/6/2023 – 12/6/2024	\$292,000.00	Annual Payment
Second Excess D&O	Endurance Risk Solutions Assurance Co.	DOX30028975201	12/6/2023 – 12/6/2024	\$190,000.00	Annual Payment
Lead Side A D&O	Allied World Insurance Co.	0313-6414	12/6/2023 – 12/6/2024	\$65,700.00	Annual Payment