

**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 (I)
ESTABLISHING NOTIFICATION PROCEDURES AND APPROVING
RESTRICTIONS ON CERTAIN TRANSFERS OF, OR WORTHLESSNESS
DEDUCTIONS WITH RESPECT TO, STOCK OF THE DEBTORS AND (II)
GRANTING RELATED RELIEF**

The above-captioned debtors and debtors in possession (the “**Debtors**”) hereby move this Court (the “**Motion**”), pursuant to sections 105(a), 362, and 541 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 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**”), for entry of interim and final orders substantially in the forms annexed hereto as Exhibit A (the “**Interim Order**”) and Exhibit B (the “**Final Order**”) and together with the Interim Order, the “**Proposed Orders**”) respectively, (i) authorizing the Debtors to establish certain Stock Procedures and Worthless Stock Deduction Procedures (as defined below herein) to protect the potential value of certain net operating loss carryforwards and other tax benefits of one or more of the Debtors for U.S. federal income tax purposes and (ii) granting related relief. In support of the Motion, the Debtors rely upon the *Declaration of Brian Dow, Chief*

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.



Financial Officer of 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), 362, and 541, Bankruptcy Rules 6003 and 6004, and Local Rule 9013-1(m).

RELIEF REQUESTED

3. Pursuant to sections 105(a) and 362 of the Bankruptcy Code, the Debtors request entry of interim and final orders authorizing the Debtors to establish procedures to protect the potential value of the debtors’ Consolidated net operating loss carryforwards (“**NOLs**”) and certain other tax benefits (collectively, the “**Tax Attributes**”). The Procedures apply to (a)(i) common stock of ProSomnus, Inc. (the “**ProSomnus Common Stock**”), (ii) Series A Convertible Preferred Stock of ProSomnus, Inc. (the “**ProSomnus Preferred Stock**” and together with the ProSomnus Common Stock, the “**ProSomnus Stock**”) and (iii) options or similar rights to acquire ProSomnus Stock (the “**Options**”), and (b) any claim (for income tax reporting purposes) of a worthless stock

² Capitalized terms used but not otherwise defined herein or in Exhibit 1 or Exhibit 2 to the Proposed Orders shall have the meanings ascribed to such terms in the First Day Declaration.

deduction under section 165(g) of title 26 of the United States code (the “**Tax Code**”) with respect to ProSomnus Stock (a “**Worthless Stock Deduction**”) by a Substantial Stockholder (as hereinafter defined). The Debtors request that the relief requested herein be effective as of the Petition Date.

BACKGROUND

a) **General Background**

4. On May 7, 2024 (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.

5. 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) and Local Rule 1015-1. 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 these Chapter 11 Cases and no committees have yet been appointed.

THE DEBTORS’ TAX ATTRIBUTES

6. The Debtors’ consolidated group possesses significant Tax Attributes, including significant NOLs and other tax benefits, including as of December 31, 2022, estimated consolidated federal and state NOLs totaling approximately \$159 million, and have generated

significant additional federal and state NOLs in 2023 and 2024.³ The Tax Attributes are valuable assets.

7. The Tax Code generally permits corporations to carryforward its NOLs and other tax attributes to reduce future taxable income, thereby reducing, along with available tax credits, such corporation's tax liability in future periods. *See, e.g.*, 26 U.S.C. §§ 38 and 171. Accordingly, absent any intervening limitations and depending on future operating results and the consummation of taxable asset dispositions by the Debtors, the Tax Attributes could substantially reduce the Debtors' U.S. federal income tax liability for current and future periods, including during the pendency of these Chapter 11 Cases. The Tax Attributes are available to reduce the Debtors' federal income tax liability through the taxable year that includes the effective date of a chapter 11 plan and potentially thereafter. The Tax Attributes, therefore, could translate into future tax savings over time, and any such savings would enhance the Debtors' cash position for the benefit of all parties in interest.

8. The potential carryforward of any Tax Attributes, however, is not unlimited. Sections 382 and 383 of the Tax Code limit the ability of a "loss corporation" (e.g., a corporation that has NOLs) to deduct NOLs and use tax credits or other tax benefits to offset potential future income or tax liabilities once the corporation has undergone an "ownership change" as defined in section 382 of the Tax Code (an "**Ownership Change**"). Under Tax Code section 382, an Ownership Change generally occurs when the percentage (by value) of a corporation's equity held by one or more of its "5-percent shareholders" (as defined in section 382 of the Tax Code, and each a "**5-percent Shareholder**") increases by more than 50 percentage points above the lowest

³ As set forth in the First Day Declaration, the Debtors underwent a Business Combination in December 2022, which may limit the utilization of some NOLs generated prior to that date. As described below, an Ownership Change was identified as of January 31, 2017 and the Updated Section 382 Study is in progress.

percentage of the corporation's equity owned by such shareholder(s) at any time during the relevant testing period—typically, the shorter of the three-year period or the period of time since the corporation's most recent Ownership Change. *See* 26 U.S.C. § 382(g).

9. In addition, an Ownership Change can also occur due to a “worthless stock deduction” claimed by any “50-percent shareholder.” *See* 26 U.S.C. § 382(g)(4)(D). A 50-percent shareholder is defined as any person or entity with Beneficial Ownership⁴ of 50-percent or more of a corporation's stock “at any time during the 3-year period ending on the last day of the taxable year” with respect to which the worthless stock deduction is claimed. *Id.* If the 50-percent shareholder still owns the corporation's stock at the end of the taxable year, sections 382 and 383 of the Tax Code essentially treat such person or entity as newly purchasing the stock on the first day of the next taxable year resulting in an Ownership Change.

10. ProSomnus, Inc. had a prior Ownership Change on January 31, 2017 based on the Section 382 study prepared by Armanino, LLP dated June 25, 2018 (“**Prior Section 382 Study**”). The Prior Section 382 Study determined that approximately \$44 million of Federal NOLs would not be available for utilization prior to their expiration and the remaining \$23.5 million of Federal NOLs would be available for utilization before expiration. The Prior 382 Study will be updated through the Petition Date to determine if any additional Ownership Change(s) occurred and their effect on the availability of the Tax Attributes (“**Updated Section 382 Study**”). The Updated Section 382 Study will be made a part of any Section 382(1)(5) or Section 382(1)(6) calculations. Accordingly, the Debtors believe that they continue to have significant Tax Attributes that would be adversely affected (and perhaps effectively eliminated) by the occurrence of an Ownership

⁴ The terms “Beneficially Owns” and “Beneficially Owned” each have the meaning set forth for “Beneficial Ownership” in Exhibit 1 and Exhibit 2 to the Proposed Orders.

Change during the pendency of these Chapter 11 Cases. Therefore, it is in the best interests of the Debtors and their stakeholders to restrict both the trading of ProSomnus Stock and any claim of a Worthless Stock Deduction that could result in an Ownership Change occurring before the Debtors' Tax Attributes are fully utilized. Such a restriction would protect the Debtors' ability to use the Tax Attributes during the pendency of these Chapter 11 Cases or, potentially, in the event of a future transaction, to offset gain or other income recognized in connection with the Debtors' sale or ownership of their assets, which may be significant in amount. Although (as described below) the limitations imposed by section 382 of the Tax Code may be significantly less restrictive when an Ownership Change occurs pursuant to a confirmed chapter 11 plan (or any applicable bankruptcy court order), the benefits available under section 382 of the Tax Code in connection with a confirmed chapter 11 plan (or any applicable bankruptcy court order) are not applied retroactively to reduce the limitations imposed on a corporation's ability to utilize its tax benefits resulting from a previous Ownership Change (such as an Ownership Change occurring during the pendency of a chapter 11 case). *See, e.g.*, § 382(l)(6).

THE PROPOSED PROCEDURES

I. The Stock Procedures

11. By establishing procedures for monitoring the ownership and acquisitions of ProSomnus Stock (the "**Stock Procedures**"), the Debtors can preserve their ability to seek the necessary relief if it appears that any such acquisition(s), transaction(s), or declaration(s) may impair the Debtors' ability to use the Tax Attributes. Therefore, the Debtors propose the following Stock Procedures.

- a. Notice of Substantial Stock Ownership. Any Person (as such term is defined in Exhibit 1 to the Proposed Orders) that Beneficially Owns, at any time on or after the Petition Date, (a) 782,911 shares of ProSomnus Common Stock (representing 4.5 percent of all issued and outstanding shares of ProSomnus Common Stock or (b)

ProSomnus Preferred Stock equal to or greater than 4.5 percent of all issued and outstanding shares of ProSomnus Stock by value (a “**Substantial Stockholder**”) must file with the Court and serve on (i) the Debtors, c/o ProSomnus, Inc., 5675 Gibraltar Dr., Pleasanton, California 94588; (ii) 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); (iii) 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); (iv) counsel to any statutory committee (each, an “**Official Committee**”) appointed in the Chapter 11 Cases, if any; and (v) the Office of the United States Trustee, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801, Attn: Jon Lipshie (jon.lipshie@usdoj.gov) (the “**U.S. Trustee**” and, collectively, the “**Disclosure Parties**”) a notice of such Person’s ProSomnus Stock ownership (a “**Substantial Stock Ownership Notice**”), in substantially the form attached to the Proposed Orders as Exhibit 3, which describes specifically and in detail such Person’s ownership of ProSomnus Stock, on or before the date that is 14 calendar days after the later of (x) the date the Proposed Order is entered or (y) the date such Person qualifies as a Substantial Stockholder. At the election of the filing Person, the Substantial Stock Ownership Notice to be filed with the Court (but not the Substantial Stock Ownership Notice that is served on the Disclosure Parties) may be redacted to exclude the taxpayer identification number and the amount of ProSomnus Stock Beneficially Owned.

- b. Acquisition of ProSomnus Stock. At least 20 calendar days before the proposed date of any transfer of ProSomnus Stock, exercise of any Option to acquire ProSomnus Stock, or other transaction that would result in an increase in the amount of ProSomnus Stock Beneficially Owned, by any Person that currently is, or, as a result of the proposed transaction, would be a Substantial Stockholder (a “**Proposed Stock Acquisition Transaction**”), such Person or Substantial Stockholder (a “**Proposed Stock Transferee**”) must file with the Court and serve on the Disclosure Parties a notice of such Proposed Stock Transferee’s intent to purchase, acquire, or otherwise accumulate ProSomnus Stock (a “**Stock Acquisition Notice**”), in substantially the form attached to the Proposed Orders as Exhibit 4, which describes specifically and in detail the Proposed Stock Acquisition Transaction. At the election of the filing Person, the Stock Acquisition Notice to be filed with the Court (but not the Stock Acquisition Notice that is served on the Disclosure Parties) may be redacted to exclude the taxpayer identification number and the amount of ProSomnus Stock Beneficially Owned and to be acquired.
- c. Disposition of ProSomnus Stock. At least 20 calendar days before the proposed date of any transfer of ProSomnus Stock, or other transaction, that would result in a decrease in the amount of ProSomnus Stock Beneficially Owned by any Person that before such transfer is a Substantial Stockholder (a “**Proposed Stock Transfer**”),

such Person or Substantial Stockholder (a “**Proposed Stock Transferor**”) must file with the Court and serve on the Disclosure Parties a notice of such Proposed Stock Transferor’s intent to transfer ProSomnus Stock (a “**Stock Transfer Notice**”), in substantially the form attached to the Proposed Orders as Exhibit 5, which describes specifically and in detail the Proposed Stock Transfer. At the election of the filing Person, the Stock Transfer Notice to be filed with the Court (but not the Stock Transfer Notice that is served on the Disclosure Parties) may be redacted to exclude the taxpayer identification number and the amount of ProSomnus Stock Beneficially Owned and to be transferred.

- d. Objection Procedures. The Debtors, the Sponsoring Noteholders, and any Official Committee will have seven calendar days after the receipt of a Stock Acquisition Notice or a Stock Transfer Notice (the “**Stock Procedure Objection Period**”) to file with the Court and serve on a Proposed Stock Transferee or Proposed Stock Transferor, as applicable, an objection (a “**Stock Procedure Objection**”) to any Proposed Stock Acquisition Transaction described in such Stock Acquisition Notice or any Proposed Stock Transfer described in such Stock Transfer Notice. If the Debtors, the DIP Agent, or any Official Committee files a Stock Procedure Objection by the expiration of the Stock Procedure Objection Period (the “**Stock Procedure Objection Deadline**”), then the applicable Proposed Stock Acquisition Transaction or Proposed Stock Transfer will not be effective unless approved by a final and non-appealable order of the Court or such Stock Procedure Objection is withdrawn. If none of the Debtors, the Sponsoring Noteholders, or any Official Committee file a Stock Procedure Objection by the Stock Procedure Objection Deadline, or if the Debtors, the Sponsoring Noteholders, and any and all Official Committees provide written authorization to the Proposed Stock Transferee or the Proposed Stock Transferor, as applicable, approving the Proposed Stock Acquisition Transaction or Proposed Stock Transfer, then such Proposed Stock Acquisition Transaction or Proposed Stock Transfer may proceed solely as specifically described in the relevant Stock Acquisition Notice or Stock Transfer Notice, as applicable. Any further or alternative Proposed Stock Acquisition Transaction or Proposed Stock Transfer must be the subject of an additional Stock Acquisition Notice or Stock Transfer Notice, as applicable, and Stock Procedure Objection Period.

II. Worthless Stock Deduction Procedures

12. The Debtors also request that the Court enter an order approve certain notice, hearing, and objection procedures restricting the ability of shareholders that Beneficially Own or have Beneficially Owned 50 percent or more, by value, of ProSomnus Stock to take Worthless Stock Deductions (the “**Worthless Stock Deduction Procedures**” and together with the Stock Procedures, the “**Procedures**”) summarized below and set forth in Exhibit 2 to the Proposed Orders:

- a. Notice of 50-percent Stock Ownership. Any person or entity that currently is or becomes a 50-percent Shareholder, at any time on or after the Petition Date, must file with the Court, and serve on the Disclosure Parties a notice of such person or entity's 50-percent stock ownership (a "**50-percent Stock Ownership Notice**"), in substantially the form attached to the Proposed Orders as Exhibit 6, which describes specifically and in detail such person or entity's ownership of ProSomnus Stock, on or before the date that is 14 calendar days after the later of (x) the date the Proposed Order is entered or (y) the date such person or entity qualifies as a 50-percent Shareholder. At the election of the filing person or entity, the 50-percent Stock Ownership Notice to be filed with the Court (but not the 50-percent Stock Ownership Notice that is served upon the Disclosure Parties) may be redacted to exclude the taxpayer identification number and the amount of ProSomnus Stock Beneficially Owned.

- b. Worthless Stock Deduction. At least 20 calendar days before filing any income tax return, or amendment to such a return, taking any worthlessness deduction with respect to ProSomnus Stock for a tax year ending before the consummation of a debt-for-stock recapitalization, such 50-percent Shareholder must file with the Court, and serve on the Disclosure Parties, an advance written notice of the intended worthlessness deduction, in substantially the form attached to the Proposed Orders as Exhibit 7 (a "**Notice of Intent to Take a Worthless Stock Deduction**"). At the election of the filing person or entity, the Notice of Intent to Take a Worthless Stock Deduction to be filed with the Court (but not the Notice of Intent to Take Worthless Stock Deduction that is served on the Disclosure Parties) may be redacted to exclude the taxpayer identification number and the amount of ProSomnus Stock Beneficially Owned.

- c. Objection Procedures. The Debtors, the Sponsoring Noteholders, and any Official Committee will have seven calendar days after the receipt of a Notice of Intent to Take a Worthless Stock Deduction (the "**Worthless Stock Objection Period**") to file with the Court and serve on such 50-percent Shareholder an objection (a "**Worthless Stock Objection**") to any proposed worthlessness deduction described in such Notice of Intent to Take a Worthless Stock Deduction. If the Debtors, the Sponsoring Noteholders, or any Official Committee files a Worthless Stock Objection, by the expiration of the Worthless Stock Objection Period (the "**Worthless Stock Objection Deadline**"), then the filing of the income tax return with such deduction will not be permitted or effective unless approved by a final and non-appealable order of the Court or such objection is withdrawn. If none of the Debtors, the Sponsoring Noteholders, or any Official Committee file a Worthless Stock Objection by the Worthless Stock Objection Deadline, then such deduction will be permitted as set forth in the Notice of Intent to Take a Worthless Stock Deduction. Any further income tax returns within the scope of the Worthless Stock Deduction Procedures must be the subject of an additional Notice of Intent to Take a Worthless Stock Deduction and Worthless Stock Objection Period.

BASIS FOR RELIEF

I. Tax Attributes are Property of the Debtors' Estates and Are Entitled to Court Protection.

13. In furtherance of the automatic stay provisions of section 362 of the Bankruptcy Code, and pursuant to section 105 of the Bankruptcy Code, the Debtors seek authority to monitor and approve (or disapprove) certain changes in the beneficial ownership of, and certain Worthless Stock Deduction claims with respect to, ProSomnus Stock to protect against the occurrence of an Ownership Change during the pendency of these Chapter 11 Cases, and thereby to preserve the potential value of the Tax Attributes.

14. It is well established that a debtor's Tax Attributes constitute property of the bankruptcy estate under section 541 of the Bankruptcy Code and, therefore, courts have the authority to implement protective measures to preserve Tax Attributes. *See, e.g., In re Prudential Lines, Inc.*, 928 F.2d 565, 573 (2d Cir. 1991) ("Including NOL carryforwards as property of a corporate debtor's estate is consistent with Congress' intention to 'bring anything of value that the debtors have into the estate.'") (quoting H.R. Rep. No. 95-595, at 176 (1978)); *In re White Metal Rolling & Stamping Corp.*, 222 B.R. 417, 424 (Bankr. S.D.N.Y. 1998) ("It is beyond peradventure that NOL carrybacks and carryovers are property of the estate of the loss corporation that generated them").

15. Section 362 of the Bankruptcy Code enjoins all entities from, among other things, taking any action to obtain possession of property of or from the estate or to exercise control over property of the estate. Because the Tax Attributes are property of the Debtors' estates, the Court has the authority, under section 362 of the Bankruptcy Code, to enforce the automatic stay to preserve this potentially valuable estate asset. *See In re Phar-Mor, Inc.*, 152 B.R. 924, 927 (Bankr. N.D. Ohio

1993) (holding that section 362 prohibited the sale of stock in the debtors as an exercise of control of the debtor's NOLs, which were property of the debtors' estate).

16. The seminal case articulating this rule of law is *In re Prudential Lines, Inc.*, in which the United States Court of Appeals for the Second Circuit affirmed the application of the automatic stay to a debtor's tax benefits and upheld a permanent injunction prohibiting a parent company from taking a worthless stock deduction that would have adversely affected the ability of the parent corporation's subsidiary to use its NOLs under section 382 of the Tax Code. *See In re Prudential Lines, Inc.*, 928 F.2d at 573. In addition to finding that the debtor's NOLs were protected by the automatic stay, the court also held that a bankruptcy court may issue a permanent injunction to protect the debtor's NOLs pursuant to such court's equitable powers under section 105(a) of the Bankruptcy Code. *Id.* at 574.

17. As these cases demonstrate, it is well settled that, pursuant to section 362(a)(3) of the Bankruptcy Code, the automatic stay enjoins actions that would adversely affect a debtor's ability to utilize its NOLs and other tax benefits.

II. The Procedures are Necessary and in the Best Interests of the Debtors, their Estates, and their Creditors.

20. The Procedures are necessary to avoid severely impairing the Debtors' ability to use the Tax Attributes. The Debtors' ability to use the Tax Attributes may be seriously impaired unless the Procedures are established immediately and effective as of the Petition Date to ensure that trading in ProSomnus Stock (including Options to acquire ProSomnus Stock), and claiming certain Worthless Stock Deductions with respect to ProSomnus Stock, are either precluded or closely monitored and made subject to Court approval.

21. Absent an intervening Ownership Change, the Debtors expect to be able to utilize the Tax Attributes to offset a substantial portion of any taxable gain that may result from the

disposition of the Company's assets pursuant to the Chapter 11 Cases. The occurrence of an Ownership Change – whether by reason of transfers of ProSomnus Stock or claims of a Worthless Stock Deduction – may limit the use of such Tax Attributes, and thereby reduce the after-tax proceeds available to satisfy the claims of creditors of the Debtors. The relief requested herein is narrowly tailored to permit certain stock trading to continue, subject to Bankruptcy Rule 3001(e) and applicable securities, corporate, and other laws.

22. The Debtors respectfully submit that the Procedures must be implemented as soon as possible. Even if a transfer or Worthless Stock Deduction claim were found to be null and void *ab initio* under section 362 of the Bankruptcy Code or as a result of an order of the Court that prohibited such a transfer or claim retroactively to the Petition Date, such transfer or worthlessness deduction nevertheless may be regarded as having occurred for tax purposes, in which event the Debtors' estates could suffer an irrevocable loss of value. Accordingly, if a transfer or claim occurs that limits the Debtors' ability to use the Tax Attributes under section 382 of the Tax Code, the Debtors' ability to realize the value of the Tax Attributes may be permanently diminished. The relief requested, therefore, is crucial to prevent an irrevocable diminution of the value of the Debtors' estates.

23. It is in the best interests of the Debtors and their stakeholders to restrict stock trading and Worthless Stock Deduction claims that could result in an Ownership Change before the effective date of a chapter 11 plan or any applicable bankruptcy court order. This restriction would permit the Debtors to utilize the Tax Attributes, if necessary, to offset gain or other income recognized in connection with the Debtors' ownership of their assets and operation of their business. If such an Ownership Change were to occur, however, the valuation for determining the

annual amount of usable Tax Attributes is expected to be adversely affected, and possibly effectively eliminated.

24. With respect to an Ownership Change that occurs pursuant to a confirmed chapter 11 plan or any applicable bankruptcy court order, the limitations imposed by section 382 of the Tax Code can be significantly less restrictive than those applicable to an Ownership Change that occurs before the effective date of (or otherwise outside of) a chapter 11 plan. See, e.g., 26 U.S.C. § 382(l)(6).

25. Specifically, section 382(l)(6) of the Tax Code provides that, if a debtor undergoes an Ownership Change pursuant to a chapter 11 plan (and section 382(l)(5) does not apply), then the appropriate value of the Debtors for purposes of calculating the annual limitation under section 382 of the Tax Code shall reflect the increase in value of the Debtors resulting from any surrender or cancellation of creditors' claims. Generally, under section 382 of the Tax Code, the taxable income of a loss corporation available for offset by pre-Ownership Change Tax Attributes is annually limited to an amount equal to the long-term tax-exempt bond rate times the value of the loss company's stock immediately before the Ownership Change. Thus, were the equity value of the Debtors to increase as a result of a reorganization, section 382(l)(6) of the Tax Code would provide for a higher (and therefore less restrictive) annual limitation than would result under the general rules of section 382 of the Tax Code, thereby preserving the Debtors' ability to utilize a greater portion of its otherwise available Tax Attributes to offset any post-Ownership Change income. In all circumstances, it is in the best interest of the Debtors and their stakeholders for the Court to grant the requested relief in order to prevent an Ownership Change prior to the effective date of a chapter 11 plan or any applicable bankruptcy court order.

NOTICE

26. 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; and (i) 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

27. No prior 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 the Court deems appropriate.

Dated: May 8, 2024
Wilmington, Delaware

Respectfully submitted,

POLSINELLI PC

/s/ Shanti M. Katona
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*Proposed Counsel to the Debtors and
Debtors in Possession*

Exhibit A

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 (I) ESTABLISHING NOTIFICATION PROCEDURES AND
APPROVING RESTRICTIONS ON CERTAIN TRANSFERS OF, OR
WORTHLESSNESS DEDUCTIONS WITH RESPECT TO, STOCK OF THE DEBTORS
AND (II) GRANTING RELATED RELIEF**

Upon the motion (the “**Motion**”)² of the Debtors for an interim order, pursuant to Bankruptcy Code sections 105(a), 362, and 541; Bankruptcy Rules 6003 and 6004; and Local Rule 9013-1(m), (i) authorizing the Debtors to establish certain Stock Procedures and Worthless Stock Deduction Procedures (as defined below herein) to protect the potential value of certain NOLs and other Tax Attributes of one or more of the Debtors for U.S. federal income tax purposes and (ii) granting related relief; 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;

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.

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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. All objections to the entry of this Interim Order, to the extent not withdrawn or settled, are overruled.
3. The provisions of this Interim Order shall be effective as of the Petition Date.
4. The restrictions, notification requirements, and other procedures annexed hereto as Exhibit 1 and Exhibit 2 (collectively, the “**Procedures**”) are hereby approved, subject to any final order granting the relief requested in the Motion, and shall apply to all trading and transfers of, and claiming a Worthless Stock Deduction with respect to, ProSomnus Stock (including Options to acquire ProSomnus Stock), as provided therein; provided, that, the Debtors may, in their sole discretion, waive in writing, any and all restrictions, stays, and notification procedures set forth in the Procedures.
5. Until further order of this Court to the contrary, any acquisition, disposition, or trading of, or claiming a Worthless Stock Deduction with respect to, ProSomnus Stock (including Options to acquire ProSomnus Stock) in violation of the Procedures shall be null and void ab initio as an act in violation of the automatic stay under section 362 of the Bankruptcy Code and pursuant to this Court’s equitable powers under section 105(a) of the Bankruptcy Code.
6. Any person that acquires, disposes of, or trades ProSomnus Stock (including Options to acquire ProSomnus Stock) in violation of this Interim Order or the Procedures or that otherwise fails to comply with their requirements, including with respect to claiming a Worthless

Stock Deduction, shall be subject to such sanctions as this Court may consider appropriate pursuant to this Court's equitable power under section 105(a) of the Bankruptcy Code.

7. The notices substantially in the forms annexed hereto as Exhibit 3, Exhibit 4, Exhibit 5, Exhibit 6, Exhibit 7, and Exhibit 8 are hereby approved, subject to any final order granting the relief requested in the Motion.

8. Within three business days of the entry of this Interim Order, the Debtors shall serve the notice of this Interim Order (the "**Notice of Order**") annexed hereto as Exhibit 8 on (a) all parties that were served with notice of the Motion; (b) all banks, brokers, intermediaries, other nominees (the "**Nominees**") or their mailing agents that hold ProSomnus Stock in "street name" for the beneficial holders of the ProSomnus Stock, as applicable; and (c) registered holders of ProSomnus Stock (with instructions to serve down to beneficial holders, as applicable). The Debtors shall also publish the Notice of Order once in the national edition of the Wall Street Journal and post the Procedures to the website established by Kurtzman Carson Consultants LLC for the Chapter 11 Cases (which website address shall be identified in the Notice of Order), such notice being reasonably calculated to provide notice to all parties that may be affected by the Procedures, whether known or unknown, and no further notice of the Procedures shall be necessary.

9. Nothing herein shall preclude any person desirous of acquiring or transferring, or claiming a Worthless Stock Deduction with respect to, ProSomnus Stock (including Options to acquire ProSomnus Stock) from requesting relief from this Interim Order from this Court, subject to the Debtors' rights to oppose such relief.

10. The relief granted in this Interim Order is intended solely to permit the Debtors to protect, preserve, and maximize the value of their Tax Attributes; accordingly, other than to the extent that this Interim Order expressly conditions or restricts trading in ProSomnus Stock or taking

any Worthless Stock Deduction, nothing in this Interim Order or in the Motion shall, or shall be deemed to, prejudice, impair, or otherwise alter or affect the rights of any holders of ProSomnus Stock.

11. The requirements set forth in this Interim Order are in addition to the requirements of Bankruptcy Rule 3001(e) and applicable securities, corporate, and other laws and do not excuse noncompliance therewith.

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

13. The requirements set forth in Bankruptcy Rule 6003(b) are satisfied because the relief set forth in this Interim Order is necessary to avoid immediate and irreparable harm.

14. 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.

15. 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.**

16. 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).

17. This Court retains jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Interim Order.

Exhibit 1

Stock Procedures

**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)

**NOTICES, RESTRICTIONS, AND OTHER PROCEDURES
REGARDING OWNERSHIP AND ACQUISITIONS OF STOCK OF THE DEBTORS**

TO ALL PERSONS WITH STOCK OWNERSHIP OF THE DEBTORS:

Pursuant to the *Interim Order (I) Establishing Notification Procedures and Approving Restrictions on Certain Transfers of, or Worthlessness Deductions With Respect To, Stock of the Debtors, and (II) Granting Related Relief* [Docket No. ____] (the “**Interim Order**”) entered by the United States Bankruptcy Court for the District of Delaware (the “**Bankruptcy Court**”) on _____, 2024, the following restrictions, notification requirements, and other procedures (collectively, the “**Stock Procedures**”) apply to all trading and transfers of ProSomnus Stock² (including Options to acquire ProSomnus Stock).

I. PROSOMNUS STOCK RESTRICTIONS

a) Definitions. For purposes of these Stock Procedures, the following terms have the following meanings:

- (i) “**Beneficial Ownership**” of ProSomnus Stock and Options to acquire ProSomnus Stock will be determined in accordance with section 382 of title 26 of the United States Code (the “**Tax Code**”), the regulations promulgated by the U.S. Department of Treasury under the Tax Code (the “**Treasury Regulations**”), and rulings issued by the Internal Revenue Service (the “**IRS**”), and as described herein, and, thus, to the extent provided in those sources, from time to time will include, without limitation, (i) direct and indirect ownership (but determined without regard to any rule that treats stock of an entity as to which the constructive ownership rules apply as no longer owned by that entity), *e.g.*, a holding company would be considered to Beneficially Own all stock owned or acquired by its subsidiaries, (ii)

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 defined herein shall have the meaning ascribed to such terms in the Interim Order.

ownership by a holder's family members, (iii) ownership by any entity (as such term is defined in section 1.382-3(a) of the Treasury Regulations), and (iv) to the extent set forth in section 1.382-4 of the Treasury Regulations, the ownership of an Option to acquire ProSomnus Stock.

- (ii) **“ProSomnus Common Stock”** means common stock issued by ProSomnus, Inc.
- (iii) **“ProSomnus Preferred Stock”** means Series A Convertible Preferred Stock issued by ProSomnus, Inc.
- (iv) **“ProSomnus Stock”** means, collectively, the ProSomnus Common Stock and the ProSomnus Preferred Stock.
- (v) **“Option”** means any contingent purchase, warrant, convertible debt, put, stock subject to the risk of forfeiture, contract to acquire stock, or similar interest regardless of whether it is contingent or otherwise not currently exercisable.
- (vi) **“Person”** means any person, including any “entity” (as such term is defined in section 1.382-3(a) of the Treasury Regulations) and any group of persons acting pursuant to a formal or informal understanding among themselves to make a coordinated acquisition of ProSomnus Stock.
- (vii) **“Petition Date”** means May 7, 2024.

b) **Notice of Substantial Stock Ownership:** Any Person that Beneficially Owns, at any time on or after the Petition Date, (a) 782,911 shares of ProSomnus Common Stock (representing 4.5 percent of all issued and outstanding shares of ProSomnus Common Stock or (b) ProSomnus Preferred Stock equal to or greater than 4.5 percent of all issued and outstanding shares of ProSomnus Stock by value (a **“Substantial Stockholder”**) must file with the Court and serve on (i) the Debtors, c/o ProSomnus, Inc., 5675 Gibraltar Dr., Pleasanton, California 94588; (ii) 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); (iii) 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); (iv) counsel to any statutory committee (each, an “Official Committee”) appointed in the Chapter 11 Cases, if any; and (v) the Office of the United States Trustee, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801, Attn: Jon Lipshie (jon.lipshie@usdoj.gov) (the **“U.S. Trustee”** and, collectively, the **“Disclosure Parties”**) a notice of such Person's ProSomnus Stock ownership (a **“Substantial Stock Ownership Notice”**), in substantially the form attached to the Interim Order as Exhibit 3, which describes specifically and in detail such Person's ownership of ProSomnus Stock, on or before the date that is 14 calendar days after the later of (x) the date the Interim Order is entered or (y) the date such Person qualifies

as a Substantial Stockholder. At the election of the filing Person, the Substantial Stock Ownership Notice to be filed with the Court (but not the Substantial Stock Ownership Notice that is served on the Disclosure Parties) may be redacted to exclude the taxpayer identification number and the amount of ProSomnus Stock Beneficially Owned.

c) Acquisition of ProSomnus Stock. At least 20 calendar days before the proposed date of any transfer of ProSomnus Stock, exercise of any Option to acquire ProSomnus Stock, or other transaction that would result in an increase in the amount of ProSomnus Stock Beneficially Owned, by any Person that currently is, or, as a result of the proposed transaction, would be a Substantial Stockholder (a “**Proposed Stock Acquisition Transaction**”), such Person or Substantial Stockholder (a “**Proposed Stock Transferee**”) must file with the Court and serve on the Disclosure Parties a notice of such Proposed Stock Transferee’s intent to purchase, acquire, or otherwise accumulate ProSomnus Stock (a “**Stock Acquisition Notice**”), in substantially the form attached to the Interim Order as Exhibit 4, which describes specifically and in detail the Proposed Stock Acquisition Transaction. At the election of the filing Person, the Stock Acquisition Notice to be filed with the Court (but not the Stock Acquisition Notice that is served on the Disclosure Parties) may be redacted to exclude the taxpayer identification number and the amount of ProSomnus Stock Beneficially Owned and to be acquired.

d) Disposition of ProSomnus Stock. At least 20 calendar days before the proposed date of any transfer of ProSomnus Stock, or other transaction, that would result in a decrease in the amount of ProSomnus Stock Beneficially Owned by any Person that before such transfer is a Substantial Stockholder (a “**Proposed Stock Transfer**”), such Person or Substantial Stockholder (a “**Proposed Stock Transferor**”) must file with the Court and serve on the Disclosure Parties a notice of such Proposed Stock Transferor’s intent to transfer ProSomnus Stock (a “**Stock Transfer Notice**”), in substantially the form attached to the Interim Order as Exhibit 5, which describes specifically and in detail the Proposed Stock Transfer. At the election of the filing Person, the Stock Transfer Notice to be filed with the Court (but not the Stock Transfer Notice that is served on the Disclosure Parties) may be redacted to exclude the taxpayer identification number and the amount of ProSomnus Stock Beneficially Owned and to be transferred.

e) Objection Procedures. The Debtors, the Sponsoring Noteholders, and any Official Committee will have seven calendar days after the receipt of a Stock Acquisition Notice or a Stock Transfer Notice (the “**Stock Procedure Objection Period**”) to file with the Court and serve on a Proposed Stock Transferee or Proposed Stock Transferor, as applicable, an objection (a “**Stock Procedure Objection**”) to any Proposed Stock Acquisition Transaction described in such Stock Acquisition Notice or any Proposed Stock Transfer described in such Stock Transfer Notice. If the Debtors, the DIP Agent, or any Official Committee files a Stock Procedure Objection by the expiration of the Stock Transfer Objection Period (the “**Stock Procedure Objection Deadline**”), then the applicable Proposed Stock Acquisition Transaction or Proposed Stock Transfer will not be effective unless approved by a final and non-appealable order of the Court or such Stock Procedure Objection is withdrawn. If none of the Debtors, the Sponsoring Noteholders, or any Official Committee file a Stock Procedure Objection by the Stock Procedure Objection Deadline, or if the Debtors, the Sponsoring Noteholders, and any and all Official Committees provide written authorization to the Proposed Stock Transferee or the Proposed Stock Transferor, as applicable, approving the Proposed Stock Acquisition Transaction or Proposed Stock Transfer, then such Proposed Stock Acquisition Transaction or Proposed Stock Transfer may proceed solely as

specifically described in the relevant Stock Acquisition Notice or Stock Transfer Notice, as applicable. Any further or alternative Proposed Stock Acquisition Transaction or Proposed Stock Transfer must be the subject of an additional Stock Acquisition Notice or Stock Transfer Notice, as applicable, and Stock Procedure Objection Period.

II. NONCOMPLIANCE WITH STOCK PROCEDURES

Any transfer of ProSomnus Stock in violation of the Stock Procedures will be null and void *ab initio* as an act in violation of the automatic stay under section 362 of the Bankruptcy Code and pursuant to the Bankruptcy Court's equitable powers under section 105(a) of the Bankruptcy Code. Furthermore, any Person that owns, acquires or disposes of ProSomnus Stock in violation of these Stock Procedures will be subject to sanctions as provided under the Interim Order and by applicable law.

III. DEBTORS' RIGHT TO WAIVE

The Debtors may waive, in writing, any and all restrictions, stays, notification, and provisions of the Stock Procedures set forth herein.

Exhibit 2

Worthless Stock Deduction Procedures

**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)

**NOTICES, RESTRICTIONS, AND OTHER PROCEDURES REGARDING
WORTHLESSNESS DEDUCTIONS WITH RESPECT TO STOCK OF THE DEBTORS**

TO ALL PERSONS WITH STOCK OWNERSHIP OF THE DEBTORS:

Pursuant to the *Interim Order (I) Establishing Notification Procedures and Approving Restrictions on Certain Transfers of, or Worthlessness Deductions With Respect To, Stock of the Debtors, and (II) Granting Related Relief* [Docket No. ____] (the “**Interim Order**”) entered by the United States Bankruptcy Court for the District of Delaware (the “**Bankruptcy Court**”) on _____, 2024, the following restrictions, notification requirements, and other procedures apply to all claims of Worthless Stock Deductions with respect to ProSomnus Stock² (the “**Worthless Stock Deduction Procedures**”).

I. PROSOMNUS STOCK RESTRICTIONS

a) Definitions. For purposes of the Worthless Stock Deduction Procedures, the following terms have the following meanings:

- (i) “**50-percent Shareholder**” means any person or entity that at any time during the three-year period ending on the Petition Date has had Beneficial Ownership of at least 50 percent or more of ProSomnus Stock or is otherwise considered a 50-percent Shareholder of ProSomnus, Inc., within the meaning of section 382(g)(4)(D) of the Tax Code.
- (ii) “**Beneficial Ownership**” of ProSomnus Stock or Options to acquire ProSomnus Stock will be determined in accordance with section 382 of the title 26 of the United States Code (the “**Tax Code**”), the regulations promulgated by the U.S. Department of Treasury under the Tax Code (the “**Treasury Regulations**”), and rulings issued by the Internal Revenue

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 defined herein shall have the meaning ascribed to such terms in the Interim Order.

Service (the “**IRS**”), and as described herein, and, thus, to the extent provided in those sources, from time to time will include, without limitation, (i) direct and indirect ownership (but determined without regard to any rule that treats stock of an entity as to which the constructive ownership rules apply as no longer owned by that entity), *e.g.*, a holding company would be considered to Beneficially Own all stock owned or acquired by its subsidiaries, (ii) ownership by a holder’s family members, (iii) ownership by any entity (as such term is defined in section 1.382-3(a) of the Treasury Regulations), and (iv) to the extent set forth in section 1.382-4 of the Treasury Regulations, the ownership of an Option to acquire ProSomnus Stock.

- (i) “**ProSomnus Common Stock**” means common stock issued by ProSomnus, Inc.
- (ii) “**ProSomnus Preferred Stock**” means Series A Convertible Preferred Stock issued by ProSomnus, Inc.
- (iii) “**ProSomnus Stock**” means, collectively, the ProSomnus Common Stock and the ProSomnus Preferred Stock.
- (iv) “**Option**” means any contingent purchase, warrant, convertible debt, put, stock subject to risk of forfeiture, contract to acquire stock, or similar interest regardless of whether it is contingent or otherwise not currently exercisable.
- (v) “**Petition Date**” means May 7, 2024.
- (vi) “**Worthless Stock Deduction**” shall mean any claim (for income tax reporting purposes) of a worthless stock deduction under section 165(g) of the Tax Code with respect to the ProSomnus Stock.

b) Notice of 50-percent Stock Ownership. Any person or entity that currently is or becomes a 50-percent Shareholder, at any time on or after the Petition Date, must file with the Court, and serve on (i) the Debtors, c/o ProSomnus, Inc., 5675 Gibraltar Dr., Pleasanton, California 94588; (ii) 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); (iii) 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); (iv) counsel to any statutory committee (each, an “Official Committee”) appointed in the Chapter 11 Cases, if any; and (v) the Office of the United States Trustee, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801, Attn: Jon Lipshie (jon.lipshie@usdoj.gov) (the “**U.S. Trustee**” and, collectively, the “**Disclosure Parties**”) a notice of such person or entity’s 50-percent stock ownership (a “**50-percent Stock Ownership Notice**”), in

substantially the form attached to the Interim Order as Exhibit 6, which describes specifically and in detail such person or entity's ownership of ProSomnus Stock, on or before the date that is 14 calendar days after the later of (x) the date the Interim Order is entered or (y) the date such person or entity qualifies as a 50-percent Shareholder. At the election of the filing person or entity, the 50-percent Stock Ownership Notice to be filed with the Court (but not the 50-percent Stock Ownership Notice that is served upon the Disclosure Parties) may be redacted to exclude the taxpayer identification number and the amount of ProSomnus Stock Beneficially Owned.

c) Worthless Stock Deduction. At least 20 calendar days before filing any income tax return, or amendment to such a return, taking any worthlessness deduction with respect to ProSomnus Stock for a tax year ending before the consummation of a debt-for-stock recapitalization (or, if applicable, a chapter 11 sale process), such 50-percent Shareholder must file with the Court, and serve on the Disclosure Parties, an advance written notice of the intended worthlessness deduction, in substantially the form attached to the Interim Order as Exhibit 7 (a "**Notice of Intent to Take a Worthless Stock Deduction**"). At the election of the filing person or entity, the Notice of Intent to Take a Worthless Stock Deduction to be filed with the Court (but not the Notice of Intent to Take Worthless Stock Deduction that is served on the Disclosure Parties) may be redacted to exclude the taxpayer identification number and the amount of ProSomnus Stock Beneficially Owned.

d) Objection Procedures. The Debtors, the Sponsoring Noteholders, and any Official Committee will have seven calendar days after the receipt of a Notice of Intent to Take a Worthless Stock Deduction (the "**Worthless Stock Objection Period**") to file with the Court and serve on such 50-percent Shareholder an objection (a "**Worthless Stock Objection**") to any proposed worthlessness deduction described in such Notice of Intent to Take a Worthless Stock Deduction. If the Debtors, the Sponsoring Noteholders, or any Official Committee files a Worthless Stock Objection, by the expiration of the Worthless Stock Objection Period (the "**Worthless Stock Objection Deadline**"), then the filing of the income tax return with such deduction will not be permitted or effective unless approved by a final and non-appealable order of the Court or such objection is withdrawn. If none of the Debtors, the Sponsoring Noteholders, or any Official Committee file a Worthless Stock Objection by the Worthless Stock Objection Deadline, then such deduction will be permitted as set forth in the Notice of Intent to Take a Worthless Stock Deduction. Any further income tax returns within the scope of the Worthless Stock Deduction Procedures must be the subject of an additional Notice of Intent to Take a Worthless Stock Deduction and Worthless Stock Objection Period.

II. NONCOMPLIANCE WITH WORTHLESS STOCK DEDUCTION PROCEDURES

In the event that a 50-percent Shareholder takes a worthlessness deduction with respect to ProSomnus Stock in violation of the Worthless Stock Deduction Procedures such worthlessness deduction will be null and void *ab initio* as an act in violation of the automatic stay under section 362 of the Bankruptcy Code and pursuant to the Bankruptcy Court's equitable powers under section 105(a) of the Bankruptcy Code. Furthermore, any such 50-percent Shareholder will be subject to sanctions as provided under the Interim Order and by applicable law.

III. DEBTORS' RIGHT TO WAIVE

The Debtors may waive, in writing, any and all restrictions, stays, notifications, and provisions of the Worthless Stock Deduction Procedures.

Exhibit 3

Notice of Substantial Stock Ownership

**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)

NOTICE OF SUBSTANTIAL STOCK OWNERSHIP

PLEASE TAKE NOTICE that, pursuant to that certain *Interim Order (I) Establishing Notification Procedures and Approving Restrictions on Certain Transfers of, or Worthlessness Deductions With Respect To, Stock of the Debtors, and (II) Granting Related Relief* [Docket No. ___] (the “**Interim Order**”), [Name of Filer] (the “**Filer**”) hereby provides notice that, as of the date hereof, the Filer Beneficially Owns²:

- a) _____ shares of ProSomnus Stock and/or
- b) Options to acquire _____ shares of ProSomnus Stock.

PLEASE TAKE FURTHER NOTICE that the taxpayer identification number of the Filer is _____.

PLEASE TAKE FURTHER NOTICE that the following table sets forth the following information:

For ProSomnus Stock and/or Options to acquire ProSomnus Stock that are owned directly by the Filer, the table sets forth (i) the number of such shares of ProSomnus Stock and/or the number of shares of ProSomnus Stock underlying Options Beneficially Owned by such Filer and (ii) the date(s) on which such ProSomnus Stock and/or Options were acquired.

In the case of ProSomnus Stock and/or options to acquire ProSomnus Stock that are not owned directly by the Filer but are nonetheless Beneficially Owned by the Filer, the table sets forth (i) the name(s) of each record or legal owner of such shares of ProSomnus Stock and/or Options to acquire ProSomnus Stock that are Beneficially Owned by the Filer, (ii) the number of shares of

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 defined herein have the meanings ascribed to such terms in **Exhibit 1** to the Interim Order.

ProSomnus Stock and/or the number of shares of ProSomnus Stock underlying Options Beneficially Owned by such Filer, and (ii) the date(s) on which such ProSomnus Stock and/or Options were acquired.

<i>Name of Owner</i>	<i>Class of Shares Owned</i>	<i>Number of Shares Owned</i>	<i>Shares Underlying Options</i>	<i>Date(s) Acquired</i>

(Attach additional page(s) if necessary)

[[IF APPLICABLE:] The Filer is represented by [name of law firm], [address], [phone], (Attn: [name of attorney]).]

Respectfully submitted,

[Name of Filer]

By: _____
Name: _____
Address: _____

Telephone: _____
Facsimile: _____
Email: _____

Date: _____

Exhibit 4

Notice of Intent to Purchase, Acquire, or Otherwise Accumulate ProSomnus Stock

**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)

**NOTICE OF INTENT TO PURCHASE,
ACQUIRE, OR OTHERWISE ACCUMULATE PROSOMNUS STOCK**

PLEASE TAKE NOTICE that, pursuant to the *Interim Order (I) Establishing Notification Procedures and Approving Restrictions on Certain Transfers of, or Worthlessness Deductions With Respect To, Stock of the Debtors, and (II) Granting Related Relief* [Docket No. ___] (the “**Interim Order**”) entered by the United States Bankruptcy Court for the District of Delaware (the “**Bankruptcy Court**”) on May [●]. 2024, [Name of Filer] (the “**Filer**”) hereby provides notice of (a) its intention to purchase, acquire, or otherwise accumulate directly one or more shares of ProSomnus Stock² and/or Options to acquire ProSomnus Stock and/or (b) a proposed purchase or acquisition of ProSomnus Stock and/or Options to acquire ProSomnus Stock that would result in an increase in the number of shares of ProSomnus Stock and/or number of shares of ProSomnus Stock underlying Options that are Beneficially Owned by the Filer (any proposed transaction described in the foregoing (a) or (b), a “**Proposed Stock Acquisition**”).

PLEASE TAKE FURTHER NOTICE that the following table sets forth the following information:

If the Proposed Stock Acquisition involves the purchase or acquisition directly by the Filer of ProSomnus Stock and/or Options to acquire ProSomnus Stock, the table sets forth (a) the number of shares of ProSomnus Stock and/or the number of shares of ProSomnus Stock underlying Options proposed to be purchased or acquired and (b) the date(s) of such Proposed Stock Acquisition.

If the Proposed Stock Acquisition involves the purchase or acquisition of ProSomnus Stock and/or Options to acquire ProSomnus Stock by a Person other than the Filer, but the Proposed Stock Acquisition nonetheless would increase the number of shares of ProSomnus Stock and/or number of shares of ProSomnus Stock underlying Options that are Beneficially Owned by the Filer, the table sets forth (a) the name(s) of each such Person that proposes to purchase or acquire such shares of

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 defined herein have the meanings ascribed to such terms in Exhibit 1 to the Interim Order.

ProSomnus Stock and/or Options, (b) the number of shares of ProSomnus Stock and/or number of shares of ProSomnus Stock underlying Options proposed to be purchased or acquired, and (c) the date(s) of such Proposed Stock Acquisition.

<i>Name of Purchaser or Acquirer</i>	<i>Class of Shares to be Purchased or Acquired</i>	<i>Number of Shares to be Purchased or Acquired</i>	<i>Shares Underlying Options to be Purchased or Acquired</i>	<i>Date(s) of Proposed Stock Acquisition</i>

(Attach additional page(s) if necessary)

PLEASE TAKE FURTHER NOTICE that the following table summarizes the Filer's Beneficial Ownership of ProSomnus Stock and/or Options to acquire ProSomnus Stock assuming that the Proposed Stock Acquisition is approved and consummated as described above. The table sets forth, as of immediately following the consummation of the Proposed Stock Acquisition, the number of shares of ProSomnus Stock and/or the number of shares of ProSomnus Stock underlying Options (a) that would be owned directly by the Filer and, (b) in the case of any Beneficial Ownership by the Filer of ProSomnus Stock and/or Options that would be owned by another Person as record or legal owner, the name(s) of each prospective record or legal owner and the number of shares of ProSomnus Stock and/or the number of shares of ProSomnus Stock underlying Options that would be owned by each such record or legal owner:

<i>Name of Owner</i>	<i>Class of Shares to Be Owned</i>	<i>Number of Shares to Be Owned</i>	<i>Shares Underlying Options to Be Owned</i>

(Attach additional page(s) as necessary)

PLEASE TAKE FURTHER NOTICE that if the Proposed Stock Acquisition involves a purchase or acquisition of ProSomnus Stock and/or Options to acquire ProSomnus Stock directly by the Filer and such Proposed Stock Acquisition would result in (a) an increase in the Beneficial Ownership of ProSomnus Stock and/or Options to acquire ProSomnus Stock by a Person other than the Filer that currently is a Substantial Stockholder or (b) a Person's (other than the Filer's) becoming a Substantial Stockholder, the following table sets forth (i) the name of each such Person, (ii) the number of shares of ProSomnus Stock and/or the number of shares of ProSomnus Stock underlying Options that are Beneficially Owned by such Person currently (i.e., prior to the Proposed Stock Acquisition), and (iii) the number of shares of ProSomnus Stock and/or the number of shares of ProSomnus Stock underlying Options that would be Beneficially Owned by such Person immediately following the Proposed Stock Acquisition.

<i>Name of Beneficial Owner</i>	<i>Class of Shares</i>	<i>Shares Owned Currently (i.e., Prior to Proposed Stock Acquisition)</i>	<i>Shares to Be Owned Following Proposed Stock Acquisition</i>	<i>Shares Underlying Options Owned Currently (i.e., Prior to Proposed Stock Acquisition)</i>	<i>Shares Underlying Options to Be Owned Following Proposed Stock Acquisition</i>

(Attach additional page(s) if necessary.)

PLEASE TAKE FURTHER NOTICE that the taxpayer identification number of the Filer is _____.

PLEASE TAKE FURTHER NOTICE that, under penalty of perjury, the Filer hereby declares that he or she has examined this Notice and accompanying attachments (if any), and, to the best of its knowledge and belief, this Notice and any attachments hereto are true, correct, and complete.

[[IF APPLICABLE:] The Filer is represented by [name of law firm], [address], [phone], (Attn: [name of attorney]).]

Respectfully submitted,

[Name of Filer]

By: _____

Name: _____

Address: _____

Telephone: _____

Facsimile: _____

Email: _____

Date: _____

Exhibit 5

Notice of Intent to Transfer ProSomnus Stock

**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)

NOTICE OF INTENT TO TRANSFER PROSOMNUS STOCK

PLEASE TAKE NOTICE that, pursuant to the *Interim Order (I) Establishing Notification Procedures and Approving Restrictions on Certain Transfers of, or Worthlessness Deductions With Respect To, Stock of the Debtors, and (II) Granting Related Relief* [Docket No. ___] (the “**Interim Order**”) entered by the United States Bankruptcy Court for the District of Delaware (the “**Bankruptcy Court**”) on May [●]. 2024, [Name of Filer] (the “**Filer**”) hereby provides notice of (a) its intention to sell, trade, or otherwise directly transfer shares of ProSomnus Stock² and/or Options to acquire ProSomnus Stock and/or (b) a proposed sale, trade, or other transfer of shares of ProSomnus Stock and/or Options to acquire ProSomnus Stock that would result in a decrease in the number of shares of ProSomnus Stock and/or number of shares of ProSomnus Stock underlying Options that are Beneficially Owned by the Filer (any proposed transaction described in (a) or (b), a “**Proposed Stock Transfer**”).

PLEASE TAKE FURTHER NOTICE that the following table sets forth the following information:

If the Proposed Stock Transfer involves the transfer directly by the Filer of ProSomnus Stock and/or Options to acquire ProSomnus Stock, the table sets forth (a) the number of shares of ProSomnus Stock and/or the number of shares of ProSomnus Stock underlying Options proposed to be transferred and (b) the date(s) of such Proposed Stock Transfer.

If the Proposed Stock Transfer involves the transfer of ProSomnus Stock and/or Options to acquire ProSomnus Stock by a Person other than the Filer, but the Proposed Stock Transfer nonetheless would decrease the number of shares of ProSomnus Stock and/or number of shares of ProSomnus Stock underlying Options that are Beneficially Owned by the Filer, the table sets forth (a) the name(s) of each such Person that proposes to transfer such shares of ProSomnus Stock and/or Options, (b) the number of shares of ProSomnus Stock and/or number of shares of

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 defined herein have the meanings ascribed to such terms in Exhibit 1 to the Interim Order.

ProSomnus Stock underlying Options proposed to be transferred, and (c) the date(s) of such Proposed Stock Transfer.

<i>Name of Transferor</i>	<i>Class of Shares to be Transferred</i>	<i>Number of Shares to be Transferred</i>	<i>Shares Underlying Options to be Transferred</i>	<i>Date(s) of Proposed Stock Transfer</i>

(Attach additional page(s) if necessary)

PLEASE TAKE FURTHER NOTICE that the following table summarizes the Filer’s Beneficial Ownership of ProSomnus Stock and/or Options to acquire ProSomnus Stock assuming that the Proposed Stock Transfer is approved and consummated as described above. The table sets forth, as of immediately following the consummation of the Proposed Stock Transfer, the number of shares of ProSomnus Stock and/or the number of shares of ProSomnus Stock underlying Options (a) that would be owned directly by the Filer and, (b) in the case of any Beneficial Ownership by the Filer of ProSomnus Stock and/or Options that would be owned by another Person as record or legal owner, the name(s) of each prospective record or legal owner and the number of shares of ProSomnus Stock and/or the number of shares of ProSomnus Stock underlying Options that would be owned by each such record or legal owner:

<i>Name of Owner</i>	<i>Class of Shares to Be Owned</i>	<i>Number of Shares to Be Owned</i>	<i>Shares Underlying Options to Be Owned</i>

(Attach additional page(s) as necessary)

PLEASE TAKE FURTHER NOTICE that if the Proposed Stock Transfer involves a purchase or acquisition of ProSomnus Stock and/or Options to acquire ProSomnus Stock directly by the Filer and such Proposed Stock Transfer would result in (a) an increase in the Beneficial Ownership of ProSomnus Stock and/or Options to acquire ProSomnus Stock by a Person other than the Filer that currently is a Substantial Stockholder or (b) a Person’s (other than the Filer’s) becoming a Substantial Stockholder, the following table sets forth (i) the name of each such Person, (ii) the number of shares of ProSomnus Stock and/or the number of shares of ProSomnus Stock underlying Options that are Beneficially Owned by such Person currently (i.e., prior to the Proposed Stock Acquisition), and (iii) the number of shares of ProSomnus Stock and/or the number of shares of ProSomnus Stock underlying Options that would be Beneficially Owned by such Person immediately following the Proposed Stock Transfer.

<i>Name of Beneficial Owner</i>	<i>Class of Shares</i>	<i>Shares Owned Currently (i.e., Prior to Proposed Stock Transfer)</i>	<i>Shares to Be Owned Following Proposed Stock Transfer</i>	<i>Shares Underlying Options Owned Currently (i.e., Prior to Proposed Stock Transfer)</i>	<i>Shares Underlying Options to Be Owned Following Proposed Stock Transfer</i>

(Attach additional page(s) if necessary.)

PLEASE TAKE FURTHER NOTICE that the taxpayer identification number of the Filer is _____.

PLEASE TAKE FURTHER NOTICE that, under penalty of perjury, the Filer hereby declares that he or she has examined this Notice and accompanying attachments (if any), and, to the best of its knowledge and belief, this Notice and any attachments hereto are true, correct, and complete.

[[IF APPLICABLE:] The Filer is represented by [name of law firm], [address], [phone], (Attn: [name of attorney]).]

Respectfully submitted,

[Name of Filer]

By: _____

Name: _____

Address: _____

Telephone: _____

Facsimile: _____

Email: _____

Date: _____

Exhibit 6

Notice of Status as a 50-percent Shareholder

**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)

NOTICE OF STATUS AS A 50-PERCENT SHAREHOLDER

PLEASE TAKE NOTICE that, pursuant to the *Interim Order (I) Establishing Notification Procedures and Approving Restrictions on Certain Transfers of, or Worthlessness Deductions With Respect To, Stock of the Debtors, and (II) Granting Related Relief* [Docket No. ___] (the “**Interim Order**”) entered by the United States Bankruptcy Court for the District of Delaware (the “**Bankruptcy Court**”) on May [●]. 2024, [Name of Filer] (the “**Filer**”) [is/has become] a 50-percent Shareholder² with respect to ProSomnus Stock.

PLEASE TAKE FURTHER NOTICE that, as of _____, the Filer Beneficially Owns ___ shares of the ProSomnus Stock. The following table sets forth the date(s) on which [Name of Filer] acquired or otherwise became the Beneficial Owner of such ProSomnus Stock:

<i>Class of Shares</i>	<i>Number of Shares</i>	<i>Date Acquired</i>

(Attach additional page(s) if necessary)

PLEASE TAKE FURTHER NOTICE that the taxpayer identification number of the Filer is _____.

PLEASE TAKE FURTHER NOTICE that, under penalty of perjury, the Filer hereby declares that he or she has examined this Notice and accompanying attachments (if any), and, to the best of its knowledge and belief, this Notice and any attachments hereto are true, correct, and complete.

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 defined herein have the meanings ascribed to such terms in Exhibit 2 to the Interim Order.

[[IF APPLICABLE:] The Filer is represented by [name of law firm], [address], [phone], (Attn: [name of attorney]).]

Respectfully submitted,

[Name of Filer]

By: _____

Name: _____

Address: _____

Telephone: _____

Facsimile: _____

Email: _____

Date: _____

Exhibit 7

Notice of Intent to Take a Worthless Stock Deduction

**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)

NOTICE OF INTENT TO TAKE A WORTHLESS STOCK DEDUCTION

PLEASE TAKE NOTICE that, pursuant to the *Interim Order (I) Establishing Notification Procedures and Approving Restrictions on Certain Transfers of, or Worthlessness Deductions With Respect To, Stock of the Debtors, and (II) Granting Related Relief* [Docket No. ___] (the “**Interim Order**”) entered by the United States Bankruptcy Court for the District of Delaware (the “**Bankruptcy Court**”) on May [●]. 2024, [Name of Filer] (the “**Filer**”) hereby provides notice of its intention to take a Worthless Stock Deduction² (the “**Proposed Worthless Claim**”) with respect to shares of ProSomnus Stock.

PLEASE TAKE FURTHER NOTICE that, if applicable, on _____, the Filer filed a Notice of Status as a 50-percent Shareholder with the Bankruptcy Court.

PLEASE TAKE FURTHER NOTICE that Filer currently Beneficially Owns _____ shares of ProSomnus Common Stock and _____ shares of ProSomnus Preferred Stock.

PLEASE TAKE FURTHER NOTICE that, pursuant to the Proposed Worthless Claim, the Filer proposes to claim a Worthless Stock Deduction with respect to _____ shares of ProSomnus Common Stock and _____ shares of ProSomnus Preferred Stock. If the Proposed Worthless Claim is permitted to occur, the Filer will be treated as having acquired ___ shares of ProSomnus Stock on the first day of the Filer’s next taxable year and shall be treated as never having owned such ProSomnus Stock during any prior year for the purposes of testing whether an Ownership Change has occurred.

PLEASE TAKE FURTHER NOTICE that the taxpayer identification number of the Filer is _____.

PLEASE TAKE FURTHER NOTICE that, under penalty of perjury, the Filer hereby declares that he or she has examined this Notice and accompanying attachments (if any), and, to

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 defined herein have the meaning ascribed to such terms in Exhibit 2 to the Interim Order.

the best of its knowledge and belief, this Notice and any attachments hereto are true, correct, and complete.

[[IF APPLICABLE:] The Filer is represented by [name of law firm], [address], [phone], (Attn: [name of attorney]).]

Respectfully submitted,

[Name of Filer]

By: _____

Name: _____

Address: _____

Telephone: _____

Facsimile: _____

Email: _____

Date: _____

Exhibit 8

Publication Notice

ATTENTION DIRECT AND INDIRECT HOLDERS OF, AND PROSPECTIVE HOLDERS OF, STOCK ISSUED BY PROSOMNUS, INC.

Upon the motion (the “**Motion**”) of ProSomnus, Inc. (“**ProSomnus**”), and its affiliated debtors (collectively, the “**Debtors**”), on _____, 2024, the United States Bankruptcy Court for the District of Delaware (the “**Bankruptcy Court**”), having jurisdiction over the chapter 11 cases of the Debtors, captioned as *In re ProSomnus, Inc., et al.*, Case No. 24-10972 (JTD) (the “**Chapter 11 Cases**”), entered an order establishing procedures (the “**Procedures**”) with respect to direct and indirect transfers of, and claiming a worthless stock deduction with respect to, common and preferred stock of ProSomnus (collectively, “**ProSomnus Stock**”), including options to acquire ProSomnus Stock, and scheduling a hearing on a final order with respect to such Procedures.

In certain circumstances, the Procedures restrict (i) transactions involving, and require notices of the holdings of and proposed transactions by, any person that is or, as a result of such a transaction, would become a Substantial Stockholder of the ProSomnus Stock and (ii) claims by any 50-percent Shareholder of a worthless stock deduction under section 165(g) of the Internal Revenue Code with respect to the ProSomnus Stock (a “**Worthless Stock Deduction**”). For purposes of the Procedures, a “**Substantial Stockholder**” is any Person that Beneficially Owns, at any time on or after the Petition Date, (a) 782,911 shares of ProSomnus Common Stock (representing 4.5 percent of all issued and outstanding shares of ProSomnus Common Stock or (b) ProSomnus Preferred Stock equal to or greater than 4.5 percent of all issued and outstanding shares of ProSomnus Stock by value, and a “**50-Percent Shareholder**” is any person or entity that at any time during the three-year period ending on the Petition Date has had Beneficial Ownership (as defined in the Procedures) of at least 50 percent or more of ProSomnus Stock or is otherwise considered a 50-percent Shareholder of ProSomnus, Inc., within the meaning of section 382(g)(4)(D) of Title 26 of the United States Code. *Any prohibited acquisition or other transfer of, or claim of a Worthless Stock Deduction with respect to, ProSomnus Stock (including options to acquire ProSomnus Stock) will be null and void ab initio and may lead to contempt, compensatory damages, punitive damages, or sanctions being imposed by the Bankruptcy Court.*

The Procedures, as approved on an interim basis and as requested on a final basis, are available on the website of Kurtzman Carson Consultants LLC, the Debtors’ Court-approved claims agent, located at www.kccllc.net/prosomnus, and on the docket of the Chapter 11 Cases, Docket No. 24-10972 (JTD), which can be accessed via PACER at <https://www.pacer.gov>.

A direct or indirect holder of, or prospective holder of, ProSomnus Stock that may be or become a Substantial Stockholder or a 50-percent Shareholder should consult the Procedures.

The final hearing on the Motion shall be held on _____, 2024, at _____ (prevailing Eastern Time), and any objections or responses to the Motion shall be in writing, filed with the Court, and served upon (i) the Debtors, c/o ProSomnus, Inc., 5675 Gibraltar Dr., Pleasanton, California 94588; (ii) 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); (iii) 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); (iv) 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); (v) counsel to the proposed DIP Agent, Seward & Kissel LLP, One Battery Park Plaza, New York, NY 10004, Attn: Gregg Bateman (bateman@sewkis.com); and (vi) the Office of the United States Trustee, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801, Attn: Jon Lipshie (jon.lipshie@usdoj.gov), in each case so as to be received no later **than 4:00 p.m. (prevailing Eastern Time) on _____, 2024.**

Exhibit B

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 (I) ESTABLISHING NOTIFICATION PROCEDURES AND
APPROVING RESTRICTIONS ON CERTAIN TRANSFERS OF, OR
WORTHLESSNESS DEDUCTIONS WITH RESPECT TO, STOCK OF THE
DEBTORS AND (II) GRANTING RELATED RELIEF**

Upon the motion (the “**Motion**”)² of the Debtors for a final order, pursuant to Bankruptcy Code sections 105(a), 362, and 541; Bankruptcy Rules 6003 and 6004; and Local Rule 9013-1(m), (i) authorizing the Debtors to establish certain Stock Procedures and Worthless Stock Deduction Procedures (as defined below herein) to protect the potential value of certain NOLs and other Tax Attributes of one or more of the Debtors for U.S. federal income tax purposes and (ii) granting related relief; 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, Exhibit 1, Exhibit 2, or First Day Declaration, as applicable.

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 this Court having reviewed the Motion; and this Court having held a hearing to consider the relief requested in the Motion on a final basis (the “**Final Hearing**”); and this Court having entered an order granting the relief requested in the Motion on an interim basis; 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 Order, to the extent not withdrawn or settled, are overruled.
3. The provisions of this Order shall be effective as of the Petition Date.
4. The restrictions, notification requirements, and other procedures annexed hereto as Exhibit 1 and Exhibit 2 (collectively, the “**Procedures**”) are hereby approved and shall apply to all trading and transfers of, and claiming a Worthless Stock Deduction with respect to, ProSomnus Stock (including Options to acquire ProSomnus Stock), as provided therein; provided, that, the Debtors may, in their sole discretion, waive in writing, any and all restrictions, stays, and notification procedures set forth in the Procedures.
5. Any acquisition, disposition, or trading of, or claiming a Worthless Stock Deduction with respect to, ProSomnus Stock (including Options to acquire ProSomnus Stock) in violation of the Procedures shall be null and void ab initio as an act in violation of the automatic stay under section 362 of the Bankruptcy Code and pursuant to this Court’s equitable powers under section 105(a) of the Bankruptcy Code.

6. Any person that acquires, disposes of, or trades ProSomnus Stock (including Options to acquire ProSomnus Stock) in violation of this Order or the Procedures or that otherwise fails to comply with their requirements, including with respect to claiming a Worthless Stock Deduction, shall be subject to such sanctions as this Court may consider appropriate pursuant to this Court's equitable power under section 105(a) of the Bankruptcy Code.

7. The notices substantially in the forms annexed hereto as Exhibit 3, Exhibit 4, Exhibit 5, Exhibit 6, Exhibit 7, and Exhibit 8 are hereby approved.

8. Within three business days of the entry of this Order, the Debtors shall serve the notice of this Order (the "**Notice of Order**") annexed hereto as Exhibit 8 on (a) all parties that were served with notice of the Motion; (b) all banks, brokers, intermediaries, other nominees or their mailing agents that hold ProSomnus Stock in "street name" for the beneficial holders of the ProSomnus Stock, as applicable; and (c) registered holders of ProSomnus Stock (with instructions to serve down to beneficial holders, as applicable). To the extent they have not already done so, the Debtors shall also publish the Notice of Order in the national edition of the Wall Street Journal and post the Procedures to the website established by Kurtzman Carson Consultants LLC for the Chapter 11 Cases (which website address shall be identified in the Notice of Order), such notice being reasonably calculated to provide notice to all parties that may be affected by the Procedures, whether known or unknown, and no further notice of the Procedures shall be necessary.

9. Nothing herein shall preclude any person desirous of acquiring or transferring, or claiming a Worthless Stock Deduction with respect to, ProSomnus Stock (including Options to acquire ProSomnus Stock) from requesting relief from this Order from this Court, subject to the Debtors' rights to oppose such relief.

10. The relief granted in this Order is intended solely to permit the Debtors to protect, preserve, and maximize the value of their Tax Attributes; accordingly, other than to the extent that this Order expressly conditions or restricts trading in ProSomnus Stock or taking any Worthless Stock Deduction, nothing in this Order or in the Motion shall, or shall be deemed to, prejudice, impair, or otherwise alter or affect the rights of any holders of ProSomnus Stock.

11. The requirements set forth in this Order are in addition to the requirements of Bankruptcy Rule 3001(e) and applicable securities, corporate, and other laws and do not excuse noncompliance therewith.

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

13. The requirements set forth in Bankruptcy Rule 6003(b) are satisfied because the relief set forth in this Order is necessary to avoid immediate and irreparable harm.

14. 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 Order.

15. This Court retains jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

Exhibit 1

Stock Procedures

**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)

**NOTICES, RESTRICTIONS, AND OTHER PROCEDURES
REGARDING OWNERSHIP AND ACQUISITIONS OF STOCK OF THE DEBTORS**

TO ALL PERSONS WITH STOCK OWNERSHIP OF THE DEBTORS:

Pursuant to the *Order (I) Establishing Notification Procedures and Approving Restrictions on Certain Transfers of, or Worthlessness Deductions With Respect To, Stock of the Debtors, and (II) Granting Related Relief* [Docket No. ____] (the “**Final Order**”) entered by the United States Bankruptcy Court for the District of Delaware (the “**Bankruptcy Court**”) on _____, 2024, the following restrictions, notification requirements, and other procedures (collectively, the “**Stock Procedures**”) apply to all trading and transfers of ProSomnus Stock² (including Options to acquire ProSomnus Stock).

I. PROSOMNUS STOCK RESTRICTIONS

a) Definitions. For purposes of these Stock Procedures, the following terms have the following meanings:

- (i) “**Beneficial Ownership**” of ProSomnus Stock and Options to acquire ProSomnus Stock will be determined in accordance with section 382 of title 26 of the United States Code (the “**Tax Code**”), the regulations promulgated by the U.S. Department of Treasury under the Tax Code (the “**Treasury Regulations**”), and rulings issued by the Internal Revenue Service (the “**IRS**”), and as described herein, and, thus, to the extent provided in those sources, from time to time will include, without limitation, (i) direct and indirect ownership (but determined without regard to any rule that treats stock of an entity as to which the constructive ownership rules apply as no longer owned by that entity), *e.g.*, a holding company would be considered to Beneficially Own all stock owned or acquired by its subsidiaries, (ii)

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 defined herein shall have the meaning ascribed to such terms in the Final Order.

ownership by a holder's family members, (iii) ownership by any entity (as such term is defined in section 1.382-3(a) of the Treasury Regulations), and (iv) to the extent set forth in section 1.382-4 of the Treasury Regulations, the ownership of an Option to acquire ProSomnus Stock.

- (ii) **“ProSomnus Common Stock”** means common stock issued by ProSomnus, Inc.
- (iii) **“ProSomnus Preferred Stock”** means Series A Convertible Preferred Stock issued by ProSomnus, Inc.
- (iv) **“ProSomnus Stock”** means, collectively, the ProSomnus Common Stock and the ProSomnus Preferred Stock.
- (v) **“Option”** means any contingent purchase, warrant, convertible debt, put, stock subject to the risk of forfeiture, contract to acquire stock, or similar interest regardless of whether it is contingent or otherwise not currently exercisable.
- (vi) **“Person”** means any person, including any “entity” (as such term is defined in section 1.382-3(a) of the Treasury Regulations) and any group of persons acting pursuant to a formal or informal understanding among themselves to make a coordinated acquisition of ProSomnus Stock.
- (vii) **“Petition Date”** means May 7, 2024.

b) **Notice of Substantial Stock Ownership:** Any Person that Beneficially Owns, at any time on or after the Petition Date, (a) 782,911 shares of ProSomnus Common Stock (representing 4.5 percent of all issued and outstanding shares of ProSomnus Common Stock or (b) ProSomnus Preferred Stock equal to or greater than 4.5 percent of all issued and outstanding shares of ProSomnus Stock by value (a **“Substantial Stockholder”**) must file with the Court and serve on (i) the Debtors, c/o ProSomnus, Inc., 5675 Gibraltar Dr., Pleasanton, California 94588; (ii) 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); (iii) 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); (iv) counsel to any statutory committee (each, an “Official Committee”) appointed in the Chapter 11 Cases, if any; and (v) the Office of the United States Trustee, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801, Attn: Jon Lipshie (jon.lipshie@usdoj.gov) (the **“U.S. Trustee”** and, collectively, the **“Disclosure Parties”**) a notice of such Person's ProSomnus Stock ownership (a **“Substantial Stock Ownership Notice”**), in substantially the form attached to the Final Order as Exhibit 3, which describes specifically and in detail such Person's ownership of ProSomnus Stock, on or before the date that is 14 calendar days after the later of (x) the date the Final Order is entered or (y) the date such Person qualifies as a

Substantial Stockholder. At the election of the filing Person, the Substantial Stock Ownership Notice to be filed with the Court (but not the Substantial Stock Ownership Notice that is served on the Disclosure Parties) may be redacted to exclude the taxpayer identification number and the amount of ProSomnus Stock Beneficially Owned.

c) Acquisition of ProSomnus Stock. At least 20 calendar days before the proposed date of any transfer of ProSomnus Stock, exercise of any Option to acquire ProSomnus Stock, or other transaction that would result in an increase in the amount of ProSomnus Stock Beneficially Owned, by any Person that currently is, or, as a result of the proposed transaction, would be a Substantial Stockholder (a “**Proposed Stock Acquisition Transaction**”), such Person or Substantial Stockholder (a “**Proposed Stock Transferee**”) must file with the Court and serve on the Disclosure Parties a notice of such Proposed Stock Transferee’s intent to purchase, acquire, or otherwise accumulate ProSomnus Stock (a “**Stock Acquisition Notice**”), in substantially the form attached to the Final Order as Exhibit 4, which describes specifically and in detail the Proposed Stock Acquisition Transaction. At the election of the filing Person, the Stock Acquisition Notice to be filed with the Court (but not the Stock Acquisition Notice that is served on the Disclosure Parties) may be redacted to exclude the taxpayer identification number and the amount of ProSomnus Stock Beneficially Owned and to be acquired.

d) Disposition of ProSomnus Stock. At least 20 calendar days before the proposed date of any transfer of ProSomnus Stock, or other transaction, that would result in a decrease in the amount of ProSomnus Stock Beneficially Owned by any Person that before such transfer is a Substantial Stockholder (a “**Proposed Stock Transfer**”), such Person or Substantial Stockholder (a “**Proposed Stock Transferor**”) must file with the Court and serve on the Disclosure Parties a notice of such Proposed Stock Transferor’s intent to transfer ProSomnus Stock (a “**Stock Transfer Notice**”), in substantially the form attached to the Final Order as Exhibit 5, which describes specifically and in detail the Proposed Stock Transfer. At the election of the filing Person, the Stock Transfer Notice to be filed with the Court (but not the Stock Transfer Notice that is served on the Disclosure Parties) may be redacted to exclude the taxpayer identification number and the amount of ProSomnus Stock Beneficially Owned and to be transferred.

e) Objection Procedures. The Debtors, the Sponsoring Noteholders, and any Official Committee will have seven calendar days after the receipt of a Stock Acquisition Notice or a Stock Transfer Notice (the “**Stock Procedure Objection Period**”) to file with the Court and serve on a Proposed Stock Transferee or Proposed Stock Transferor, as applicable, an objection (a “**Stock Procedure Objection**”) to any Proposed Stock Acquisition Transaction described in such Stock Acquisition Notice or any Proposed Stock Transfer described in such Stock Transfer Notice. If the Debtors, the DIP Agent, or any Official Committee files a Stock Procedure Objection by the expiration of the Stock Procedure Objection Period (the “**Stock Procedure Objection Deadline**”), then the applicable Proposed Stock Acquisition Transaction or Proposed Stock Transfer will not be effective unless approved by a final and non-appealable order of the Court or such Stock Procedure Objection is withdrawn. If none of the Debtors, the Sponsoring Noteholders, or any Official Committee file a Stock Procedure Objection by the Stock Procedure Objection Deadline, or if the Debtors, the Sponsoring Noteholders, and any and all Official Committees provide written authorization to the Proposed Stock Transferee or the Proposed Stock Transferor, as applicable, approving the Proposed Stock Acquisition Transaction or Proposed Stock Transfer, then such Proposed Stock Acquisition Transaction or Proposed Stock Transfer may proceed solely as

specifically described in the relevant Stock Acquisition Notice or Stock Transfer Notice, as applicable. Any further or alternative Proposed Stock Acquisition Transaction or Proposed Stock Transfer must be the subject of an additional Stock Acquisition Notice or Stock Transfer Notice, as applicable, and Stock Procedure Objection Period.

II. NONCOMPLIANCE WITH STOCK PROCEDURES

Any transfer of ProSomnus Stock in violation of the Stock Procedures will be null and void *ab initio* as an act in violation of the automatic stay under section 362 of the Bankruptcy Code and pursuant to the Bankruptcy Court's equitable powers under section 105(a) of the Bankruptcy Code. Furthermore, any Person that owns, acquires or disposes of ProSomnus Stock in violation of these Stock Procedures will be subject to sanctions as provided under the Final Order and by applicable law.

III. DEBTORS' RIGHT TO WAIVE

The Debtors may waive, in writing, any and all restrictions, stays, notification, and provisions of the Stock Procedures set forth herein.

Exhibit 2

Worthless Stock Deduction Procedures

**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)

**NOTICES, RESTRICTIONS, AND OTHER PROCEDURES REGARDING
WORTHLESSNESS DEDUCTIONS WITH RESPECT TO STOCK OF THE DEBTORS**

TO ALL PERSONS WITH STOCK OWNERSHIP OF THE DEBTORS:

Pursuant to the *Order (I) Establishing Notification Procedures and Approving Restrictions on Certain Transfers of, or Worthlessness Deductions With Respect To, Stock of the Debtors, and (II) Granting Related Relief* [Docket No. ____] (the “**Final Order**”) entered by the United States Bankruptcy Court for the District of Delaware (the “**Bankruptcy Court**”) on _____, 2024, the following restrictions, notification requirements, and other procedures apply to all claims of Worthless Stock Deductions with respect to ProSomnus Stock² (the “**Worthless Stock Deduction Procedures**”).

I. PROSOMNUS STOCK RESTRICTIONS

a) Definitions. For purposes of the Worthless Stock Deduction Procedures, the following terms have the following meanings:

- (i) “**50-percent Shareholder**” means any person or entity that at any time during the three-year period ending on the Petition Date has had Beneficial Ownership of at least 50 percent or more of ProSomnus Stock or is otherwise considered a 50-percent Shareholder of ProSomnus, Inc., within the meaning of section 382(g)(4)(D) of the Tax Code.
- (ii) “**Beneficial Ownership**” of ProSomnus Stock or Options to acquire ProSomnus Stock will be determined in accordance with section 382 of the title 26 of the United States Code (the “**Tax Code**”), the regulations promulgated by the U.S. Department of Treasury under the Tax Code (the “**Treasury Regulations**”), and rulings issued by the Internal Revenue

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 defined herein shall have the meaning ascribed to such terms in the Final Order.

Service (the “**IRS**”), and as described herein, and, thus, to the extent provided in those sources, from time to time will include, without limitation, (i) direct and indirect ownership (but determined without regard to any rule that treats stock of an entity as to which the constructive ownership rules apply as no longer owned by that entity), *e.g.*, a holding company would be considered to Beneficially Own all stock owned or acquired by its subsidiaries, (ii) ownership by a holder’s family members, (iii) ownership by any entity (as such term is defined in section 1.382-3(a) of the Treasury Regulations), and (iv) to the extent set forth in section 1.382-4 of the Treasury Regulations, the ownership of an Option to acquire ProSomnus Stock.

- (i) “**ProSomnus Common Stock**” means common stock issued by ProSomnus, Inc.
- (ii) “**ProSomnus Preferred Stock**” means Series A Convertible Preferred Stock issued by ProSomnus, Inc.
- (iii) “**ProSomnus Stock**” means, collectively, the ProSomnus Common Stock and the ProSomnus Preferred Stock.
- (iv) “**Option**” means any contingent purchase, warrant, convertible debt, put, stock subject to risk of forfeiture, contract to acquire stock, or similar interest regardless of whether it is contingent or otherwise not currently exercisable.
- (v) “**Petition Date**” means May 7, 2024.
- (vi) “**Worthless Stock Deduction**” shall mean any claim (for income tax reporting purposes) of a worthless stock deduction under section 165(g) of the Tax Code with respect to the ProSomnus Stock.

b) Notice of 50-percent Stock Ownership. Any person or entity that currently is or becomes a 50-percent Shareholder, at any time on or after the Petition Date, must file with the Court, and serve on (i) the Debtors, c/o ProSomnus, Inc., 5675 Gibraltar Dr., Pleasanton, California 94588; (ii) 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); (iii) 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); (iv) counsel to any statutory committee (each, an “Official Committee”) appointed in the Chapter 11 Cases, if any; and (v) the Office of the United States Trustee, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801, Attn: Jon Lipshie (jon.lipshie@usdoj.gov) (the “**U.S. Trustee**” and, collectively, the “**Disclosure Parties**”) a notice of such person or entity’s 50-percent stock ownership (a “**50-percent Stock Ownership Notice**”), in

substantially the form attached to the Final Order as Exhibit 6, which describes specifically and in detail such person or entity's ownership of ProSomnus Stock, on or before the date that is 14 calendar days after the later of (x) the date the Final Order is entered or (y) the date such person or entity qualifies as a 50-percent Shareholder. At the election of the filing person or entity, the 50-percent Stock Ownership Notice to be filed with the Court (but not the 50-percent Stock Ownership Notice that is served upon the Disclosure Parties) may be redacted to exclude the taxpayer identification number and the amount of ProSomnus Stock Beneficially Owned.

c) Worthless Stock Deduction. At least 20 calendar days before filing any income tax return, or amendment to such a return, taking any worthlessness deduction with respect to ProSomnus Stock for a tax year ending before the consummation of a debt-for-stock recapitalization (or, if applicable, a chapter 11 sale process), such 50-percent Shareholder must file with the Court, and serve on the Disclosure Parties, an advance written notice of the intended worthlessness deduction, in substantially the form attached to the Final Order as Exhibit 7 (a "**Notice of Intent to Take a Worthless Stock Deduction**"). At the election of the filing person or entity, the Notice of Intent to Take a Worthless Stock Deduction to be filed with the Court (but not the Notice of Intent to Take Worthless Stock Deduction that is served on the Disclosure Parties) may be redacted to exclude the taxpayer identification number and the amount of ProSomnus Stock Beneficially Owned.

d) Objection Procedures. The Debtors, the Sponsoring Noteholders, and any Official Committee will have seven calendar days after the receipt of a Notice of Intent to Take a Worthless Stock Deduction (the "**Worthless Stock Objection Period**") to file with the Court and serve on such 50-percent Shareholder an objection (a "**Worthless Stock Objection**") to any proposed worthlessness deduction described in such Notice of Intent to Take a Worthless Stock Deduction. If the Debtors, the Sponsoring Noteholders, or any Official Committee files a Worthless Stock Objection, by the expiration of the Worthless Stock Objection Period (the "**Worthless Stock Objection Deadline**"), then the filing of the income tax return with such deduction will not be permitted or effective unless approved by a final and non-appealable order of the Court or such objection is withdrawn. If none of the Debtors, the Sponsoring Noteholders, or any Official Committee file a Worthless Stock Objection by the Worthless Stock Objection Deadline, then such deduction will be permitted as set forth in the Notice of Intent to Take a Worthless Stock Deduction. Any further income tax returns within the scope of the Worthless Stock Deduction Procedures must be the subject of an additional Notice of Intent to Take a Worthless Stock Deduction and Worthless Stock Objection Period.

II. NONCOMPLIANCE WITH WORTHLESS STOCK DEDUCTION PROCEDURES

In the event that a 50-percent Shareholder takes a worthlessness deduction with respect to ProSomnus Stock in violation of the Worthless Stock Deduction Procedures such worthlessness deduction will be null and void *ab initio* as an act in violation of the automatic stay under section 362 of the Bankruptcy Code and pursuant to the Bankruptcy Court's equitable powers under section 105(a) of the Bankruptcy Code. Furthermore, any such 50-percent Shareholder will be subject to sanctions as provided under the Final Order and by applicable law.

III. DEBTORS' RIGHT TO WAIVE

The Debtors may waive, in writing, any and all restrictions, stays, notifications, and provisions of the Worthless Stock Deduction Procedures.

Exhibit 3

Notice of Substantial Stock Ownership

**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)

NOTICE OF SUBSTANTIAL STOCK OWNERSHIP

PLEASE TAKE NOTICE that, pursuant to that certain *Final Order (I) Establishing Notification Procedures and Approving Restrictions on Certain Transfers of, or Worthlessness Deductions With Respect To, Stock of the Debtors, and (II) Granting Related Relief* [Docket No. ___] (the “**Final Order**”), [Name of Filer] (the “**Filer**”) hereby provides notice that, as of the date hereof, the Filer Beneficially Owns²:

- a) _____ shares of ProSomnus Stock and/or
- b) Options to acquire _____ shares of ProSomnus Stock.

PLEASE TAKE FURTHER NOTICE that the taxpayer identification number of the Filer is _____.

PLEASE TAKE FURTHER NOTICE that the following table sets forth the following information:

For ProSomnus Stock and/or Options to acquire ProSomnus Stock that are owned directly by the Filer, the table sets forth (i) the number of such shares of ProSomnus Stock and/or the number of shares of ProSomnus Stock underlying Options Beneficially Owned by such Filer and (ii) the date(s) on which such ProSomnus Stock and/or Options were acquired.

In the case of ProSomnus Stock and/or options to acquire ProSomnus Stock that are not owned directly by the Filer but are nonetheless Beneficially Owned by the Filer, the table sets forth (i) the name(s) of each record or legal owner of such shares of ProSomnus Stock and/or Options to acquire ProSomnus Stock that are Beneficially Owned by the Filer, (ii) the number of shares of

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 defined herein have the meanings ascribed to such terms in Exhibit 1 to the Final Order.

ProSomnus Stock and/or the number of shares of ProSomnus Stock underlying Options Beneficially Owned by such Filer, and (ii) the date(s) on which such ProSomnus Stock and/or Options were acquired.

<i>Name of Owner</i>	<i>Class of Shares Owned</i>	<i>Number of Shares Owned</i>	<i>Shares Underlying Options</i>	<i>Date(s) Acquired</i>

(Attach additional page(s) if necessary)

[[IF APPLICABLE:] The Filer is represented by [name of law firm], [address], [phone], (Attn: [name of attorney]).]

Respectfully submitted,

[Name of Filer]

By: _____
Name: _____
Address: _____

Telephone: _____
Facsimile: _____
Email: _____

Date: _____

Exhibit 4

Notice of Intent to Purchase, Acquire, or Otherwise Accumulate ProSomnus Stock

**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)

**NOTICE OF INTENT TO PURCHASE,
ACQUIRE, OR OTHERWISE ACCUMULATE PROSOMNUS STOCK**

PLEASE TAKE NOTICE that, pursuant to the *Order (I) Establishing Notification Procedures and Approving Restrictions on Certain Transfers of, or Worthlessness Deductions With Respect To, Stock of the Debtors, and (II) Granting Related Relief* [Docket No. ___] (the “**Final Order**”) entered by the United States Bankruptcy Court for the District of Delaware (the “**Bankruptcy Court**”) on May [●]. 2024, [Name of Filer] (the “**Filer**”) hereby provides notice of (a) its intention to purchase, acquire, or otherwise accumulate directly one or more shares of ProSomnus Stock² and/or Options to acquire ProSomnus Stock and/or (b) a proposed purchase or acquisition of ProSomnus Stock and/or Options to acquire ProSomnus Stock that would result in an increase in the number of shares of ProSomnus Stock and/or number of shares of ProSomnus Stock underlying Options that are Beneficially Owned by the Filer (any proposed transaction described in the foregoing (a) or (b), a “**Proposed Stock Acquisition**”).

PLEASE TAKE FURTHER NOTICE that the following table sets forth the following information:

If the Proposed Stock Acquisition involves the purchase or acquisition directly by the Filer of ProSomnus Stock and/or Options to acquire ProSomnus Stock, the table sets forth (a) the number of shares of ProSomnus Stock and/or the number of shares of ProSomnus Stock underlying Options proposed to be purchased or acquired and (b) the date(s) of such Proposed Stock Acquisition.

If the Proposed Stock Acquisition involves the purchase or acquisition of ProSomnus Stock and/or Options to acquire ProSomnus Stock by a Person other than the Filer, but the Proposed Stock Acquisition nonetheless would increase the number of shares of ProSomnus Stock and/or number of shares of ProSomnus Stock underlying Options that are Beneficially Owned by the Filer, the table sets forth (a) the name(s) of each such Person that proposes to purchase or acquire such shares of

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 defined herein have the meanings ascribed to such terms in Exhibit 1 to the Final Order.

ProSomnus Stock and/or Options, (b) the number of shares of ProSomnus Stock and/or number of shares of ProSomnus Stock underlying Options proposed to be purchased or acquired, and (c) the date(s) of such Proposed Stock Acquisition.

<i>Name of Purchaser or Acquirer</i>	<i>Class of Shares to be Purchased or Acquired</i>	<i>Number of Shares to be Purchased or Acquired</i>	<i>Shares Underlying Options to be Purchased or Acquired</i>	<i>Date(s) of Proposed Stock Acquisition</i>

(Attach additional page(s) if necessary)

PLEASE TAKE FURTHER NOTICE that the following table summarizes the Filer’s Beneficial Ownership of ProSomnus Stock and/or Options to acquire ProSomnus Stock assuming that the Proposed Stock Acquisition is approved and consummated as described above. The table sets forth, as of immediately following the consummation of the Proposed Stock Acquisition, the number of shares of ProSomnus Stock and/or the number of shares of ProSomnus Stock underlying Options (a) that would be owned directly by the Filer and, (b) in the case of any Beneficial Ownership by the Filer of ProSomnus Stock and/or Options that would be owned by another Person as record or legal owner, the name(s) of each prospective record or legal owner and the number of shares of ProSomnus Stock and/or the number of shares of ProSomnus Stock underlying Options that would be owned by each such record or legal owner:

<i>Name of Owner</i>	<i>Class of Shares to Be Owned</i>	<i>Number of Shares to Be Owned</i>	<i>Shares Underlying Options to Be Owned</i>

(Attach additional page(s) as necessary)

PLEASE TAKE FURTHER NOTICE that if the Proposed Stock Acquisition involves a purchase or acquisition of ProSomnus Stock and/or Options to acquire ProSomnus Stock directly by the Filer and such Proposed Stock Acquisition would result in (a) an increase in the Beneficial Ownership of ProSomnus Stock and/or Options to acquire ProSomnus Stock by a Person other than the Filer that currently is a Substantial Stockholder or (b) a Person’s (other than the Filer’s) becoming a Substantial Stockholder, the following table sets forth (i) the name of each such Person, (ii) the number of shares of ProSomnus Stock and/or the number of shares of ProSomnus Stock underlying Options that are Beneficially Owned by such Person currently (i.e., prior to the Proposed Stock Acquisition), and (iii) the number of shares of ProSomnus Stock and/or the number of shares of ProSomnus Stock underlying Options that would be Beneficially Owned by such Person immediately following the Proposed Stock Acquisition.

<i>Name of Beneficial Owner</i>	<i>Class of Shares</i>	<i>Shares Owned Currently (i.e., Prior to Proposed Stock Acquisition)</i>	<i>Shares to Be Owned Following Proposed Stock Acquisition</i>	<i>Shares Underlying Options Owned Currently (i.e., Prior to Proposed Stock Acquisition)</i>	<i>Shares Underlying Options to Be Owned Following Proposed Stock Acquisition</i>

(Attach additional page(s) if necessary.)

PLEASE TAKE FURTHER NOTICE that the taxpayer identification number of the Filer is _____.

PLEASE TAKE FURTHER NOTICE that, under penalty of perjury, the Filer hereby declares that he or she has examined this Notice and accompanying attachments (if any), and, to the best of its knowledge and belief, this Notice and any attachments hereto are true, correct, and complete.

[[IF APPLICABLE:] The Filer is represented by [name of law firm], [address], [phone], (Attn: [name of attorney]).]

Respectfully submitted,

[Name of Filer]

By: _____

Name: _____

Address: _____

Telephone: _____

Facsimile: _____

Email: _____

Date: _____

Exhibit 5

Notice of Intent to Transfer ProSomnus Stock

**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)

NOTICE OF INTENT TO TRANSFER PROSOMNUS STOCK

PLEASE TAKE NOTICE that, pursuant to the *Order (I) Establishing Notification Procedures and Approving Restrictions on Certain Transfers of, or Worthlessness Deductions With Respect To, Stock of the Debtors, and (II) Granting Related Relief* [Docket No. ___] (the “**Final Order**”) entered by the United States Bankruptcy Court for the District of Delaware (the “**Bankruptcy Court**”) on May [●]. 2024, [Name of Filer] (the “**Filer**”) hereby provides notice of (a) its intention to sell, trade, or otherwise directly transfer shares of ProSomnus Stock² and/or Options to acquire ProSomnus Stock and/or (b) a proposed sale, trade, or other transfer of shares of ProSomnus Stock and/or Options to acquire ProSomnus Stock that would result in a decrease in the number of shares of ProSomnus Stock and/or number of shares of ProSomnus Stock underlying Options that are Beneficially Owned by the Filer (any proposed transaction described in (a) or (b), a “**Proposed Stock Transfer**”).

PLEASE TAKE FURTHER NOTICE that the following table sets forth the following information:

If the Proposed Stock Transfer involves the transfer directly by the Filer of ProSomnus Stock and/or Options to acquire ProSomnus Stock, the table sets forth (a) the number of shares of ProSomnus Stock and/or the number of shares of ProSomnus Stock underlying Options proposed to be transferred and (b) the date(s) of such Proposed Stock Transfer.

If the Proposed Stock Transfer involves the transfer of ProSomnus Stock and/or Options to acquire ProSomnus Stock by a Person other than the Filer, but the Proposed Stock Transfer nonetheless would decrease the number of shares of ProSomnus Stock and/or number of shares of ProSomnus Stock underlying Options that are Beneficially Owned by the Filer, the table sets forth (a) the name(s) of each such Person that proposes to transfer such shares of ProSomnus Stock and/or Options, (b) the number of shares of ProSomnus Stock and/or number of shares of

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 defined herein have the meanings ascribed to such terms in Exhibit 1 to the Final Order.

ProSomnus Stock underlying Options proposed to be transferred, and (c) the date(s) of such Proposed Stock Transfer.

<i>Name of Transferor</i>	<i>Class of Shares to be Transferred</i>	<i>Number of Shares to be Transferred</i>	<i>Shares Underlying Options to be Transferred</i>	<i>Date(s) of Proposed Stock Transfer</i>

(Attach additional page(s) if necessary)

PLEASE TAKE FURTHER NOTICE that the following table summarizes the Filer’s Beneficial Ownership of ProSomnus Stock and/or Options to acquire ProSomnus Stock assuming that the Proposed Stock Transfer is approved and consummated as described above. The table sets forth, as of immediately following the consummation of the Proposed Stock Transfer, the number of shares of ProSomnus Stock and/or the number of shares of ProSomnus Stock underlying Options (a) that would be owned directly by the Filer and, (b) in the case of any Beneficial Ownership by the Filer of ProSomnus Stock and/or Options that would be owned by another Person as record or legal owner, the name(s) of each prospective record or legal owner and the number of shares of ProSomnus Stock and/or the number of shares of ProSomnus Stock underlying Options that would be owned by each such record or legal owner:

<i>Name of Owner</i>	<i>Class of Shares to Be Owned</i>	<i>Number of Shares to Be Owned</i>	<i>Shares Underlying Options to Be Owned</i>

(Attach additional page(s) as necessary)

PLEASE TAKE FURTHER NOTICE that if the Proposed Stock Transfer involves a purchase or acquisition of ProSomnus Stock and/or Options to acquire ProSomnus Stock directly by the Filer and such Proposed Stock Transfer would result in (a) an increase in the Beneficial Ownership of ProSomnus Stock and/or Options to acquire ProSomnus Stock by a Person other than the Filer that currently is a Substantial Stockholder or (b) a Person’s (other than the Filer’s) becoming a Substantial Stockholder, the following table sets forth (i) the name of each such Person, (ii) the number of shares of ProSomnus Stock and/or the number of shares of ProSomnus Stock underlying Options that are Beneficially Owned by such Person currently (i.e., prior to the Proposed Stock Acquisition), and (iii) the number of shares of ProSomnus Stock and/or the number of shares of ProSomnus Stock underlying Options that would be Beneficially Owned by such Person immediately following the Proposed Stock Transfer.

<i>Name of Beneficial Owner</i>	<i>Class of Shares</i>	<i>Shares Owned Currently (i.e., Prior to Proposed Stock Transfer)</i>	<i>Shares to Be Owned Following Proposed Stock Transfer</i>	<i>Shares Underlying Options Owned Currently (i.e., Prior to Proposed Stock Transfer)</i>	<i>Shares Underlying Options to Be Owned Following Proposed Stock Transfer</i>

(Attach additional page(s) if necessary.)

PLEASE TAKE FURTHER NOTICE that the taxpayer identification number of the Filer is _____.

PLEASE TAKE FURTHER NOTICE that, under penalty of perjury, the Filer hereby declares that he or she has examined this Notice and accompanying attachments (if any), and, to the best of its knowledge and belief, this Notice and any attachments hereto are true, correct, and complete.

[[IF APPLICABLE:] The Filer is represented by [name of law firm], [address], [phone], (Attn: [name of attorney]).]

Respectfully submitted,

[Name of Filer]

By: _____

Name: _____

Address: _____

Telephone: _____

Facsimile: _____

Email: _____

Date: _____

Exhibit 6

Notice of Status as a 50-percent Shareholder

**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)

NOTICE OF STATUS AS A 50-PERCENT SHAREHOLDER

PLEASE TAKE NOTICE that, pursuant to the *Order (I) Establishing Notification Procedures and Approving Restrictions on Certain Transfers of, or Worthlessness Deductions With Respect To, Stock of the Debtors, and (II) Granting Related Relief* [Docket No. ___] (the “**Final Order**”) entered by the United States Bankruptcy Court for the District of Delaware (the “**Bankruptcy Court**”) on May [●]. 2024, [Name of Filer] (the “**Filer**”) [is/has become] a 50-percent Shareholder² with respect to ProSomnus Stock.

PLEASE TAKE FURTHER NOTICE that, as of _____, the Filer Beneficially Owns ___ shares of the ProSomnus Stock. The following table sets forth the date(s) on which [Name of Filer] acquired or otherwise became the Beneficial Owner of such ProSomnus Stock:

<i>Class of Shares</i>	<i>Number of Shares</i>	<i>Date Acquired</i>

(Attach additional page(s) if necessary)

PLEASE TAKE FURTHER NOTICE that the taxpayer identification number of the Filer is _____.

PLEASE TAKE FURTHER NOTICE that, under penalty of perjury, the Filer hereby declares that he or she has examined this Notice and accompanying attachments (if any), and, to the best of its knowledge and belief, this Notice and any attachments hereto are true, correct, and complete.

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 defined herein have the meanings ascribed to such terms in Exhibit 2 to the Final Order.

[[IF APPLICABLE:] The Filer is represented by [name of law firm], [address], [phone], (Attn: [name of attorney]).]

Respectfully submitted,

[Name of Filer]

By: _____

Name: _____

Address: _____

Telephone: _____

Facsimile: _____

Email: _____

Date: _____

Exhibit 7

Notice of Intent to Take a Worthless Stock Deduction

**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)

NOTICE OF INTENT TO TAKE A WORTHLESS STOCK DEDUCTION

PLEASE TAKE NOTICE that, pursuant to the *Order (I) Establishing Notification Procedures and Approving Restrictions on Certain Transfers of, or Worthlessness Deductions With Respect To, Stock of the Debtors, and (II) Granting Related Relief* [Docket No. ___] (the “**Final Order**”) entered by the United States Bankruptcy Court for the District of Delaware (the “**Bankruptcy Court**”) on May [●]. 2024, [Name of Filer] (the “**Filer**”) hereby provides notice of its intention to take a Worthless Stock Deduction² (the “**Proposed Worthless Claim**”) with respect to shares of ProSomnus Stock.

PLEASE TAKE FURTHER NOTICE that, if applicable, on _____, the Filer filed a Notice of Status as a 50-percent Shareholder with the Bankruptcy Court.

PLEASE TAKE FURTHER NOTICE that Filer currently Beneficially Owns _____ shares of ProSomnus Stock.

PLEASE TAKE FURTHER NOTICE that, pursuant to the Proposed Worthless Claim, the Filer proposes to claim a Worthless Stock Deduction with respect to _____ shares of ProSomnus Common Stock and _____ shares of ProSomnus Preferred Stock. If the Proposed Worthless Claim is permitted to occur, the Filer will be treated as having acquired ___ shares of ProSomnus Stock on the first day of the Filer’s next taxable year and shall be treated as never having owned such ProSomnus Stock during any prior year for the purposes of testing whether an Ownership Change has occurred.

PLEASE TAKE FURTHER NOTICE that the taxpayer identification number of the Filer is _____.

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 defined herein have the meaning ascribed to such terms in Exhibit 2 to the Final Order.

PLEASE TAKE FURTHER NOTICE that, under penalty of perjury, the Filer hereby declares that he or she has examined this Notice and accompanying attachments (if any), and, to the best of its knowledge and belief, this Notice and any attachments hereto are true, correct, and complete.

[[IF APPLICABLE:] The Filer is represented by [name of law firm], [address], [phone], (Attn: [name of attorney]).]

Respectfully submitted,

[Name of Filer]

By: _____

Name: _____

Address: _____

Telephone: _____

Facsimile: _____

Email: _____

Date: _____

Exhibit 8

Publication Notice

ATTENTION DIRECT AND INDIRECT HOLDERS OF, AND PROSPECTIVE HOLDERS OF, STOCK ISSUED BY PROSOMNUS, INC.

Upon the motion (the “**Motion**”) of ProSomnus, Inc. (“**ProSomnus**”), and its affiliated debtors (collectively, the “**Debtors**”), on _____, 2024, the United States Bankruptcy Court for the District of Delaware (the “**Bankruptcy Court**”), having jurisdiction over the chapter 11 cases of the Debtors, captioned as *In re ProSomnus, Inc., et al.*, Case No. 24-10972 (JTD) (the “**Chapter 11 Cases**”), entered a final order establishing procedures (the “**Procedures**”) with respect to direct and indirect transfers of, and claiming a worthless stock deduction with respect to, common and preferred stock of ProSomnus (“**ProSomnus Stock**”), including options to acquire ProSomnus Stock.

In certain circumstances, the Procedures restrict (i) transactions involving, and require notices of the holdings of and proposed transactions by, any person that is or, as a result of such a transaction, would become a Substantial Stockholder of the ProSomnus Stock and (ii) claims by any 50-percent Shareholder of a worthless stock deduction under section 165(g) of the Internal Revenue Code with respect to the ProSomnus Stock (a “**Worthless Stock Deduction**”). For purposes of the Procedures, a “**Substantial Stockholder**” is any Person that Beneficially Owns, at any time on or after the Petition Date, (a) 782,911 shares of ProSomnus Common Stock (representing 4.5 percent of all issued and outstanding shares of ProSomnus Common Stock or (b) ProSomnus Preferred Stock equal to or greater than 4.5 percent of all issued and outstanding shares of ProSomnus Stock by value, and a “**50-Percent Shareholder**” is any person or entity that at any time during the three-year period ending on the Petition Date has had Beneficial Ownership (as defined in the Procedures) of at least 50 percent or more of ProSomnus Stock or is otherwise considered a 50-percent Shareholder of ProSomnus, Inc., within the meaning of section 382(g)(4)(D) of Title 26 of the United States Code. *Any prohibited acquisition or other transfer of, or claim of a Worthless Stock Deduction with respect to, ProSomnus Stock (including options to acquire ProSomnus Stock) will be null and void ab initio and may lead to contempt, compensatory damages, punitive damages, or sanctions being imposed by the Bankruptcy Court.*

The Procedures, as approved on an interim basis and as requested on a final basis, are available on the website of Kurtzman Carson Consultants LLC, the Debtors’ Court-approved claims agent, located at www.kccllc.net/prosomnus and on the docket of the Chapter 11 Cases, Docket No. 24-10972 (JTD), which can be accessed via PACER at <https://www.pacer.gov>.

A direct or indirect holder of, or prospective holder of, ProSomnus Stock that may be or become a Substantial Stockholder or a 50-percent Shareholder should consult the Procedures.