

**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 DEBTORS TO (I) MAINTAIN AND ADMINISTER CUSTOMER
PROGRAMS, PROMOTIONS, AND PRACTICES AND (II) PAY AND HONOR
RELATED PREPETITION OBLIGATIONS**

The above-captioned debtors and debtors in possession (the “**Debtors**”) hereby move the 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(b), and 507(a) of title 11 of the United States Code (the “**Bankruptcy Code**”), authorizing, but not directing, the Debtors to, in the ordinary course of business and consistent with past practice, (i) maintain and administer customer programs, promotions, and practices and (ii) pay and otherwise honor their obligations to customers and providers relating thereto, whether arising prior to or after the Petition Date, as necessary and appropriate in the Debtors’ business judgment. 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:

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 First Day Declaration.



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(b), and 507(a).

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.

RELIEF REQUESTED

5. By this Motion, pursuant to sections 105(a), 363(b), and 507(a) of the Bankruptcy Code, the Debtors request authority to, in the ordinary course of business and consistent with past practice, (i) maintain and administer customer programs, promotions, and practices and (ii) pay and otherwise honor their obligations to customers and providers relating thereto, whether arising prior to or after the Petition Date, as necessary and appropriate in the Debtors' business judgment.

THE DEBTORS' CUSTOMER PROGRAMS

6. Traditionally, the Debtors' business has been dependent upon the loyalty of their prescribing providers as well as their customers, as the end-users of their products. To maximize customer and provider loyalty, the Debtors maintained and followed, in the ordinary course of business, the practices and programs described herein and others (collectively, the "**Customer Programs**") to reward and provide incentives to existing providers and strategic partners. Customer and provider programs are standard in the medical device business. Without the ability to continue their Customer Programs and to satisfy prepetition obligations in connection therewith, the Debtors risk severely disrupting their ongoing operations, eroding estate value, and losing the loyalty of their customers and providers, who may look to alternative products from the Debtors' competitors.

7. The Debtors believe that their ability to continue the Customer Programs and to honor any obligations thereunder in the ordinary course of business is necessary to retain their reputation for reliability, comply with their legal obligations, meet competitive market pressures, and ensure overall customer and provider satisfaction. Continuing the Customer Programs allows the Debtors to maintain the goodwill of their current customers and partners, attract new customers and partners, and, ultimately, to enhance the Debtors' revenue and profitability.

8. As part of the Debtors' earned partner program (the "**Earned Partner Program**"), the Debtors have arrangements with approximately 528 medical providers (the "**Partner Providers**") whereby the Debtors may issue discounts (the "**Discounts**") to certain high-volume Partner Providers based on a 4-track discount system.

9. Pursuant to the Earned Partner Program, Discounts are calculated and awarded quarterly based on the eligible amount invoiced for the quarter and if that amount is paid in full before the first day of the second month following the quarter end. Partner Providers fall into one of four tracks based on their respective quarterly invoiced amounts and payment metrics, with the resulting quarterly discount being issued via an account credit or a prepaid card, at the election of the relevant Partner Provider. At each progressive "partnership" tier, the rate of the Partner Provider's earned Discount increases up to the maximum Discount under the Earned Partner Program of 20%.

10. Prior to the Petition Date, in April of 2024, the Debtors paid approximately \$500,000 on account of Discounts earned by Partner Providers in the fourth quarter of 2023. As of the Petition Date, the Debtors anticipate that approximately \$500,000 will become due and owing on account of Discounts earned by Partner Providers in the first quarter of 2024 within the next 30 days.

BASIS FOR RELIEF

I. Ample Authority Exists to Support Payment of the Customer Obligations

11. The Court may grant the relief requested herein pursuant to section 363 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 if a sound business purpose exists for doing so. *See In re Montgomery Ward Holding Corp.*, 242 B.R. 147, 153 (D. Del. 1999) (requiring that debtor show a “sound business purpose” to justify its actions under section 363 of Bankruptcy Code); *see also In re Phoenix Steel Corp.*, 82 B.R. 334, 335–36 (Bankr. D. Del. 1987). Moreover, if “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.” *In re Johns-Manville Corp.*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986) (*citation omitted*); *see also In re Tower Air, Inc.*, 416 F.3d 229, 238 (3d Cir. 2005) (stating that “[o]vercoming the presumptions of the business judgment rule on the merits is a near-Herculean task”).

12. The business judgment rule is satisfied where “the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company.” *See, e.g., Official Comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.)*, 147 B.R. 650, 656 (S.D.N.Y. 1992) (quoting *Smith v. Van Gorkom*, 488 A.2d 858, 872 (Del. 1985)), *appeal dismissed*, 3 F.3d 49 (2d Cir. 1993).

13. In addition, the Court has the authority, pursuant to its equitable powers under section 105(a) of the Bankruptcy Code, to authorize the relief requested herein, because such relief is necessary for the Debtors to carry out their fiduciary duties under section 1107(a) of the Bankruptcy Code. Section 105(a) of the Bankruptcy Code empowers bankruptcy 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. Section 1107(a) of the Bankruptcy Code “contains an implied duty of the debtor-in-possession” to “protect and preserve the estate, including an operating business’ going-concern value,” on behalf of a debtor’s creditors and other parties in interest. *In re CEI Roofing*,

Inc., 315 B.R. 50, 59 (Bankr. N.D. Tex. 2004) (quoting *In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002)); see also *Unofficial Comm. of Equity Holders v. McManigle (In re Penick Pharm., Inc.)*, 227 B.R. 229, 232–33 (Bankr. S.D.N.Y. 1998) (“[U]pon filing its petition, the Debtor became debtor in possession and, through its management . . . was burdened with the duties and responsibilities of a bankruptcy trustee.”).

14. The Court may also authorize the payment of prepetition claims in appropriate circumstances under section 105(a) of the Bankruptcy Code and the doctrine of necessity when such payment is essential to the continued operation of a debtor’s business. See, e.g., *CoServ*, 273 B.R. at 497 (“[I]t is only logical that the bankruptcy court be able to use § 105(a) of the Bankruptcy Code to authorize satisfaction of the prepetition claim in aid of preservation or enhancement of the estate.”); *Just for Feet*, 242 B.R. 821, 824–25 (D. Del. 1999) (holding that section 105(a) of Bankruptcy Code provides a statutory basis for payment of prepetition claims under the doctrine of necessity and noting that the Court has “power to authorize payment of pre-petition claims when such payment is necessary for the debtor’s survival during chapter 11”); *In re Columbia Gas Sys., Inc.*, 171 B.R. 189, 191–92 (Bankr. D. Del. 1994) (confirming that doctrine of necessity is standard in Third Circuit for enabling a court to authorize payment of prepetition claims prior to confirmation of a reorganization plan). Indeed, at least one court has recognized that there are instances when a debtor’s fiduciary duty can “only be fulfilled by the preplan satisfaction of a prepetition claim.” *In re CoServ*, 273 B.R. at 497.

15. Allowing a debtor to honor prepetition obligations under this authority is appropriate where, as here, doing so is consistent with the “two recognized policies” of chapter 11 of the Bankruptcy Code—preserving going concern value and maximizing property available to

satisfy creditors. *See Bank of Am. Nat'l Trust & Sav. Assoc. v. 203 N. LaSalle St. P'Ship*, 526 U.S. 434, 453 (1999).

16. Courts in this and other districts specifically have authorized debtors to honor prepetition obligations arising from customer programs substantially similar to those discussed herein in comparable chapter 11 proceedings. *See, e.g., In re Alamo Drafthouse Cinemas Holdings, LLC*, No. 21-10474 (MFW) (Bankr. D. Del. Mar. 4, 2021) (authorizing up to \$247,000 of prepetition customer programs expenses); *In re Furniture Factory Ultimate Holding, L.P.*, No. 20-12816 (JTD) (Bankr. D. Del. Nov. 6, 2020) (authorizing payment of all prepetition customer program expenses, subject to interim period cap of \$250,000); *In re The Great Atl. & Pac. Tea Co.*, Case No. 15-23007 (Bankr. S.D.N.Y. August 11, 2015); *In re Sbarro LLC*, Case No. 14-10557 (Bankr. S.D.N.Y. Apr. 7, 2014) (approving \$87,500 of prepetition customer program expenses); *In re AWI Delaware, Inc.*, Case No. 14-12092 (Bankr. D. Del. Sept. 10, 2014) (approving \$120,000 of prepetition customer programs expenses); *In re The Great Atl. & Pac. Tea Co., Inc.*, Case No. 10-24549 (Bankr. S.D.N.Y. January 13, 2011) (authorizing approximately \$11,140,000 of prepetition customer programs expenses); *In re Bruno's, Inc.*, Case No. 09-00634 (Bankr. N.D. Ala. Feb. 5, 2009) (approving \$900,000 of prepetition customer programs expenses).

II. Continuing the Customer Programs and Honoring the Customer Obligations Is in the Best Interests of the Debtors' Businesses and Estates

17. The ability to continue administering the Customer Programs without interruption is absolutely critical to the Debtors' valuable customer and provider relationships and goodwill, which will inure to the benefit of all of the Debtors' stakeholders. If the Debtors are unable to continue the Customer Programs postpetition or honor obligations thereunder, the Debtors risk alienating certain provider constituencies (who then could form relationships with the Debtors'

competitors) and could suffer corresponding losses in loyalty and goodwill that will harm their prospects for maximizing recoveries to their creditors.

18. The Debtors' Customer Programs are also essential marketing strategies for attracting new customers and providers. Failure to continue the Customer Programs will place the Debtors at a significant—and potentially insurmountable—competitive disadvantage in the marketplace, amplifying the negative effect of customer uncertainty that may arise from the filing of the Chapter 11 Cases. Such uncertainty could erode the Debtors' hard-earned reputation and brand loyalty, which, in turn, could adversely impact their ability to successfully administer the Chapter 11 Cases and maximize recoveries to stakeholders. The relief requested herein will pay dividends with respect to their businesses, both in terms of profitability and the engendering of goodwill, especially at this critical time following the filing of the Chapter 11 Cases.

19. Under these circumstances, the benefits of continuing to honor the Customer Programs far outweigh the relatively minimal costs associated therewith. Accordingly, the Debtors have shown cause sufficient to warrant the authority to continue administering the Customer Programs and to honor any obligations relating thereto.

III. Processing of Checks and Electronic Fund Transfers Should be Authorized.

20. The Debtors also requests that the Court authorize the Debtors' banks and financial institutions to receive, process, honor, and pay any and all checks or wire transfer requests with respect to the Customer Programs, provided that sufficient funds are available in the applicable bank accounts to make such payments. The Debtors further request that all such banks and financial institutions be authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved pursuant to this Motion.

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

21. Bankruptcy Rule 6003(b) provides that, to the extent relief is necessary to avoid immediate and irreparable harm, a Bankruptcy Court may issue an order granting “a motion to use, sell, lease, or otherwise incur an obligation regarding property of the estate, including a motion to pay all or part of a claim that arose before the filing of the petition” before twenty-one (21) days after filing of the petition. As described above, the Customer Programs are integral to the Debtors’ continued operations because they are necessary to maintain the confidence and goodwill of the Debtors’ customer and provider base. The Debtors are at a critical juncture at which they must make every effort to retain customer and provider support, drive revenues, and maximize cash flow. The Debtors’ inability to continue the Customer Programs could materially—and perhaps fatally—impair their efforts and thwart any progress of the Chapter 11 Cases before they have had a chance to begin. Accordingly, the Debtors submit that the relief requested herein is necessary to avoid immediate and irreparable harm, and, therefore, Bankruptcy Rule 6003 is satisfied.

22. To implement the foregoing successfully, the Debtors request that the Court waive the fourteen (14) day stay of an order authorizing the use, sale, or lease of property under Bankruptcy Rule 6004(h). As explained above and in the First Day Declaration, the relief requested herein is necessary to avoid immediate and irreparable harm to the Debtors. Accordingly, ample cause exists to justify a waiver of the fourteen (14) day stay imposed by Bankruptcy Rule 6004(h), to the extent such stay applies.

RESERVATION OF RIGHTS

Nothing contained herein is intended or should be construed as (a) an admission as to the validity of any claim or lien against the Debtors or their estates; (b) a waiver of the Debtors’ rights to dispute any claim or lien; (c) a request to assume or reject any agreement, contract, or lease

pursuant to Bankruptcy Code section 365; (d) an admission of the priority status of any claim, whether under Bankruptcy Code section 503(b)(9) or otherwise; or (e) 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 Partner Provider. 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

23. 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) any banking or financial institution that holds Debtors' accounts; and (j) 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

24. 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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*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.*,¹

Debtors.

Chapter 11

Case No. 24-10972 (JTD)

(Joint Administration Requested)

Re: Docket No. __

**INTERIM ORDER AUTHORIZING DEBTORS TO (I) MAINTAIN AND ADMINISTER
CUSTOMER PROGRAMS, PROMOTIONS, AND PRACTICES AND (II) PAY AND
HONOR RELATED PREPETITION OBLIGATIONS**

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(b), and 507(a), authorizing the Debtors to, in the ordinary course of business and consistent with past practices, (i) maintain and administer their Customer Programs, promotions, and practices and (ii) pay and otherwise honor their obligations to customers relating thereto, whether arising prior to or after the Petition Date, as necessary and appropriate in the Debtors’ business judgment, all as more fully set forth in the Motion; 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

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.

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, but not directed, to maintain and administer the Customer Programs and honor any related prepetition obligations in the ordinary course of business and consistent with past practices, as necessary and appropriate in the Debtors' business judgment; provided, however, that the award of Earned Partner Program Discounts on account of pre-petition periods shall not exceed \$500,000.
3. Nothing in the Motion or this Interim Order shall be deemed to authorize the Debtors to accelerate any payments not otherwise due prior to the date of the final hearing to consider the relief requested in the Motion.
4. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized, when requested by the Debtors, in the Debtors' discretion, to honor and process checks or electronic fund transfers drawn on the Debtors' bank accounts to pay prepetition obligations authorized to be paid hereunder, whether such checks or other requests were submitted prior to, or after, the Petition Date, provided that sufficient funds are available in the applicable bank accounts to make such payments. Such banks or financial institutions may rely on the representations of the Debtors with respect to whether any check or other transfer drawn or issued by the Debtors prior to the Petition Date should be honored pursuant to this Interim Order, and shall not have any

liability to any party for relying on such representations by the Debtors, as provided for in this Interim Order.

5. Nothing contained in the Motion or this Interim Order, nor any payment made pursuant to the authority granted by this Interim Order, is intended to be or shall be construed as (i) an admission as to the validity of any claim against the Debtors, (ii) a waiver of the Debtors' or any appropriate party in interest's rights to dispute the amount of, basis for, or validity of any claim against the Debtors, (iii) a waiver of any claims or causes of action which may exist against any creditor or interest holder, or (iv) an approval, assumption, adoption, or rejection of any agreement, contract, lease, program, or policy between the Debtors and any third party under section 365 of the Bankruptcy Code.

6. Nothing herein shall create, nor is intended to create, any rights in favor of or enhance the status of any claim held by any party.

7. This Interim Order is effective only from the date of entry through this Court's disposition of the Motion on a final basis; provided that the Court's ultimate disposition of the Motion on a final basis shall not impair or otherwise affect any action taken pursuant to this Interim Order.

8. The requirements of Bankruptcy Rule 6003(b) have been satisfied.

9. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and such notice satisfies the requirements of Bankruptcy Rule 6004(a).

10. Notwithstanding Bankruptcy Rule 6004(h), this Interim Order shall be immediately effective and enforceable upon its entry.

11. The Debtors are authorized to take all action necessary to effectuate the relief granted in this Interim Order.

12. 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.**

13. 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); and (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).

14. 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 DEBTORS TO (I) MAINTAIN AND ADMINISTER
CUSTOMER PROGRAMS, PROMOTIONS, AND PRACTICES AND (II) PAY AND
HONOR RELATED PREPETITION OBLIGATIONS**

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(b), and 507(a), authorizing the Debtors to, in the ordinary course of business and consistent with past practices, (i) maintain and administer their Customer Programs, promotions, and practices and (ii) pay and otherwise honor their obligations to customers relating thereto, whether arising prior to or after the Petition Date, as necessary and appropriate in the Debtors’ business judgment, all as more fully set forth in the Motion; 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 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

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

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, but not directed, to maintain and administer the Customer Programs and honor any related prepetition obligations in the ordinary course of business and consistent with past practice, as necessary and appropriate in the Debtors' business judgment; provided, however, that the award of Earned Partner Program Discounts on account of pre-petition periods shall not exceed \$500,000.
4. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized, when requested by the Debtors, in the Debtors' discretion, to honor and process checks or electronic fund transfers drawn on the Debtors' bank accounts to pay prepetition obligations authorized to be paid hereunder, whether such checks or other requests were submitted prior to, or after, the Petition Date, provided that sufficient funds are available in the applicable bank accounts to make such payments. Such banks and financial institutions may rely on the representations of the Debtors with respect to whether any check or other transfer drawn or issued by the Debtors prior to the Petition Date should be honored pursuant to this Final Order, and shall not have any liability to any party for relying on such representations by the Debtors.

5. Notwithstanding anything to the contrary contained herein, any payment made or to be made under this Final Order, any authorization contained in this Final Order, or any claim for which payment is authorized hereunder, shall be subject to the requirements imposed on the Debtors under any orders of this Court approving any debtor-in-possession financing of the Debtors and any budget in connection therewith.

6. Nothing contained in the Motion or this Final Order, nor any payment made pursuant to the authority granted by this Final Order, is intended to be or shall be construed as (i) an admission as to the validity of any claim against the Debtors, (ii) a waiver of the Debtors' or any appropriate party in interest's rights to dispute the amount of, basis for, or validity of any claim against the Debtors, (iii) a waiver of any claims or causes of action which may exist against any creditor or interest holder, or (iv) an approval, assumption, adoption, or rejection of any agreement, contract, lease, program, or policy between the Debtors and any third party under section 365 of the Bankruptcy Code.

7. Nothing herein shall create, nor is intended to create, any rights in favor of or enhance the status of any claim held by any party.

8. The requirements of Bankruptcy Rule 6003(b) have been satisfied.

9. Notwithstanding Bankruptcy Rule 6004(h), this Final Order shall be immediately effective and enforceable upon its entry.

10. The Debtors are authorized to take all action necessary to effectuate the relief granted in this Final Order.

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