

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

In re:

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

Debtors.

Chapter 11

Case No. 24-10972 (JTD)

(Jointly Administered)

**Re: Docket No. 12**

**CERTIFICATION OF COUNSEL REGARDING INTERIM ORDER  
(I) AUTHORIZING THE DEBTORS TO (A) OBTAIN SENIOR SUBORDINATE  
SECURED POSTPETITION FINANCING AND (B) UTILIZE CASH COLLATERAL,  
(II) GRANTING LIENS AND SUPERPRIORITY ADMINISTRATIVE EXPENSE  
CLAIMS, (III) MODIFYING THE AUTOMATIC STAY, (IV) SCHEDULING A FINAL  
HEARING, AND (V) GRANTING RELATED RELIEF**

I, Shanti M. Katona, Esq., of Polsinelli PC, proposed counsel to the above-captioned debtors and debtors in possession (collectively, the “**Debtors**”), hereby certify and state as follows:

1. On May 7, 2024, the Debtors filed the *Motion of Debtors for Interim and Final Orders (I) Authorizing the Debtors to (A) Obtain Senior Subordinate Secured Postpetition Financing and (B) Utilize Cash Collateral, (II) Granting Liens and Superpriority Administrative Expense Claims, (III) Modifying the Automatic Stay, (IV) Scheduling a Final Hearing, and (V) Granting Related Relief* [Docket No. 12] (the “**Motion**”)<sup>2</sup> with the United States Bankruptcy Court for the District of Delaware (the “**Court**”).

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

<sup>2</sup> Capitalized terms used but not defined herein shall have the meaning ascribed to such terms in the Motion.



2. On May 8, 2024, the Debtors filed declarations in support of the Motion by Edward T. Gavin, CTP, NCPM [Docket No. 13] and Jason L. Orchard [Docket No. 36] with the Court.

3. On May 9, 2024, a hearing (the “**Hearing**”) was held before the Court to consider interim approval of the Motion, among other matters. Prior to the Hearing, the Debtors received comments to the proposed form of interim order approving the Motion (the “**Proposed Interim Order**”) from the Office of the United States Trustee (“**US Trustee**”) and the Prepetition Agents. At the Hearing, the Court approved the relief requested in the Proposed Interim Order, with certain modifications thereto.

4. Attached hereto as Exhibit A is the revised proposed form of interim order approving the Motion (the “**Revised Interim Order**”) which incorporates the Court’s ruling at the Hearing and comments received from the US Trustee and the Prepetition Agents. For the convenience of the Court and other interested parties, a blackline comparison of the Revised Order against the proposed form of interim order filed with the Motion is attached hereto as Exhibit B.

5. Accordingly, the Debtors respectfully request that the Court enter the Revised Interim Order, attached hereto as Exhibit A, at the earliest convenience of the Court.

*[Remainder of Page Intentionally Left Blank]*

Dated: May 9, 2024  
Wilmington, Delaware

POLSINELLI PC

*/s/ Shanti M. Katona*

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*Proposed Counsel to the Debtors and  
Debtors in Possession*

**EXHIBIT A**

**(Revised Proposed Interim Order)**

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

In re:

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

Debtors.

Chapter 11

Case No. 24-10972 (JTD)

(Jointly Administered)

**Re: Docket Nos. 12, 13**

**INTERIM ORDER (I) AUTHORIZING THE DEBTORS TO (A) OBTAIN SENIOR SUBORDINATE SECURED POSTPETITION FINANCING AND (B) UTILIZE CASH COLLATERAL, (II) GRANTING LIENS AND SUPERPRIORITY ADMINISTRATIVE EXPENSE CLAIMS, (III) MODIFYING THE AUTOMATIC STAY, (IV) SCHEDULING A FINAL HEARING, AND (V) GRANTING RELATED RELIEF**

Upon the motion (the “**Motion**”)<sup>2</sup> of ProSomnus, Inc. and its affiliated debtors-in-possession (collectively, the “**Debtors**”) in the above-captioned chapter 11 cases (collectively, the “**Chapter 11 Cases**”), seeking entry of an interim order (this “**Interim Order**”) and a Final Order (as defined herein) pursuant to sections 105, 361, 362, 363, 364(c)(3), 364(d), 364(e), 503, 506, 507 and 552 of title 11 of the United States Code, 11 U.S.C. §§ 101- 1532 (as amended, the “**Bankruptcy Code**”), Rules 2002, 4001, 6004, 9013, and 9014 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and Rules 2002-1, 4001-2, and 9013-1 of the Local Rules (the “**Local Bankruptcy Rules**”) for the United States Bankruptcy Court for the District of Delaware (the “**Court**” or the “**Bankruptcy Court**”), *inter alia*:

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

<sup>2</sup> Capitalized terms used but not defined herein shall have the meaning ascribed to such terms in the Motion.

(i) authorizing, upon entry of this Interim Order, the Debtors to obtain senior subordinate secured postpetition financing on a subordinate superpriority basis (the “**DIP Facility**”) consisting of (1) a new money multi-draw term loan facility consisting of \$7 million (the “**New Money Amount**”), of which \$2.5 million shall be available upon entry of this Interim Order (the “**Interim New Money Amount**”) and \$4.5 million shall be available upon entry of the Final Order, and (2) upon entry of the Interim Order, a roll-in of obligations under (i) the Bridge Notes (as defined below) in the aggregate principal amount of \$4 million plus all accrued interest through the date of entry of the Interim Order, and (ii) the Senior Notes in the aggregate principal amount of \$2 million (subclauses (i) and (ii) collectively, the “**Roll-In Amount**”), pursuant to the terms and conditions of this Interim Order and that certain *Senior Subordinate Superpriority Secured Debtor-in-Possession Credit Agreement* attached to the Motion as Exhibit B (as the same may be amended, restated, supplemented, or otherwise modified from time to time, the “**DIP Credit Agreement**”), by and among (a) ProSomnus, Inc., as borrower (“**Borrower**”), (b) ProSomnus Holdings, Inc. (“**Holdings**”) and ProSomnus Sleep Technologies, Inc. (“**Sleep Technologies**”) as guarantors (the “**Guarantors**” and together with Borrower, the “**DIP Loan Parties**”), (c) Wilmington Savings Fund Society, FSB, as administrative agent (in such capacity, the “**DIP Administrative Agent**”) and as collateral agent (in such capacity, the “**DIP Collateral Agent**,” and together with the DIP Administrative Agent, collectively, the “**DIP Agent**”), and (d) the lenders party thereto from time to time (collectively, the “**DIP Lender**,” and together with the DIP Agent, the “**DIP Secured Parties**”);

(ii) approving the terms of, and authorizing the DIP Loan Parties to execute and deliver, the DIP Credit Agreement and any other agreements, instruments and documents related thereto (collectively, the “**DIP Documents**”), which shall be on terms consistent with the DIP Credit

Agreement and otherwise in form and substance acceptable to the Required DIP Lenders<sup>3</sup> and the DIP Agent (or as otherwise provided in the DIP Documents), and to perform such other acts as may be necessary or desirable in connection with the DIP Documents;

(iii) authorizing the DIP Loan Parties to execute and deliver the DIP Documents, to incur all obligations owing thereunder to the DIP Secured Parties (collectively, the “**DIP Obligations**”), grant the DIP Agent and DIP Lenders allowed superpriority administrative expense claim status in each of the Chapter 11 Cases and any Successor Cases (as defined below), subject to the relative priorities set forth herein, and to otherwise perform all of their respective obligations under the DIP Documents;

(iv) granting to the DIP Collateral Agent (on behalf of the DIP Secured Parties) automatically perfected security interests in and liens on all of the DIP Collateral (as defined below), including, without limitation, all property constituting “cash collateral,” as defined in section 363(a) of the Bankruptcy Code (including, without limitation, all cash and cash equivalents and other amounts from time to time on deposit or maintained by the Debtors in any deposit or securities account or accounts as of the Petition Date), of the Prepetition Secured Parties (as defined below), and any cash or cash equivalents received by the Debtors after the Petition Date as proceeds of the Prepetition Collateral (“**Cash Collateral**”), which liens shall be subject only to the Prepetition Senior Liens, the Prepetition Permitted Liens, and the Carve-Out;

(v) authorizing the Debtors to use proceeds of the DIP Facility, Cash Collateral, and Prepetition Collateral to: (a) pay the principal, interest, fees, expenses, and other amounts payable

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<sup>3</sup> As used herein, the term “**Required DIP Lenders**” has the same meaning as “Required Lenders” in the Credit Agreement.

and reimbursable under the DIP Documents and this Interim Order as such become earned, due, and payable, including, without limitation, facility fees and the fees and disbursements of the DIP Lender Professionals (as defined below); and (b) provide financing for working capital and other general corporate purposes during the Chapter 11 Cases, including for bankruptcy-related costs and expenses, all to the extent provided in, and in accordance with, the Approved Budget (including the Permitted Variances thereto), this Interim Order, the DIP Documents, and the RSA;

(vi) authorizing the Debtors to use the Prepetition Collateral, including all property constituting Cash Collateral on an interim basis in accordance with the Approved Budget, this Interim Order, and the DIP Documents;

(vii) vacating and modifying the automatic stay imposed by section 362 of the Bankruptcy Code to the extent set forth herein solely to the extent necessary to permit the Debtors, their affiliates, and the Prepetition Secured Parties to implement and effectuate the terms and provisions of the DIP Documents and this Interim Order;

(viii) authorizing payment of the DIP Fees (as defined below);

(ix) waiving any applicable stay (including under Bankruptcy Rule 6004) with respect to the effectiveness and enforceability of this Interim Order and providing for the immediate effectiveness of this Interim Order; and

(x) scheduling a final hearing (the “**Final Hearing**”) to consider the relief requested in the Motion on a final basis and approving the form of notice with respect to the Final Hearing.

The Court having considered the Motion, the exhibits attached thereto, the First Day Declaration, the *Declaration of Edward T. Gavin, CTP, NCPM in Support of the Debtors’ Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Obtain Senior Subordinate Secured Postpetition Financing and (B) Utilize Cash Collateral, (II) Granting Liens and*



*Superpriority Administrative Expense Claims, (III) Modifying the Automatic Stay, (IV) Scheduling A Final Hearing, and (V) Granting Related Relief* (the “**DIP Declaration**”), the DIP Credit Agreement and other DIP Documents, and the evidence submitted and arguments made at the interim hearing held on May 9, 2024 (the “**Interim Hearing**”); and notice of the Interim Hearing having been given in accordance with Bankruptcy Rules 2002, 4001(b), (c) and (d), and all applicable Local Bankruptcy Rules; and the Interim Hearing having been held and concluded; and all objections, if any, to the interim relief requested in the Motion having been withdrawn, resolved or overruled by the Court; and it appearing that approval of the interim relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtors and their estates (the “**Estates**”) pending the Final Hearing, and otherwise is fair and reasonable and in the best interests of the Debtors, their Estates and all parties in interest, and is essential for the continued operation of the Debtors’ business and the preservation of the value of the Debtors’ assets; and after due deliberation and consideration, and good and sufficient cause appearing therefor;

**BASED UPON THE RECORD ESTABLISHED AT THE INTERIM HEARING, THE COURT MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW:<sup>4</sup>**

A. **Disposition.** The relief requested in the Motion is granted on an interim basis in accordance with the terms of this Interim Order. Any objections to the Motion with respect to the entry of this Interim Order that have not been withdrawn, waived or settled, and all reservations of rights included therein, are hereby denied and overruled on the merits. This Interim Order shall

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<sup>4</sup> The findings and conclusions set forth herein constitute the Bankruptcy Court’s findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent that any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

become effective immediately upon its entry and any applicable stay (including under Bankruptcy Rule 6004) is waived to permit such effectiveness.

B. **Petition Date.** On May 7, 2024 (the “**Petition Date**”), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code with the Bankruptcy Court.

C. **Debtors in Possession.** The Debtors have continued in the management and operation of their businesses and properties as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. As of the date hereof, no trustee or examiner has been appointed.

D. **Jurisdiction and Venue.** This Court has jurisdiction over the Chapter 11 Cases, the Motion, and the parties and property affected hereby pursuant to 28 U.S.C. §§ 157 and 1334. Venue for the Chapter 11 Cases and proceedings on the Motion is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

E. **Committee.** As of the date hereof, the United States Trustee for the District of Delaware (the “**U.S. Trustee**”) has not appointed an official committee of unsecured creditors in these Cases pursuant to section 1102 of the Bankruptcy Code (the “**Committee**”).

F. **Notice.** Notice of the Motion and the Interim Hearing have been provided in accordance with the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules, and no other or further notice of the DIP Motion with respect to the relief requested at the Interim Hearing or entry of this Interim Order shall be required.

G. **Debtors’ Stipulations.** Subject to the limitations in Paragraph 24, and after consultation with their attorneys and financial advisors, the Debtors irrevocably admit, stipulate, acknowledge, and agree as follows (Paragraphs G(i) through (xi) below are referred to, collectively, as the “**Debtors’ Stipulations**”):

(i) *Prepetition Senior Secured Convertible Notes*. Each of the Debtors is party to that certain *Indenture*, dated as of December 6, 2022, as amended by that certain *First Supplemental Indenture*, dated as of June 29, 2023, as further amended by that certain *Second Supplemental Indenture*, dated as of September 20, 2023 (as further amended, amended and restated, supplemented or otherwise modified from time to time prior to the Petition Date, the “**2022 Senior Convertible Notes Indenture**” and together with all other agreements, guarantees, pledge, collateral and security documents, control agreements, instruments, certificates, notes, and other documents executed, recorded and/or delivered in connection therewith, including, without limitation, the Intercreditor Agreement (as defined below), collectively, the “**Senior Convertible Notes Documents**”) among (i) ProSomnus, Inc., as the issuer, (ii) ProSomnus Holdings and ProSomnus Sleep Technologies, as guarantors party thereto (the “**Senior Convertible Notes Guarantors**,” and together with ProSomnus, Inc., the “**Senior Convertible Notes Loan Parties**”), and (iii) Wilmington Trust, National Association, as trustee and collateral agent (in such capacity, the “**Senior Convertible Notes Agent**”). Pursuant to the 2022 Senior Convertible Notes Indenture, the issuer issued Senior Secured Convertible Notes due December 6, 2025 (the “**Senior Convertible Notes**” and the holders thereof, the “**Senior Convertible Noteholders**” which together with the Senior Convertible Notes Agent comprise the “**Senior Convertible Notes Secured Parties**”) in the aggregate principal amount of up to \$21,959,807.00, comprised of: (i) an initial offering of Senior Convertible Notes on December 6, 2022 in the aggregate principal amount of \$16,959,807.00 (the “**Senior Convertible Initial Notes**”), and (ii) a subsequent offering of Senior Convertible Notes on April 17, 2024 in the aggregate principal amount of up to \$5,000,000.00 (the “**Bridge Notes**”). Pursuant to the Senior Convertible Notes Documents, each of the Senior Convertible Notes Guarantors, among other things, unconditionally and irrevocably

guaranteed, on a joint and several basis, the payment in full in cash of all of the Senior Convertible Notes Obligations (as defined below).

(ii) *Prepetition Senior Secured Convertible Note Obligations.* As of the Petition Date, the Senior Convertible Notes Loan Parties were justly and lawfully indebted and liable, without defense, challenge, objection, claim, counterclaim, or offset of any kind, to the Senior Convertible Notes Secured Parties, on a joint and several basis, in the aggregate amount of not less than \$17,567,846.00 on account of principal amounts outstanding under the Senior Convertible Notes, plus all other amounts that may be due or owing under the Senior Convertible Note Documents (collectively, the “**Senior Convertible Notes Obligations**”).

(iii) *Prepetition Senior Secured Exchange Notes.* Each of the Debtors is party to that certain *Indenture*, dated as of October 11, 2023 (as further amended, amended and restated, supplemented or otherwise modified from time to time prior to the Petition Date, the “**2023 Senior Exchange Notes Indenture**” and together with all other agreements, guarantees, pledge, collateral and security documents, control agreements, instruments, certificates, notes, and other documents executed, recorded and/or delivered in connection therewith, collectively, the “**Senior Exchange Notes Documents**” and together with the Senior Convertible Notes Documents, the “**Senior Notes Documents**”) among (i) ProSomnus, Inc., as the issuer, (ii) ProSomnus Holdings and ProSomnus Sleep Technologies, as guarantors party thereto (the “**Senior Exchange Notes Guarantors**,” and together with ProSomnus, Inc., the “**Senior Exchange Notes Loan Parties**” which together with the Senior Convertible Notes Loan Parties comprise the “**Senior Loan Parties**”), and (iii) Wilmington Trust, National Association, as trustee and collateral agent (in such capacity, the “**Senior Exchange Notes Agent**” and together with the Senior Convertible Notes Agent, the “**Prepetition Senior Agents**”). Pursuant to the 2023 Senior Exchange Notes Indenture, the issuer

issued Senior Secured Convertible Exchange Notes due December 6, 2025 (the “**Senior Exchange Notes**” and the holders thereof, the “**Senior Exchange Noteholders**,” and together with the Senior Exchange Notes Agent, the “**Senior Exchange Notes Secured Parties**,” which collectively with the Senior Convertible Note Secured Parties comprise the “**Senior Secured Parties**”) in the aggregate principal amount of \$3,391,961.00 in exchange for \$3,391,961.00 principal amount of Senior Convertible Notes.

(iv) *Prepetition Senior Secured Exchange Notes Obligations.* As of the Petition Date, the Senior Exchange Notes Loan Parties were justly and lawfully indebted and liable, without defense, challenge, objection, claim, counterclaim, or offset of any kind, to the Senior Exchange Notes Secured Parties, on a joint and several basis, in the aggregate amount of not less than \$3,391,961.00 on account of principal amounts outstanding under the Senior Exchange Notes, plus all other amounts that may be due or owing under the Senior Exchange Note Documents (collectively, the “**Senior Exchange Notes Obligations**” and together with the Senior Convertible Notes Obligations, the “**Senior Notes Obligations**”).

(v) *Prepetition Subordinate Secured Convertible Notes.* Each of the Debtors is party to that certain *Indenture*, dated as of December 6, 2022, as amended by that certain *First Supplemental Indenture*, dated as of June 29, 2023, as further amended by that certain *Second Supplemental Indenture*, dated as of September 20, 2023 (as further amended, amended and restated, supplemented or otherwise modified from time to time prior to the Petition Date, the “**2022 Subordinate Convertible Notes Indenture**” and together with all other agreements, guarantees, pledge, collateral and security documents, control agreements, instruments, certificates, notes, and other documents executed, recorded and/or delivered in connection therewith, collectively, the “**Subordinate Convertible Notes Documents**”) among (i)

ProSomnus, Inc., as the issuer, (ii) ProSomnus Holdings and ProSomnus Sleep Technologies, as guarantors party thereto (the “**Subordinated Convertible Notes Guarantors**,” and together with ProSomnus, Inc., the “**Subordinate Convertible Notes Loan Parties**”), and (iii) Wilmington Trust, National Association, as trustee and collateral agent (in such capacity, the “**Subordinate Convertible Notes Agent**”). Pursuant to the 2022 Subordinate Convertible Notes Indenture, the issuer issued Subordinated Secured Convertible Notes due April 6, 2026 (the “**Subordinated Convertible Notes**” and the holders thereof, the “**Subordinated Convertible Noteholders**”) in the aggregate principal amount of \$17,453,141.00. Pursuant to the Subordinated Convertible Notes Documents, each of the Subordinated Convertible Notes Guarantors, among other things, unconditionally and irrevocably guaranteed, on a joint and several basis, the payment in full in cash of all of the Subordinated Convertible Notes Obligations (as defined below).

(vi) *Prepetition Subordinate Secured Convertible Notes Obligations.* As of the Petition Date, the Subordinated Convertible Notes Loan Parties were justly and lawfully indebted and liable, without defense, challenge, objection, claim, counterclaim, or offset of any kind, to the Subordinated Convertible Notes Secured Parties, on a joint and several basis, in the aggregate amount of not less than \$5,315,252.00 on account of principal amounts outstanding under the Subordinated Convertible Notes, plus all other amounts that may be due or owing under the Subordinated Convertible Note Documents (collectively, the “**Subordinate Convertible Notes Obligations**”).

(vii) *Prepetition Subordinate Secured Convertible Exchange Notes.* Each of the Debtors is party to that certain *Indenture*, dated as of October 11, 2023 (as further amended, amended and restated, supplemented or otherwise modified from time to time prior to the Petition Date, the “**2023 Subordinated Exchange Notes Indenture**” and together with all other agreements,

guarantees, pledge, collateral and security documents, control agreements, instruments, certificates, notes, and other documents executed, recorded and/or delivered in connection therewith, collectively, the “**Subordinated Exchange Notes Documents**” and together with the Senior Convertible Notes Documents, Senior Exchange Notes Documents, and Subordinated Convertible Notes Documents, the “**Prepetition Notes Documents**”) among (i) ProSomnus, Inc., as the issuer, (ii) ProSomnus Holdings and ProSomnus Sleep Technologies, as guarantors party thereto (the “**Subordinated Exchange Notes Guarantors**,” and together with ProSomnus, Inc., the “**Subordinated Exchange Notes Loan Parties**” which collectively with the Subordinated Convertible Notes Loan Parties and the Senior Loan Parties comprise the “**Prepetition Loan Parties**”), and (iii) Wilmington Trust, National Association, as trustee and collateral agent (in such capacity, the “**Subordinated Exchange Notes Agent**” and together with the Subordinated Convertible Notes Agent, the “**Prepetition Subordinated Agents**” which collectively with the Prepetition Senior Agents comprise the “**Prepetition Agents**”). Pursuant to the 2023 Subordinated Exchange Notes Indenture, the issuer issued Subordinated Convertible Exchange Notes due April 6, 2026 (the “**Subordinated Exchange Notes**” and the holders thereof, the “**Subordinated Exchange Noteholders**,” and collectively with the Subordinated Convertible Noteholders, Subordinated Notes Agent, and Subordinated Exchange Notes Agent, the “**Subordinated Secured Parties**” which together with the Senior Secured Parties comprise the “**Prepetition Secured Parties**”) in the aggregate principal amount of \$12,137,889.00 in exchange for \$12,079,169.00<sup>5</sup> principal amount of Subordinated Convertible Notes. Pursuant to the Subordinated Exchange Notes Documents, each of the Subordinated Exchange Notes Guarantors, among other things,

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<sup>5</sup> The \$12,137,889.00 of Subordinated Exchange Notes exchanged includes \$58,720.00 of accrued and unpaid paid-in-kind interest on the Subordinated Convertible Notes exchanged.

unconditionally and irrevocably guaranteed, on a joint and several basis, the payment in full in cash of all of the Subordinated Exchange Notes Obligations (as defined below).

(viii) *Prepetition Subordinate Secured Convertible Exchange Notes Obligations.* As of the Petition Date, the Subordinated Exchange Note Loan Parties were justly and lawfully indebted and liable, without defense, challenge, objection, claim, counterclaim, or offset of any kind, to the Subordinated Exchange Notes Secured Parties, on a joint and several basis, in the aggregate amount of not less than \$12,137,889.00 on account of principal amounts outstanding under the Subordinated Exchange Notes, plus all other amounts that may be due or owing under the Subordinated Exchange Notes Documents (collectively, the “**Subordinate Exchange Notes Obligations**” and together with the Subordinate Convertible Notes Obligations, the “**Subordinate Note Obligations**” and together with the Senior Notes Obligations, the “**Prepetition Obligations**”).

(ix) *Prepetition Liens and Prepetition Collateral.* As more fully set forth in the Prepetition Notes Documents, prior to the Petition Date, the Prepetition Loan Parties, as applicable, granted: (1) with respect to the Senior Convertible Notes Obligations, to the Senior Convertible Notes Agent, for the benefit of the Senior Convertible Notes Secured Parties, a first-priority security interest in and continuing lien (the “**Senior Convertible Notes Lien**”) on substantially all of the Debtors’ assets (the “**Senior Convertible Note Collateral**”); (2) with respect to the Senior Exchange Notes Obligations, to the Senior Exchange Notes Agent, for the benefit of the Senior Exchange Notes Secured Parties, a first-priority security interest in and continuing lien (the “**Senior Exchange Notes Lien**” and together with the Senior Convertible Notes Lien, the “**Prepetition Senior Liens**”) on substantially all of the Debtors’ assets (the “**Senior Exchange Notes Collateral**” and together with the Senior Convertible Notes Collateral, the “**Prepetition**



**Senior Collateral**”) that is *pari passu* with the Senior Convertible Notes Lien; (3) with respect to the Subordinated Convertible Notes Obligations, to the Subordinated Convertible Notes Agent, for the benefit of the Subordinated Convertible Notes Secured Parties, a second-priority security interest in and continuing lien (the “**Subordinated Convertible Notes Lien**”) on substantially all of the Debtors’ assets (the “**Subordinated Convertible Notes Collateral**”) that is junior to the Prepetition Senior Liens; and (4) with respect to the Subordinated Exchange Notes Obligations, to the Subordinated Exchange Notes Agent, for the benefit of the Subordinated Exchange Notes Secured Parties, a second-priority security interest in and continuing lien (the “**Subordinated Exchange Note Lien**” and together with the Subordinated Convertible Notes Lien, the “**Prepetition Subordinated Liens**” which together with the Prepetition Senior Liens comprise the “**Prepetition Liens**”) on substantially all of the Debtors’ assets (the “**Subordinated Exchange Note Collateral**” and together with the Subordinated Convertible Note Collateral, the “**Prepetition Subordinated Collateral**” which together with the Prepetition Senior Collateral comprises the “**Prepetition Collateral**”) that is *pari passu* with the Subordinated Convertible Notes Lien.

(x) *Intercreditor Agreement.* The Senior Secured Parties and the Subordinated Secured Parties, in their respective capacities as such (collectively, the “**Prepetition Secured Parties**”) with respect to collateral and proceeds thereof are governed by that certain *Amended and Restated Intercreditor Agreement* dated as of October 11, 2023 (as amended, restated, supplemented, or otherwise modified in accordance with its terms, the “**Intercreditor Agreement**”).

(xi) *Validity, Extent, Perfection and Priority of Prepetition Liens and Prepetition Obligations.* The Debtors irrevocably acknowledge, stipulate, and agree that as of the Petition Date: (a) the Prepetition Liens on the Prepetition Collateral were valid, binding, enforceable, non-

avoidable, and properly perfected and were granted to, or for the benefit of, the Prepetition Secured Parties for fair consideration and reasonably equivalent value; (b) the Prepetition Senior Liens were senior in priority over any and all other liens on the Prepetition Senior Collateral; (c) the Prepetition Subordinated Liens were senior in priority over any and all other liens on the Prepetition Subordinated Collateral except the Prepetition Senior Liens on the Prepetition Collateral, subject in each case to the Intercreditor Agreement, other than certain other liens that are permitted to be senior to the Prepetition Senior Liens under the Senior Notes Documents (solely to the extent such liens were valid, non-avoidable, and senior in priority to the Prepetition Senior Liens as of the Petition Date and properly perfected as of the Petition Date or perfected subsequent to the Petition Date as permitted by section 546(b) of the Bankruptcy Code (collectively the “**Prepetition Permitted Liens**”));<sup>6</sup> (c) the Prepetition Obligations constitute legal, valid, binding, and non-avoidable obligations of the Prepetition Loan Parties enforceable in accordance with the terms of the applicable Prepetition Notes Documents; (d) no offsets, recoupments, challenges, objections, defenses, causes of action, claims, or counterclaims of any kind or nature to any of the Prepetition Liens or Prepetition Obligations exist, and no portion of the Prepetition Liens or Prepetition Obligations is subject to any challenge or defense including avoidance, disallowance, disgorgement, recharacterization, or subordination (equitable or otherwise) pursuant to the Bankruptcy Code or applicable non-bankruptcy law; (e) the Debtors and their estates have no claims, objections, challenges, causes of action, and/or choses in action, including avoidance claims under Chapter 5 of the Bankruptcy Code or applicable state law equivalents or actions for

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<sup>6</sup> For the avoidance of doubt, Prepetition Permitted Liens include all validly perfected liens created pursuant to equipment leases.

recovery or disgorgement, against any of the Prepetition Secured Parties or any of their respective affiliates, agents, attorneys, advisors, professionals, officers, directors, and employees arising out of, based upon or related to the Prepetition Obligations; (f) the Debtors have irrevocably waived, discharged, and released any right to challenge any of the Prepetition Obligations, the priority of the Debtors' obligations thereunder, and the validity, extent, and priority of the Prepetition Liens securing the Prepetition Obligations; and (g) the Prepetition Obligations constitute allowed, secured claims within the meaning of sections 502 and 506 of the Bankruptcy Code.

H. **Prepetition Permitted Liens.** Nothing herein shall constitute a finding or ruling by this Court that any alleged Prepetition Permitted Lien is valid, senior, enforceable, prior, perfected, or non-avoidable.<sup>7</sup> For the avoidance of doubt, the DIP Liens created through this Interim Order shall not prime the Prepetition Permitted Liens.

I. **Intercreditor Agreement; Agreement Among Lenders.** Pursuant to section 510 of the Bankruptcy Code, the Intercreditor Agreement, any other applicable intercreditor or subordination provisions contained in any of the Prepetition Notes Documents or otherwise (i) shall remain in full force and effect, (ii) shall continue to govern the relative priorities, rights, and remedies of the Prepetition Secured Parties, and (iii) shall not be deemed to be amended, altered, or modified by the terms of this Interim Order.

J. **Cash Collateral.** All of the Debtors' cash and cash equivalents constituting Prepetition Collateral, including cash on deposit in any account or accounts as of the Petition Date, cash obtained at any time thereafter (including proceeds of the DIP Facility), securities or other

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<sup>7</sup> For the avoidance of doubt, as used in this Interim Order, no reference to the Prepetition Permitted Liens shall refer to or include the Prepetition Liens.

property, wherever located, whether subject to control agreements or otherwise, whether as original collateral or proceeds, products, rent or profits of other Prepetition Collateral, constitutes Cash Collateral of the Prepetition Secured Parties.

K. **Findings Regarding Postpetition Financing.**

(i) *Request for Postpetition Financing.* The Debtors seek authority to (a) enter into the DIP Facility on the terms described herein and in the DIP Documents, and (b) use Cash Collateral on the terms described herein, in the DIP Credit Agreement, and the other DIP Documents to administer their Chapter 11 Cases and fund their operations in accordance with the Approved Budget (as defined herein). At the Final Hearing, the Debtors will seek final approval of the proposed postpetition financing and use of Cash Collateral arrangements pursuant to a proposed final order (the “**Final Order**” and together with the Interim Order, the “**DIP Orders**”), which shall be in form and substance reasonably acceptable to the Required DIP Lenders and the DIP Agent. Notice of the Final Hearing and Final Order will be provided in accordance with this Interim Order.

(ii) *Need for Postpetition Financing and Use of Cash Collateral.* The Debtors have an immediate and critical need to obtain the financing pursuant to the DIP Facility and to continue to use the Prepetition Collateral (including Cash Collateral) in order to, among other things, (i) pay the fees, costs, and expenses incurred in connection with the Chapter 11 Cases, (ii) fund any obligations benefitting from the Carve-Out (as defined below), (iii) continue their operations, (iv) maintain business relationships with customers, vendors and suppliers, (v) make payroll, and (vi) satisfy other working capital and operational needs and costs of the restructuring, all to the extent provided in, and in accordance with, the Approved Budget, this Interim Order and the DIP Documents. The incurrence of new debt under the DIP Documents and use of Cash Collateral is

necessary and vital to the preservation and maintenance of the value of the Debtors' Estates. Immediate and irreparable harm will be caused to the Debtors and their Estates if immediate financing is not obtained and permission to use Cash Collateral is not granted. The terms of the proposed financing are fair and reasonable, reflect the Debtors' exercise of prudent business judgment, and are supported by reasonably equivalent value and fair consideration.

(iii) *No Credit Available on More Favorable Terms.* The DIP Facility is the best source of debtor-in-possession financing available to the Debtors. Given their current financial condition, financing arrangements, capital structure, and the circumstances of these Chapter 11 Cases, the Debtors are unable to obtain financing from sources other than the DIP Lenders on terms more favorable than the DIP Facility. To the extent necessary, the Prepetition Secured Parties have consented to the Debtors incurring debtor-in-possession financing and, as applicable, the use of their Cash Collateral, only on the terms and subject to the conditions set forth in the DIP Documents and this Interim Order. The Debtors are unable to obtain unsecured credit allowable under section 503(b)(1) of the Bankruptcy Code as an administrative expense. The Debtors have also been unable to obtain: (a) unsecured credit having priority over that of administrative expenses of the kind specified in sections 503(b), 507(a) and 507(b) of the Bankruptcy Code; or (b) credit secured solely by a lien on property of the Debtors and their Estates that is not otherwise subject to a lien. Financing on terms more favorable than those set forth in the DIP Documents is not available without granting: (1) perfected security interests in and liens on (each as provided herein) the DIP Collateral with the priorities set forth herein (including subject to the Carve-Out); (2) superpriority claims to the extent set forth in this Interim Order; and (3) the other protections set forth in this Interim Order.

(iv) *Use of Cash Collateral and Proceeds of the DIP Facility.* As a condition to the Debtors' entry into the DIP Documents, the extension of credit under the DIP Facility and the authorization to use Prepetition Collateral, including Cash Collateral, the Debtors and Prepetition Secured Parties have agreed that Cash Collateral and the proceeds of the DIP Facility shall be used solely in accordance with the terms and conditions of this Interim Order and the DIP Documents and in accordance with the Approved Budget. The DIP Lenders are relying upon the Debtors' agreement to comply with the terms set forth in the DIP Documents, the Approved Budget, and this Interim Order in determining to enter into the postpetition financing arrangements provided for therein and as set forth herein.

(v) *Consent of Prepetition Secured Parties.* The holders of Prepetition Liens on the DIP Collateral, including the Senior Secured Parties and the Subordinate Secured Parties, have consented, or are deemed to consent, to the DIP Facility as set forth in the DIP Documents.

(vi) *Application of Proceeds of Collateral.* As a condition to entry into the DIP Documents, the extension of credit under the DIP Facility and authorization to use Cash Collateral, the Debtors have agreed that, as of and commencing on the date of entry of this Interim Order, the Debtors shall apply the proceeds of DIP Collateral in accordance with this Interim Order and the DIP Documents.

(vii) *Roll-In.*

1. Upon entry of the Interim Order, but subject to paragraph 24 of this Interim Order, the obligations arising under the Bridge Notes (including accrued interest) and the Senior Notes in an aggregate amount of up to the Roll-In Amount shall be converted on a cashless dollar-for-dollar basis into principal obligations constituting DIP Obligations, without any further action by the

Debtors or any other party (collectively, the “**DIP Roll-In Obligations**”).<sup>8</sup> The Roll-In terms provide that the obligations under the Bridge Notes and the Senior Notes subject to the Roll-In will convert to a lower priority upon rolling into the DIP Facility. All of the holders of the Bridge Notes and the Senior Notes have consented to the “roll-in” structure and the Roll-In is an exercise of the Debtors’ sound business judgment.

2. The conversion (or “roll-in”) shall be authorized as compensation for, in consideration for, and solely on account of, the agreement of the Sponsoring Noteholders as DIP Lenders to fund amounts, and provide other consideration to the Debtors under the DIP Facility, and not as payments under, adequate protection for, or otherwise on account of, any Prepetition Obligations. Notwithstanding any other provision of this Interim Order, the Final Order, or the DIP Documents, all rights of the Prepetition Secured Parties shall be fully preserved. The Prepetition Secured Parties would not otherwise consent to the use of their Cash Collateral, and the DIP Lenders would not be willing to provide the DIP Facility or extend credit to the Debtors thereunder, without the inclusion of the DIP Roll-In Obligations in the DIP Obligations upon entry of the Interim Order. Moreover, the roll-in of the DIP Roll-In Obligations into DIP Obligations will enable the Debtors to obtain urgently needed financing to administer these Chapter 11 Cases to fund their operations.

(viii) *Business Judgment and Good Faith.* Based on the Motion and the DIP Declaration, and the record presented to the Court at the Interim Hearing, (i) the terms of the financing embodied in the DIP Facility, including the Roll-In, fees, expenses and other charges paid and to be paid thereunder or in connection therewith, and (ii) the terms on which the Debtors may

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<sup>8</sup> The DIP Obligations other than the DIP Roll-In Obligations shall constitute the “**New Money DIP Obligations.**”

continue to use the Prepetition Collateral (including Cash Collateral), in each case pursuant to this Interim Order and the DIP Documents, are fair and reasonable, reflect the Debtors' exercise of prudent business judgment consistent with their fiduciary duties, constitute reasonably equivalent value and fair consideration, and represent the best financing (and terms) available under the circumstances. Any credit extended, loans made, and other financial accommodations extended to the Debtors by the DIP Lenders, including, without limitation, pursuant to this Interim Order, have been extended, issued, or made, as the case may be, in "good faith" within the meaning of section 364(e) of the Bankruptcy Code and in express reliance upon the protections offered by section 364(e) of the Bankruptcy Code, and the DIP Facility, the DIP Liens, and the DIP Superpriority Claims (as defined below) shall be entitled to the full protection of section 364(e) of the Bankruptcy Code in the event that this Interim Order or any provision hereof is vacated, reversed, or modified on appeal or otherwise.

L. **Sections 506(c) and 552(b)**. In light of (i) the Prepetition Secured Parties' agreement that their liens shall be subject to the Carve-Out and (ii) the payment of certain prepetition unsecured claims and administrative expenses as set forth in the Approved Budget (as defined below) and first day motions in accordance with and subject to the terms and conditions of this Interim Order, (a) the Prepetition Secured Parties are each entitled to a waiver of any "equities of the case" exception under section 552(b) of the Bankruptcy Code, and (b) the DIP Secured Parties and the Prepetition Secured Parties, as applicable, are each entitled to a waiver of the provisions of section 506(c) of the Bankruptcy Code, in each case effective upon entry of a Final Order providing for such relief.

M. **Immediate Entry**. Sufficient cause exists for immediate entry of this Interim Order pursuant to Bankruptcy Rule 4001(b)(2). Absent entry of this Interim Order, the Debtors'



businesses, properties and estates would be immediately and irreparably harmed. This Court concludes that entry of this Interim Order is in the best interests of the Debtors' respective estates and stakeholders.

N. **Interim Hearing.** Notice of the Interim Hearing and the relief requested in the Motion has been provided by the Debtors, whether by facsimile, electronic mail, overnight courier or hand delivery, to certain parties-in-interest, including: (i) the United States Trustee for the District of Delaware; (ii) the holders of the twenty (20) largest unsecured claims on a consolidated basis against the Debtors; (iii) counsel to the Sponsoring Noteholders and the proposed DIP Lenders; (iv) counsel to the Prepetition Agents; (v) counsel to the proposed DIP Agent; (vi) the Internal Revenue Service; (vii) the United States Securities and Exchange Commission; (viii) the Office of the United States Attorney for the District of Delaware; (ix) any banking or financial institution that holds Debtors' accounts; (x) all other known parties asserting a lien on the Debtors' assets; and (xi) all parties entitled to notice pursuant to Bankruptcy Rule 2002. The Debtors have made reasonable efforts to afford the best notice possible under the circumstances.

Based upon the foregoing findings and conclusions, the Motion, the First Day Declaration, the DIP Declaration, and the record before the Court with respect to the Motion, and after due consideration and good and sufficient cause appearing therefor,

**IT IS HEREBY ORDERED THAT:**

1. **DIP Financing Approved.** On an interim basis, entry into the DIP Facility is authorized and approved, and the use of Cash Collateral is authorized, in each case, subject to the terms and conditions set forth in this Interim Order and the DIP Documents; *provided, however*, that all Case Milestones approved hereby requiring the Debtors to obtain the approval of this Court are approved subject to the Court's availability for such hearing. All objections to this Interim Order, to the extent not withdrawn, waived, settled or resolved, and all reservations of rights

included therein, are hereby denied and overruled on the merits. This Interim Order shall become effective immediately upon its entry. The Debtors are hereby authorized and directed to pay, in accordance with this Interim Order, any principal, interest, fees, expenses, and other amounts described in the DIP Documents and this Interim Order, as such amounts become due and owing, without need to obtain further Court approval (except as otherwise provided herein or in the DIP Documents) subject to, and in accordance with, the terms hereof and thereof. Upon execution and delivery, the DIP Documents shall represent legal, valid, and binding obligations of the Debtors, enforceable against each of the Debtors and their Estates in accordance with their terms. Each officer, sole member, or managing member, as applicable, of a Debtor acting individually is hereby authorized to execute and deliver each of the DIP Documents, and such execution and delivery is conclusive evidence of the respective authority of such officer, sole member, or managing member, as applicable, to act in the name of and on behalf of the Debtors.

### **DIP Facility Authorization**

2. Authorization of the DIP Financing. The Debtors are expressly and immediately authorized and empowered to execute and deliver the DIP Documents, and to incur and to perform the DIP Obligations in accordance with, and subject to, the terms of this Interim Order and the DIP Documents, and to execute, deliver and perform under all instruments, certificates, agreements, and documents which may be required or necessary for the performance by the Debtors under the DIP Documents and the creation and perfection of the DIP Liens described in and provided for by this Interim Order and the DIP Documents.

3. Authorization to Borrow. To prevent immediate and irreparable harm to the Debtors' Estates, and to enable the Debtors to continue to operate their business, and to preserve and maximize the value of their Estates, subject to the terms and conditions set forth in the DIP

Documents and this Interim Order, the Debtors are hereby authorized to borrow the Interim New Money Amount and incur the DIP Roll-In Obligations, subject to any limitations on, or conditions to, borrowing under the DIP Documents, which borrowings shall be used solely for purposes permitted under the DIP Documents, including, without limitation, to provide working capital for the Debtors and for other general corporate purposes and to pay interest, fees, costs, charges and expenses, in each case, in accordance with this Interim Order, the DIP Documents, and the Approved Budget.

4. DIP Obligations. Upon execution and delivery of the DIP Documents, the DIP Documents and this Interim Order shall constitute and evidence the validity and binding effect of the Debtors' DIP Obligations. Upon execution and delivery of the DIP Documents and entry of this Interim Order, the DIP Obligations and this Interim Order shall be enforceable against the Debtors and their Estates, and any successors thereto, including without limitation, any trustee appointed in the Chapter 11 Cases, or in any case under Chapter 7 of the Bankruptcy Code upon the conversion of any of the Chapter 11 Cases, or in any other proceedings superseding or related to any of the foregoing (collectively, the "**Successor Cases**"). Upon execution and delivery of the DIP Documents and entry of this Interim Order, the DIP Obligations will include all loans (including the DIP Roll-In Obligations), guarantees, reimbursement obligations, and any other indebtedness or obligations, contingent or absolute, which may now or from time to time be owing by any of the Debtors to the DIP Secured Parties, including, without limitation, all principal, accrued interest, costs, charges, fees, expenses and other amounts under the DIP Documents. Notwithstanding anything to the contrary contained in the DIP Credit Agreement, and so long as the RSA remains in effect, the DIP Obligations shall be payable in New ProSomnus Common Equity pursuant to the terms of the RSA, *provided, however*, that all fees and expenses of the

Lender Professionals (defined below) shall be paid in cash pursuant to the terms of this Interim Order.

5. DIP Collateral. Subject and subordinate to the Carve-Out and the Prepetition Senior Liens, to secure the DIP Obligations, effective immediately upon entry of this Interim Order and execution and delivery of the DIP Documents, pursuant to sections 361, 362, 364(c)(2), and 364(c)(3) of the Bankruptcy Code, the DIP Collateral Agent (for the benefit of the DIP Secured Parties), is hereby granted, continuing, valid, binding, enforceable, non-avoidable, and automatically and properly perfected postpetition security interests in and liens on (collectively, the “**DIP Liens**”) all the DIP Collateral,<sup>9</sup> excluding any causes of action that could be brought pursuant to sections 544, 545, 547, 548 of the Bankruptcy Code, or any applicable state fraudulent transfer statutes (the “**Avoidance Actions**”); *provided, however*, that, subject to entry of the Final Order, the proceeds of (and property received in respect of) such Avoidance Actions (“**Avoidance Proceeds**”) is included in the DIP Collateral on which the DIP Lenders has a DIP Lien.

6. DIP Liens. Upon execution and delivery of the DIP Documents, the DIP Liens securing the DIP Obligations are valid, automatically perfected, non-avoidable, senior in priority, and superior to any security, mortgage, collateral interest, lien, including the Prepetition Subordinate Liens, or claim, to any of the DIP Collateral, except that the DIP Liens shall be subject to the priorities set forth on Exhibit 2 hereto.

7. DIP Superpriority Claims. Subject and subordinate to the Carve-Out, upon entry of this Interim Order, the DIP Secured Parties are hereby granted, pursuant to section 364(c)(1) of the Bankruptcy Code, allowed superpriority administrative expense claims in each of the Chapter

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<sup>9</sup> “**DIP Collateral**” has the meaning set forth in the Credit Agreement.

11 Cases and any Successor Cases (collectively, the “**DIP Superpriority Claims**”) for all DIP Obligations, except with respect to the Carve-Out, with priority over any and all administrative expense claims and any claims of any kind against the Debtors or their Estates in any of the Chapter 11 Cases and any Successor Cases, at any time existing or arising, of any kind or nature whatsoever, including, without limitation, all administrative expenses of the kind specified in sections 503(b) and 507(b) of the Bankruptcy Code, or specified in or ordered pursuant to sections 105, 326, 327, 328, 330, 331, 361, 362, 363, 364, 365, 503, 506, 507(a), 507(b), 546, 552, 726, 1113 or 1114 of the Bankruptcy Code.

8. DIP Roll-In Obligations. Upon entry of this Interim Order, obligations under the Bridge Notes (including accrued interest) and the Senior Notes in an aggregate amount equal to the Roll-In Amount shall be converted into DIP Roll-In Obligations, without any further action by the Debtors or any other party.

9. No Obligation to Extend Credit. The DIP Secured Parties shall have no obligation to make any loan or advance under the DIP Documents unless all of the conditions precedent under the DIP Documents and this Interim Order have been satisfied in full or waived by the Required DIP Lenders, as applicable, in accordance with the terms of the DIP Documents.

10. Use of Proceeds of DIP Facility. From and after the Petition Date, the Debtors shall use DIP Facility proceeds only for the purposes specifically set forth in this Interim Order and the DIP Documents, and only in compliance with the Approved Budget (subject to the Permitted Variances).

11. No Monitoring Obligation for DIP Facility. The DIP Secured Parties shall have no obligation or responsibility to monitor the Debtors’ use of the DIP Facility, and the DIP Secured Parties may rely upon the Debtors’ representation that the use of the DIP Facility at any time is in

accordance with the requirements of this Interim Order and the DIP Documents. Notwithstanding the foregoing, the Debtors shall provide the DIP Secured Parties with reporting and other information as reasonably requested to ensure compliance with this Interim Order and the DIP Documents

**Authorization to Use Cash Collateral**

12. Authorization to Use Cash Collateral. Subject to the terms and conditions of this Interim Order and the DIP Documents, and in accordance with the Approved Budget (subject to the Permitted Variances), the Debtors are authorized to use Cash Collateral. Nothing in this Interim Order shall authorize the disposition of any DIP Collateral outside the ordinary course of business, except as permitted by this Interim Order and (including the Carve-Out) the DIP Documents, and in accordance with the Approved Budget (subject to the Permitted Variances), as applicable. From and after the Petition Date, the Debtors shall use Cash Collateral only for the purposes specifically set forth in this Interim Order, and only in compliance with the Approved Budget.

13. No Monitoring Obligation for Use of Cash Collateral. The Prepetition Secured Parties shall have no obligation or responsibility to monitor the Debtors' use of the Cash Collateral, and the Prepetition Secured Parties may rely upon the Debtors' representation that the use of the Cash Collateral at any time is in accordance with the requirements of this Interim Order. Notwithstanding the foregoing, the Debtors shall provide the DIP Secured Parties with reporting and other information as reasonably requested to ensure compliance with this Interim Order and the DIP Documents

14. Consent of Prepetition Secured Parties. The Prepetition Secured Parties have consented to or are deemed to consent to (a) the provisions of this Interim Order including the Debtors' entry into the DIP Facility on an interim basis, (b) the granting of the DIP Liens and DIP

Superpriority Claims on the terms and subject to the conditions set forth herein, (c) the Approved Budget, and (d) the DIP Roll-In Obligations.

**Provisions Common to DIP Financing and Use of Cash Collateral**

15. The Debtors, the DIP Agent and Required DIP Lenders (or as otherwise provided in the DIP Documents) may enter into one or more amendments, waivers, consents, or other modifications to and under the DIP Documents in accordance with the terms of the applicable DIP Documents and in such form as agreed to the Debtors and the Required DIP Lenders (or as otherwise provided in the DIP Documents) on the following conditions: (a) with respect to amendments, waivers, consents, or other modifications that do not constitute a Material Change (as defined below) to the terms of such DIP Document, the Debtors shall provide the United States Trustee and counsel to the Committee (if any) a copy of such amendment, waiver, consent, or other modification not later than three (3) days before the effective date of the same; and (b) with respect to amendments, waivers, consents, or other modifications to and under the DIP Documents that (i) shorten the maturity of the DIP Facility, (ii) increases the principal amount of, the rate of interest on, priority of, or the fees payable in connection with the DIP Facility, or (iii) changes any event of default, adds any covenants, or amends the covenants to be materially more restrictive (each, a “**Material Change**”), the Debtors shall file with the Court and serve in accordance with Local Rule 2002-1(b) a motion requesting Court approval of the amendment or modification, which motion may be considered on an expedited basis, subject to the availability of the Court.

16. Approved Budget.

(i) Attached to this Interim Order as Exhibit 1 is a 13-week budget approved by the DIP Agent, Required DIP Lenders, and Sponsoring Noteholders, which sets forth, among other things, projected cash receipts and cash disbursements (the “**Approved Budget**”). Commencing

at 5:00 p.m. (Eastern Time) on each Thursday beginning with the week of May 20, 2024, and continuing at 5:00 p.m. (Eastern Time) on each Thursday thereafter, the Debtors shall deliver to the DIP Agent, Required DIP Lenders, and Sponsoring Noteholders an updated budget, and if such updated budget is in form and substance satisfactory to the DIP Agent, Required DIP Lenders, and Sponsoring Noteholders, it shall become the “Approved Budget” for purposes of the DIP Documents and the DIP Order, and to the extent such updated budget is not satisfactory to the DIP Agent, the Required DIP Lenders and the Sponsoring Noteholders, the previous Approved Budget shall continue to be the “Approved Budget.” Any amendments, supplements or modifications to the Approved Budget shall be subject to the prior written approval of the DIP Agent (acting at the direction of the Required DIP Lenders). Upon the prior written consent of the DIP Agent to a proposed updated budget, or an amendment, supplement or modification to the Approved Budget, such proposed updated budget, amendment, supplement or modification shall be effective. Until any such updated budget, amendment, supplement or modification has been affirmatively approved (as provided in the immediately preceding sentence), the Debtors shall be subject to and be governed by the terms of the Approved Budget then in effect. Any such Approved Budgets shall be served on the U.S. Trustee and counsel to the Committee (if any).

(ii) The Approved Budget is approved on an interim basis. The proceeds of the DIP Facility and Cash Collateral under this Interim Order shall be used by the Debtors solely in accordance with the Approved Budget (subject to Permitted Variances), this Interim Order and the DIP Documents.

(iii) Other than with respect to the Carve-Out, and except as provided in Paragraph 25, none of the DIP Secured Parties’ and the Prepetition Secured Parties’ consent (deemed or otherwise) to, or acknowledgement of, the Approved Budget shall be construed as consent to use



the proceeds of the DIP Facility or Cash Collateral beyond the Maturity Date of the DIP Facility or the occurrence of the Termination Date, regardless of whether the aggregate funds shown on the Approved Budget have been expended.

17. Budget Reporting. The Debtors shall at all times comply with the Approved Budget and the permitted variances thereto set forth in the DIP Credit Agreement. By no later than 5:00 p.m. (Eastern Time) on May 20, 2024 (which shall not be a Testing Date, as defined below), and no later than 5:00 p.m. (Eastern Time) on each Monday thereafter (each, a “**Testing Date**”), the Debtors shall deliver to the DIP Agent and the Sponsoring Noteholders a variance report for the applicable Testing Period (as defined below) in form and detail required by the Credit Agreement (a “**Variance Report**”)<sup>10</sup> showing comparisons of (a) aggregate actual cash receipts since the Petition Date and for the Testing Period then most recently ended on a line by line basis, compared to the aggregate projected cash receipts of the Debtors since the Petition Date on a line by line basis and for such Testing Period<sup>11</sup> as set forth in the Approved Budget (any such difference on an aggregate basis, a “**Receipts Variance**”) and (b) actual cash disbursements on a line by line basis of the Debtors since the Petition Date and for such Testing Period compared to the projected cumulative cash disbursements on a line by line basis since the Petition Date and for such Testing Period as set forth in the Approved Budget (any such difference on an aggregate basis, a “**Disbursements Variance**” and together with the Receipts Variance, a “**Variance**”). Each Variance Report shall indicate whether there are any adverse variances that exceed the Permitted

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<sup>10</sup> The Variance Report may be made available by the DIP Agent to the DIP Lenders

<sup>11</sup> “**Testing Period**” shall mean the full calendar week (on a Monday to Sunday basis) ending on the last Sunday before the Testing Date. The first Testing Period shall cover a cumulative rolling three-week period.

Variations (as defined below) and shall provide a written explanation for such variations. “**Permitted Variations**” shall mean, as of the applicable Testing Date, (i) any Receipts Variance, or (ii) a Disbursements Variance of up to 20% on a cumulative rolling four-week basis, provided that to the extent the actual cash receipts in any such period exceed the amounts for such period in the applicable Budget, or if the cash disbursements in any such period are less than the amounts for such period in the applicable Budget, then the Budget Variance for such receipts or disbursements, as applicable, for the next succeeding period shall be increased by an amount equal to such difference (and shall continue to roll over into successive periods to the extent such additional budgeted capacity is unused by the Debtors).

18. Modification of Automatic Stay. The automatic stay imposed under section 362 of the Bankruptcy Code is hereby modified and vacated to the extent necessary to permit the Debtors, the DIP Secured Parties, and the Prepetition Secured Parties to accomplish the transactions contemplated by this Interim Order, including to: (a) permit the Debtors to grant the DIP Liens and DIP Superpriority Claims; (b) permit the Debtors to perform such acts as the DIP Agent may reasonably request to assure the perfection and priority of the liens granted herein; (c) permit the Debtors to incur all liabilities and obligations to the DIP Secured Parties under this Interim Order and the DIP Documents; and (d) authorize the Debtors to pay, and the DIP Secured Parties to retain and apply, payments made in accordance with the terms of this Interim Order.

19. Perfection of DIP Liens. This Interim Order shall be sufficient and conclusive evidence of the creation, validity, perfection, and priority of all liens granted herein, including the DIP Liens, without the necessity of filing or recording any financing statement, mortgage, deed of trust, notice, or other instrument or document which may otherwise be required under the law or regulation of any jurisdiction or the taking of any other action (including, for the avoidance of

doubt, entering into any deposit account control agreement) to validate or perfect (in accordance with applicable nonbankruptcy law) the DIP Liens or to entitle the DIP Secured Parties and the Prepetition Secured Parties to the priorities granted herein. Notwithstanding the foregoing, the DIP Agent is authorized, but not required, to file, as each deems necessary or advisable, such financing statements, security agreements, mortgages, notices of liens and other similar documents to perfect in accordance with applicable non-bankruptcy law or to otherwise evidence the DIP Liens, and all such financing statements, mortgages, notices and other documents shall be deemed to have been filed or recorded as of the Petition Date; *provided, however*, that no such filing or recordation shall be necessary or required in order to create or perfect the DIP Liens. The Debtors are authorized to execute and deliver promptly upon demand to the DIP Agent all such financing statements, mortgages, notices and other documents as each may reasonably request. The DIP Agent may, in its discretion, file a photocopy of this Interim Order as a financing statement with any filing or recording office or with any registry of deeds or similar office in addition to or in lieu of such financing statements, notices of lien or similar instruments.

20. Carve-Out. The DIP Liens and the Prepetition Liens are subordinate to the following: (i) quarterly fees required to be paid pursuant to 28 U.S.C. § 1930(a)(6) (the “**U.S. Trustee Fees**”), together with interest payable thereon pursuant to applicable law and any fees payable to the Clerk of the Bankruptcy Court; (ii) the allowed, accrued, and unpaid reasonable fees and expenses of professionals employed by the Debtors and any Committee pursuant to Sections 327 and 1103 of the Bankruptcy Code (the “**Case Professionals**”) capped at the amounts set forth in the Approved Budget. The Debtors shall establish an escrow into which will be deposited, on a monthly basis, sufficient funds from the Carve-Out to pay the Debtors’ unpaid and/or not-yet-allowed professional fees incurred in these cases consistent with the Approved Budget. Payment

from the escrow shall be made upon Court approval of the Case Professionals' fees and any hold back of professional fees instituted in these cases.

21. Preservation of Rights Granted Under this Interim Order.

a. Other than the Carve-Out and other claims and liens expressly granted or permitted by this Interim Order and the DIP Documents, no claim or lien having a priority superior to or *pari passu* with those granted by this Interim Order to the DIP Secured Parties shall be permitted while any of the DIP Obligations remain outstanding. Except as expressly provided in or permitted under this Interim Order, the DIP Liens shall not be subject or subordinate to or made *pari passu* with: (i) any lien or security interest that is avoided and preserved for the benefit of the Debtors' estates under section 551 of the Bankruptcy Code; (ii) any other lien or security interest whether under section 361, 363, or 364 of the Bankruptcy Code or otherwise; (iii) any liens arising after the Petition Date, including, without limitation, any liens or security interests granted in favor of any federal, state, municipal, or other domestic or foreign governmental unit (including any regulatory body), commission, board, or court for any liability of the DIP Secured Parties; or (iv) any intercompany or affiliate liens or security interests of the DIP Secured Parties.

b. Upon an Event of Default, interest, including, where applicable, default interest, shall accrue and be paid as and to the extent set forth in the DIP Credit Agreement. Notwithstanding any order that may be entered dismissing any of the Chapter 11 Cases under section 1112 of the Bankruptcy Code or converting any of these Chapter 11 Cases to cases under chapter 7 of the Bankruptcy Code: (i) the DIP Liens and the DIP Superpriority Claims shall continue in full force and effect and shall maintain their priorities as provided in this Interim Order until all DIP Obligations shall have been indefeasibly paid in full (and such DIP Liens and DIP Superpriority Claims shall, notwithstanding such dismissal, remain binding on all parties in

interest); (ii) the other rights granted in this Interim Order shall not be affected; and (iii) to the greatest extent allowed by applicable law, this Court shall retain jurisdiction, notwithstanding such dismissal, for purposes of enforcing the claims, liens, and security interests referred to in this paragraph and otherwise in this Interim Order.

c. If any or all of the provisions of this Interim Order are hereafter reversed or modified on appeal, the DIP Agent, the DIP Lenders and the Prepetition Secured Parties shall be entitled to all of the rights, remedies, protections, and benefits granted under section 364(e) of the Bankruptcy Code.

d. Except as expressly provided in this Interim Order or in the DIP Documents, the DIP Liens, the DIP Superpriority Claims and all other rights and remedies of the DIP Agent and the DIP Lenders granted by the provisions of this Interim Order and the DIP Documents shall survive, and shall not be modified, impaired, or discharged by: (i) the entry of an order converting any of the Chapter 11 Cases to a case under chapter 7, dismissing any of the Chapter 11 Cases, terminating the joint administration of the Chapter 11 Cases or by any other act or omission of the Debtors; (ii) the entry of an order approving the sale of any DIP Collateral pursuant to section 363(b) of the Bankruptcy Code (except to the extent permitted by the DIP Documents); or (iii) the entry of an order confirming a chapter 11 plan in any of the Chapter 11 Cases, and pursuant to section 1141(d)(4) of the Bankruptcy Code, the DIP Secured Parties have waived any discharge as to any remaining DIP Obligations. The terms and provisions of this Interim Order and the DIP Documents shall continue in these Chapter 11 Cases, in any Successor Cases if these Chapter 11 Cases cease to be jointly administered and in any superseding chapter 7 cases under the Bankruptcy Code, and the DIP Liens and the DIP Superpriority Claims and all other rights and remedies of the DIP Agent and the DIP Lenders granted by the provisions of this Interim Order and the DIP

Documents shall continue in full force and effect until the DIP Obligations are indefeasibly paid in full, as set forth herein and in the DIP Documents and the RSA.

22. Approval of DIP Fees. In consideration for the DIP Financing and the consent to the use of Cash Collateral in accordance with the terms of this Interim Order, the DIP Secured Parties shall be paid all prepetition and postpetition fees, expenses, and other amounts payable under the DIP Documents as such become due, including, without limitation, exit fees and the reasonable and documented fees and expenses of the DIP Secured Parties in connection with the DIP Facility, without regard to whether or not the transactions contemplated hereby are consummated (all such fees, together, the “**DIP Fees**”), subject to the review procedures set forth in paragraph 23. The DIP Fees shall be fully earned and payable in accordance with the terms of the DIP Documents, without the need for any further order of this Court. The DIP Fees shall be part of the DIP Obligations. Any and all DIP Fees paid prior to the Petition Date by any of the Debtors to the DIP Secured Parties in connection with or with respect to the DIP Facility in each case is hereby approved in full. Notwithstanding anything to the contrary in this Interim Order or the DIP Documents, (i) consideration of the Exit Fee is reserved until the Final Hearing, and (ii) so long as the RSA remains in effect, the Exit Fee, if approved at the Final Hearing, shall be payable in New ProSomnus Common Equity pursuant to the terms of the RSA.

23. Lender and Lender Professionals’ Fees. Professionals for (i) the Prepetition Agents,<sup>12</sup> consisting of (a) Pryor Cashman LLP (as counsel to the Prepetition Agents) and (b) Cross & Simon, LLC (as local counsel to the Prepetition Agents) and (ii) the DIP Secured Parties

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<sup>12</sup> For the avoidance of doubt, this is inclusive of the reasonable and documented fees and expenses of the Prepetition Agents.

and Ad Hoc Group<sup>13</sup> ((i) and (ii) collectively, the “**Lender Professionals**”), consisting of: (a) Kilpatrick Townsend & Stockton LLP (as counsel to the DIP Lenders and the Ad Hoc Group), (b) Morris James LLP (as local counsel to the DIP Lenders and the Ad Hoc Group), (c) Seward & Kissel LLP (as counsel to the DIP Agent), and (d) one local counsel to the DIP Agent), shall not be required to comply with the U.S. Trustee fee guidelines or file applications or motions with, or obtain approval of, this Court for compensation and reimbursement of fees and expenses. The Lender Professionals shall submit copies of summary invoices to the Debtors, the U.S. Trustee and counsel for any Committee (collectively, the “**Fee Review Parties**”). The summary invoices shall provide the specific individuals providing the services, the total number of hours billed for each individual, the hourly fee for such individual, and a summary description of services provided by the applicable Lender Professional (which shall not be required to contain time entries and which may be redacted or modified to the extent necessary to delete any information subject to the attorney-client privilege or any other confidential information), and shall be subject to all applicable privilege and work product doctrines. Any objections raised by any Fee Review Party with respect to such invoices must be in writing and state with particularity the grounds therefor and must be submitted to the applicable professional within ten (10) calendar days after receipt of an invoice (the “**Review Period**”), and any failure by any such party to deliver a fee objection within such ten (10) day period shall constitute a waiver of any right of such party to object to the applicable invoice. If no written objection is received by 12:00 prevailing Eastern Time, on the last date of the Review Period, the Debtors shall pay such invoices within five (5) days thereafter.

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<sup>13</sup> “Ad Hoc Group” means the ad hoc group of secured noteholders who collectively hold approximately 94.95% in principal amount of the Prepetition Obligations.

If an objection to a professional's invoice is received within the Review Period, the Debtors shall promptly pay the undisputed amount of the invoice without the necessity of filing formal fee applications, regardless of whether the invoiced amount arose or was incurred before or after the Petition Date, and the Court shall have jurisdiction to determine the disputed portion of such invoice if the parties are unable to resolve the dispute consensually. Notwithstanding any provision herein to the contrary, any objection to, and any hearing on an objection to, payment of any fees, costs, and expenses set forth in a professional fee invoice in respect of the Lender Professionals shall be limited to the reasonableness of the particular items or categories of the fees, costs, and expenses that are the subject of such objection. The Debtors shall timely pay in accordance with the terms and conditions of this Interim Order (a) the undisputed fees, costs, and expenses reflected on any invoice to which a Fee Objection has been timely filed and (b) all fees, costs and expenses on any invoice to which no Fee Objection has been timely filed.

24. Effect of Stipulations on Third Parties. The Debtors' Stipulations contained in Paragraph G hereof shall be binding in all circumstances upon the Debtors upon entry of this Interim Order and upon their Estates upon entry of the Final Order. The Debtors' Stipulations shall be binding upon each other party-in-interest, including the Committee (if any), except to the extent a party in interest (including any chapter 11 trustee or if the Chapter 11 Cases are converted to cases under chapter 7 prior to the expiration of the Challenge Period (as defined below) the chapter 7 trustee in such Successor Case) obtains any necessary standing and properly files a contested matter, adversary proceeding, or other matter, by the earlier of (i) seventy-five (75) calendar days following entry of the Interim Order; and (ii) the deadline to object to the Debtors' chapter 11 plan (the "**Challenge Period**," and the date that is the next calendar day after the termination of the Challenge Period in the event that either (i) no Challenge (as defined below) is properly raised



during the Challenge Period or (ii) with respect only to those parties who properly file a contested matter, adversary proceeding, or other matter challenging or otherwise objecting to the admissions, stipulations, findings, or releases included in the Debtors' Stipulations (each, a "**Challenge**"), such Challenge is fully and finally adjudicated, (i) and (ii) shall be referred to as the "**Challenge Period Termination Date**") and second, obtains a final, non-appealable order in favor of such party-in-interest sustaining any such Challenge in any such timely-filed contested matter, adversary proceeding, or other action (any such Challenge timely brought for which such a final and non-appealable order is so obtained, a "**Successful Challenge**"). Notwithstanding the previous sentence, the filing of a motion seeking standing to file a Challenge before the Challenge Period Termination Date, which attaches a proposed Challenge in accordance with the Bankruptcy Rules, shall extend the Challenge Period solely with respect to (1) the party that filed the standing motion and (2) the Challenges asserted by that party until two business days after the Court approves the standing motion, or such other time period ordered by the Court in approving the standing motion. Except as otherwise expressly provided herein, from and after the Challenge Period Termination Date and for all purposes in these Chapter 11 Cases and any Successor Cases (and after the dismissal of these Chapter 11 Cases or any Successor Cases), and without further notice, motion, or application to, order of, or hearing before this Court, (i) any and all payments made to or for the benefit of the Prepetition Secured Parties (whether made prior to, on, or after the Petition Date) shall not be subject to counterclaim, set-off, subordination, recharacterization, defense, disallowance, recovery or avoidance by any party in interest, (ii) any and all such Challenges by any party-in-interest shall be deemed to be forever released, waived, and barred, (iii) all of the Prepetition Obligations shall be deemed to be fully allowed claims within the meaning of section 506 of the Bankruptcy Code, and (iv) the Debtors' Stipulations shall be binding on all parties in

interest in these Chapter 11 Cases or any Successor Cases, including any Committee or chapter 11 or chapter 7 trustee. Notwithstanding the foregoing, to the extent any Challenge is timely asserted, the Debtors' Stipulations and the other provisions in clauses (i) through (iv) in the immediately preceding sentence shall nonetheless remain binding and preclusive on any Committee and on any other party-in-interest from and after the Challenge Period Termination Date, except to the extent that such Debtors' Stipulations or the other provisions in clauses (i) through (iv) of the immediately preceding sentence were expressly challenged in such Challenge and such Challenge becomes a Successful Challenge; provided, that all other Stipulations (other than those subject to a Successful Challenge) shall remain binding on any Committee or other party-in-interest. Notwithstanding any provision to the contrary herein, nothing in this Interim Order shall be construed to grant standing on any party in interest, including the Committee, to bring any Challenge on behalf of the Debtors' Estates. The failure of any party-in-interest, including any Committee, to obtain an order of this Court prior to the Challenge Period Termination Date granting standing to bring any Challenge on behalf of the Debtors' estates shall not be a defense to failing to commence a Challenge prior to the Challenge Period Termination Date as required under this Paragraph 24 or to require or permit an extension of the Challenge Period Termination Date. No portion of the Carve-Out, any Cash Collateral, any other DIP Collateral, or any proceeds of the DIP Facility, including any disbursements set forth in the Approved Budget or obligations benefitting from the Carve-Out, shall be used for the payment of Allowed Professional Fees, disbursements, costs or expenses incurred by any person, including, without limitation, any Committee, in connection with challenging the DIP Secured Parties' or the Prepetition Secured Parties' liens or claims, preventing, hindering or delaying any of the DIP Secured Parties' or the Prepetition Secured Parties' enforcement or realization upon any of the DIP Collateral, or initiating or prosecuting any

claim or action against any DIP Secured Party or Prepetition Secured Party; provided that, notwithstanding the foregoing, proceeds from the DIP Facility and/or Cash Collateral not to exceed \$20,000 in the aggregate may be used on account of Allowed Professional Fees incurred by Committee Professionals (if any) in connection with the investigation of avoidance actions or any other claims or causes of action (but not the prosecution of such actions) on account of the Prepetition Obligations.

25. Remedies.

a. Upon (i) the occurrence and during the continuance of an Event of Default (as such term is defined in the DIP Credit Agreement); (ii) the Debtors' failure to comply with the terms of this Interim Order (including, without limitation, its failure to comply with the Approved Budget, subject to any Permitted Variances); or (iii) the Debtors' failure to comply with any of the Case Milestones set forth in the RSA and DIP Credit Agreement, unless waived in writing by the Sponsoring Noteholders, and following written notice thereof by the DIP Agent to the Debtors, the Committee (if any), and the U.S. Trustee (which notice may be given by e-mail) (the "**Default Notice**"), then the DIP Lenders shall be fully authorized, in their sole discretion, to (i) cease making advances to the Debtor under the DIP Facility, (ii) terminate the Debtors' use Cash Collateral and/or the DIP Facility; (iii) declare all DIP Obligations to be immediately due and payable; and/or (iv) invoke the right to charge interest at the default rate (an additional 2.00% per annum); provided, however, that during the Remedy Notice Period (defined below), the Debtors may use Cash Collateral solely to meet payroll obligations and pay expenses to avoid immediate and irreparable harm to the Debtors' estates, in each case accordance with the Approved Budget, and as agreed by the Required DIP Lenders in their reasonable discretion.

b. Further, upon transmission of a Default Notice or upon the Termination Date, the Debtors, the Committee (if any) and the U.S. Trustee shall have five (5) calendar days from the date of transmission of the Default Notice (the “**Remedy Notice Period**”) to obtain an order of the Court on notice to the DIP Agent (a) enjoining or restraining the DIP Lenders/DIP Agent from taking action or exercising rights and remedies based upon the Event of Default specified in the Default Notice; (b) challenging whether an Event of Default in the Default Notice has occurred or is continuing without cure; or (c) seeking such other relief that the Court may hear (a “**Restraint on Remedies**”). Immediately upon expiration of the Remedy Notice Period, unless a Restraint on Remedies has timely been obtained from the Court, or with respect to and upon the Termination Date, the DIP Agent (on behalf of the DIP Lenders) shall have the right, free of the restrictions of section 362 or under any other section of the Bankruptcy Code or Bankruptcy Rules (including, without limitation, Bankruptcy Rule 4001(a)), to exercise contractual, legal and equitable rights and remedies as to all or such part of the DIP Collateral as it shall elect including, without limitation, (x) foreclosure on all or any portion of the DIP Collateral, and to apply the proceeds of the DIP Collateral to the repayment of the DIP Obligations; and (y) take any other actions or exercise any other rights or remedies permitted under the Interim Order, the DIP Documents or applicable law to effect the repayment of the DIP Obligations. The Debtors shall cooperate fully with the DIP Agent and the DIP Lenders in their exercise of rights and remedies, whether against the DIP Collateral or otherwise.

26. Payments Free and Clear. Any and all payments or proceeds remitted to the DIP Agent, the DIP Lenders, the Prepetition Agents, or the Prepetition Secured Parties pursuant to the provisions of this Interim Order, the Final Order (if and when entered), the DIP Documents, or any subsequent orders of the Court shall be irrevocable and received free and clear of any claim,

charge, assessment or other liability, whether asserted or assessed by, through or on behalf of the Debtors

27. No Marshalling. Subject to entry of the Final Order, the DIP Secured Parties and the Prepetition Secured Parties shall not be subject to the equitable doctrine of “marshalling” or any other similar doctrine with respect to any of the DIP Collateral or Prepetition Collateral, as applicable.

28. Section 552(b). Subject to entry of the Final Order, the DIP Secured Parties and the Prepetition Secured Parties shall each be entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code, and the “equities of the case” exception under section 552(b) of the Bankruptcy Code shall not apply to the DIP Secured Parties or the Prepetition Secured Parties, as applicable with respect to proceeds, product, offspring or profits of any of the Prepetition Collateral or DIP Collateral, as applicable.

29. Section 506(c). Subject to entry of the Final Order, no costs or expenses of administration which have or may be incurred in the Chapter 11 Case at any time shall be charged against or recovered from the DIP Lenders, the Prepetition Secured Parties, their respective claims, the DIP Collateral, or the Prepetition Collateral pursuant to Section 506(c) of the Bankruptcy Code or any similar principle of law without the prior written consent of the DIP Lenders or the Prepetition Secured Parties, as applicable, and no such consent shall be implied from any other action, inaction or acquiescence by the DIP Lenders or the Prepetition Secured Parties.

30. Limitation of Liability. In determining to make any loan or other extension of credit under the DIP Credit Agreement, to permit the use of Cash Collateral or in exercising any rights or remedies as and when permitted pursuant to this Interim Order and the DIP Documents, the DIP Agent and the DIP Lenders, in their capacities as such, shall not (i) be deemed to be in “control”

of the operations of the Debtors; (ii) owe any fiduciary duty to the Debtors, their respective creditors, shareholders, or estates; and (iii) be deemed to be acting as a “Responsible Person” or “Owner” or “Operator” with respect to the operation or management of the Debtors (as such terms or similar terms are used in the United States Comprehensive Environmental Response, Compensation and Liability Act, 29 U.S.C. §§ 9601, *et seq.*, as amended, or any similar federal or state statute).

31. Proofs of Claim. The Prepetition Agents shall not be required to file proofs of claim in the Chapter 11 Cases or any successor case in order to assert claims on behalf of itself and the Prepetition Secured Parties for payment of the Prepetition Obligations arising under the Prepetition Notes Documents, including, without limitation, any principal, premium, unpaid interest, fees, expenses, and other amounts under the Prepetition Notes Documents. The statements of claim in respect of the Prepetition Obligations set forth in this Interim Order, together with any evidence accompanying the Motion and presented at the Interim Hearing, are deemed sufficient to and do constitute proofs of claim in respect of such debt and such secured status. In addition, none of the DIP Secured Parties shall be required to file proofs of claim with respect to the DIP Obligations.

32. No Third-Party Rights. Except as explicitly provided for herein or in any of the DIP Documents, this Interim Order does not create any rights for the benefit of any third party, creditor, equity holder, or direct, indirect, or incidental beneficiary.

33. Final Hearing. The Final Hearing on the Motion shall be held on **June 5, 2024, 2024, at 10:00 a.m.**, prevailing Eastern Time; provided that the Final Hearing may be adjourned or otherwise postponed upon the Debtors filing a notice of such adjournment with the consent of the DIP Agent (acting at the direction of the Required DIP Lenders). The Debtors shall promptly serve copies of this Interim Order (which shall constitute adequate notice of the Final Hearing) to

the parties having been given notice of the Interim Hearing, and to any other party that has filed a request for notices with this Court. Any objections or responses to entry of the Final Order shall be filed on or before **4:00 p.m., prevailing Eastern Time, on May 29, 2024.**

34. Necessary Action. The Debtors are authorized to take any and all such reasonable actions and to make, execute and deliver any and all instruments as may be reasonably necessary to implement the terms and conditions of this Interim Order and the transactions contemplated hereby.

35. Enforceability. This Interim Order shall constitute findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052 and shall take effect and be enforceable immediately upon entry thereof. Notwithstanding Bankruptcy Rules 4001(a)(3), 6004(h), 6006(d), 7062 or 9014 of the Bankruptcy Rules, any applicable Local Bankruptcy Rules, or Rule 62(a) of the Federal Rules of Civil Procedure, this Interim Order shall be immediately effective and enforceable upon its entry and there shall be no stay of execution or effectiveness of this Interim Order.

36. Headings. The headings in this Interim Order are for purposes of reference only and shall not limit or otherwise affect the meaning of this Interim Order.

37. Priority of Terms. To the extent of any conflict between or among (a) the express terms or provisions of any of the DIP Documents or the Motion, on the one hand, and (b) the terms and provisions of this Interim Order, on the other hand, unless such term or provision herein is phrased in terms of “as defined in” or “as set forth in” any of the DIP Documents, the Prepetition Notes Documents, or other agreement, the terms and provisions of this Interim Order shall govern.

38. Retention of Jurisdiction. This Court retains jurisdiction (i) with respect to all matters arising from or related to the DIP Documents and the implementation of this Interim Order and (ii) to enforce the same. This retention of jurisdiction shall survive confirmation and

consummation of any chapter 11 plan for any one or more of the Debtors notwithstanding the terms of provisions of any such chapter 11 plan or any order confirming any such chapter 11 plan.



**Exhibit 1**

Budget

ProSomnus DIP Budget  
USD (whole dollars)  
5/7/2024

Week Ending	1 5/11/2024	2 5/18/2024	3 5/25/2024	4 6/1/2024	5 6/8/2024	6 6/15/2024	7 6/22/2024	8 6/29/2024	9 7/6/2024	10 7/13/2024	11 7/20/2024	12 7/27/2024	13 8/3/2024	Total 13-Weeks
<b>Operating Revenue and Expenses</b>														
Receipts														
Collections	634,041	639,017	643,993	811,211	653,945	600,591	610,840	862,624	561,190	546,561	681,752	852,190	852,190	\$ 8,950,141
Disbursements														
Payroll-NA	580,000	-	465,000	-	580,000	-	465,000	-	580,000	-	565,000	-	-	3,235,000
Payroll-EU	-	135,000	-	-	-	135,000	-	-	-	-	135,000	-	-	405,000
Equipment Leases	15,000	21,000	84,000	41,000	15,000	21,000	-	84,000	41,000	15,000	21,000	-	-	358,000
Facility Rent	-	-	104,000	-	-	-	-	104,000	-	-	-	-	-	208,000
OPEX (Incl-COR) Excluding Con	500,000	500,000	500,000	500,000	500,000	500,000	500,000	500,000	500,000	500,000	500,000	500,000	500,000	6,500,000
Critical Vendor Payments	400,000	200,000	150,000	50,000	50,000	50,000	50,000	50,000	50,000	50,000	50,000	50,000	50,000	1,250,000
Officer & Director Payments	-	-	95,000	-	-	-	-	-	-	-	-	-	-	95,000
Customer Incentive Programs	-	-	-	500,000	-	-	-	-	-	-	-	-	500,000	1,000,000
Temp Staffing	20,000	-	-	10,000	-	-	-	-	10,000	-	-	-	2,500	42,500
Corp Governance - WSGR	100,000	-	-	100,000	-	-	-	-	100,000	-	-	-	25,000	325,000
Tax - Anderson	150,000	-	-	-	-	-	-	-	-	-	-	-	-	150,000
Tax/SEC/Misc	50,000	-	-	50,000	-	-	-	-	50,000	-	-	-	12,500	162,500
<b>Total Operating Disbursements</b>	<b>1,815,000</b>	<b>856,000</b>	<b>1,398,000</b>	<b>1,251,000</b>	<b>1,145,000</b>	<b>706,000</b>	<b>1,015,000</b>	<b>738,000</b>	<b>1,331,000</b>	<b>565,000</b>	<b>1,271,000</b>	<b>550,000</b>	<b>1,090,000</b>	<b>\$ 13,731,000</b>
<b>Operating Cash Flow</b>	<b>(1,180,959)</b>	<b>(216,983)</b>	<b>(754,007)</b>	<b>(439,789)</b>	<b>(491,055)</b>	<b>(105,409)</b>	<b>(404,160)</b>	<b>124,624</b>	<b>(769,810)</b>	<b>(18,439)</b>	<b>(589,248)</b>	<b>302,190</b>	<b>(237,810)</b>	<b>\$ (4,780,859)</b>
<b>Restructuring Expenses *Paid Monthly to Escrow</b>														
Debtor Counsel - Polsinelli	325,000	-	-	325,000	-	-	-	-	325,000	-	-	-	81,250	\$ 1,056,250
Lender Counsel - KT/MJ	158,333	-	-	158,333	-	-	-	-	158,333	-	-	-	39,583	514,582
Finanacial Advisor - G/S	150,000	-	-	150,000	-	-	-	-	150,000	-	-	-	150,000	600,000
US Trustee Fees	-	-	-	-	-	-	-	-	-	-	-	-	131,505	131,505
Claims Agent - KCC	80,000	-	-	80,000	-	-	-	-	80,000	-	-	-	35,000	275,000
Collateral Agent - WSFS	50,000	-	-	50,000	-	-	-	-	50,000	-	-	-	-	150,000
<b>Total Restructuring Disbursement:</b>	<b>763,333</b>	<b>-</b>	<b>-</b>	<b>763,333</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>763,333</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>437,338</b>	<b>\$ 2,727,337</b>
<b>Total Disbursements</b>	<b>2,578,333</b>	<b>856,000</b>	<b>1,398,000</b>	<b>2,014,333</b>	<b>1,145,000</b>	<b>706,000</b>	<b>1,015,000</b>	<b>738,000</b>	<b>2,094,333</b>	<b>565,000</b>	<b>1,271,000</b>	<b>550,000</b>	<b>1,527,338</b>	<b>\$ 16,458,337</b>
<b>DIP Funding</b>	<b>2,500,000</b>	<b>-</b>	<b>-</b>	<b>4,422,102</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>\$ 6,922,102</b>
<b>Beginning Cash</b>	<b>1,950,000</b>	<b>2,505,708</b>	<b>2,288,724</b>	<b>1,534,717</b>	<b>4,753,697</b>	<b>4,262,641</b>	<b>4,157,232</b>	<b>3,753,072</b>	<b>3,877,696</b>	<b>2,344,552</b>	<b>2,326,113</b>	<b>1,736,865</b>	<b>2,039,054</b>	<b>\$ 1,950,000</b>
<b>Weekly Cash Flow</b>	<b>555,708</b>	<b>(216,983)</b>	<b>(754,007)</b>	<b>3,218,980</b>	<b>(491,055)</b>	<b>(105,409)</b>	<b>(404,160)</b>	<b>124,624</b>	<b>(1,533,143)</b>	<b>(18,439)</b>	<b>(589,248)</b>	<b>302,190</b>	<b>(675,149)</b>	<b>(586,094)</b>
<b>Ending Cash (\$1.5MM Min Liq Re</b>	<b>2,505,708</b>	<b>2,288,724</b>	<b>1,534,717</b>	<b>4,753,697</b>	<b>4,262,641</b>	<b>4,157,232</b>	<b>3,753,072</b>	<b>3,877,696</b>	<b>2,344,552</b>	<b>2,326,113</b>	<b>1,736,865</b>	<b>2,039,054</b>	<b>1,363,906</b>	<b>\$ 1,363,906</b>

**Beginning Cash 5/7/2024**      \$ 1,950,000

DIP Borrowings      \$ 6,922,102  
"Rolled Up" Bridge Loan      6,014,000  
Total DIP indebtedness      \$ 12,936,102

DIP Exit Fee      \$ 1,293,610

**Exhibit 2**

Lien Priorities

1. Prepetition Permitted Liens
2. Carve-Out
3. Prepetition Senior Liens
4. DIP Liens
5. Prepetition Subordinated Liens

**EXHIBIT B**

**(Blackline Comparison)**

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re:

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

Debtors.

Chapter 11

Case No. 24-10972 (JTD)

~~(Joint Administration Requested)~~

(Jointly Administered)

Re: Docket ~~No~~Nos. ~~—~~12, 13

**INTERIM ORDER (I) AUTHORIZING THE DEBTORS TO (A) OBTAIN SENIOR SUBORDINATE SECURED POSTPETITION FINANCING AND (B) UTILIZE CASH COLLATERAL, (II) GRANTING LIENS AND SUPERPRIORITY ADMINISTRATIVE EXPENSE CLAIMS, (III) MODIFYING THE AUTOMATIC STAY, (IV) SCHEDULING A FINAL HEARING, AND (V) GRANTING RELATED RELIEF**

Upon the motion (the “**Motion**”)<sup>2</sup> of ProSomnus, Inc. and its affiliated debtors-in-possession (collectively, the “**Debtors**”) in the above-captioned chapter 11 cases (collectively, the “**Chapter 11 Cases**”), seeking entry of an interim order (this “**Interim Order**”) and a Final Order (as defined herein) pursuant to sections 105, 361, 362, 363, 364(c)(3), 364(d), 364(e), 503, 506, 507 and 552 of title 11 of the United States Code, 11 U.S.C. §§ 101- 1532 (as amended, the “**Bankruptcy Code**”), Rules 2002, 4001, 6004, 9013, and 9014 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and Rules 2002-1, 4001-2, and 9013-1 of the Local Rules (the “**Local Bankruptcy Rules**”) for the United States Bankruptcy Court for the District of Delaware (the “**Court**” or the “**Bankruptcy Court**”), *inter alia*:

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

<sup>2</sup> Capitalized terms used but not defined herein shall have the meaning ascribed to such terms in the Motion.

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(i) authorizing, upon entry of this Interim Order, the Debtors to obtain senior subordinate secured postpetition financing on a subordinate superpriority basis (the “**DIP Facility**”) consisting of (1) a new money multi-draw term loan facility consisting of \$7 million (the “**New Money Amount**”), of which \$2.5 million shall be available upon entry of this Interim Order (the “**Interim New Money Amount**”) and \$4.5 million shall be available upon entry of the Final Order, and (2) upon entry of the Interim Order, a roll-in of obligations under (i) the Bridge Notes (as defined below) in the aggregate principal amount of \$4 million plus all accrued interest through the date of entry of the Interim Order, and (ii) the Senior Notes in the aggregate principal amount of \$2 million (subclauses (i) and (ii) collectively, the “**Roll-In Amount**”), pursuant to the terms and conditions of this Interim Order and that certain *Senior Subordinate Superpriority Secured Debtor-in-Possession Credit Agreement* attached to the Motion as Exhibit B (as the same may be amended, restated, supplemented, or otherwise modified from time to time, the “**DIP Credit Agreement**”), by and among (a) ProSomnus, Inc., as borrower (“**Borrower**”), (b) ProSomnus Holdings, Inc. (“**Holdings**”) and ProSomnus Sleep Technologies, Inc. (“**Sleep Technologies**”) as guarantors (the “**Guarantors**” and together with Borrower, the “**DIP Loan Parties**”), (c) Wilmington Savings Fund Society, FSB, as administrative agent (in such capacity, the “**DIP Administrative Agent**”) and as collateral agent (in such capacity, the “**DIP Collateral Agent**,” and together with the DIP Administrative Agent, collectively, the “**DIP Agent**”), and (d) the lenders party thereto from time to time (collectively, the “**DIP Lender**,” and together with the DIP Agent, the “**DIP Secured Parties**”);

(ii) approving the terms of, and authorizing the DIP Loan Parties to execute and deliver, the DIP Credit Agreement and any other agreements, instruments and documents related

thereto (collectively, the “**DIP Documents**”), which shall be on terms consistent with the DIP Credit Agreement and otherwise in form and substance acceptable to the Required DIP Lenders<sup>3</sup> and the DIP Agent (or as otherwise provided in the DIP Documents), and to perform such other acts as may be necessary or desirable in connection with the DIP Documents;

(iii) authorizing the DIP Loan Parties to execute and deliver the DIP Documents, to incur all obligations owing thereunder to the DIP Secured Parties (collectively, the “**DIP Obligations**”), grant the DIP Agent and DIP Lenders allowed superpriority administrative expense claim status in each of the Chapter 11 Cases and any Successor Cases (as defined below), subject to the relative priorities set forth herein, and to otherwise perform all of their respective obligations under the DIP Documents;

(iv) granting to the DIP Collateral Agent (on behalf of the DIP Secured Parties) automatically perfected security interests in and liens on all of the DIP Collateral (as defined below), including, without limitation, all property constituting “cash collateral,” as defined in section 363(a) of the Bankruptcy Code (including, without limitation, all cash and cash equivalents and other amounts from time to time on deposit or maintained by the Debtors in any deposit or securities account or accounts as of the Petition Date), of the Prepetition Secured Parties (as defined below), and any cash or cash equivalents received by the Debtors after the Petition Date as proceeds of the Prepetition Collateral (“**Cash Collateral**”), which liens shall be subject only to the Prepetition Senior Liens, the Prepetition Permitted Liens, and the Carve-Out;

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<sup>3</sup> As used herein, the term “**Required DIP Lenders**” has the same meaning as “Required Lenders” in the Credit Agreement.

(v) authorizing the Debtors to use proceeds of the DIP Facility, Cash Collateral, and Prepetition Collateral to: (a) pay the principal, interest, fees, expenses, and other amounts payable and reimbursable under the DIP Documents and this Interim Order as such become earned, due, and payable, including, without limitation, facility fees and the fees and disbursements of the DIP Lender Professionals (as defined below); and (b) provide financing for working capital and other general corporate purposes during the Chapter 11 Cases, including for bankruptcy-related costs and expenses, all to the extent provided in, and in accordance with, the Approved Budget (including the Permitted Variances thereto), this Interim Order, the DIP Documents, and the RSA;

(vi) authorizing the Debtors to use the Prepetition Collateral, including all property constituting Cash Collateral on an interim basis in accordance with the Approved Budget, this Interim Order, and the DIP Documents;

(vii) vacating and modifying the automatic stay imposed by section 362 of the Bankruptcy Code to the extent set forth herein solely to the extent necessary to permit the Debtors, their affiliates, and the Prepetition Secured Parties to implement and effectuate the terms and provisions of the DIP Documents and this Interim Order;

(viii) authorizing payment of the DIP Fees (as defined below);

(ix) waiving any applicable stay (including under Bankruptcy Rule 6004) with respect to the effectiveness and enforceability of this Interim Order and providing for the immediate effectiveness of this Interim Order; and

(x) scheduling a final hearing (the “**Final Hearing**”) to consider the relief requested in the Motion on a final basis and approving the form of notice with respect to the Final Hearing.



The Court having considered the Motion, the exhibits attached thereto, the First Day Declaration, the *Declaration of Edward T. Gavin, CTP, NCPM in Support of the Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Obtain Senior Subordinate Secured Postpetition Financing and (B) Utilize Cash Collateral, (II) Granting Liens and Superpriority Administrative Expense Claims, (III) Modifying the Automatic Stay, (IV) Scheduling A Final Hearing, and (V) Granting Related Relief* (the “**DIP Declaration**”), the DIP Credit Agreement and other DIP Documents, and the evidence submitted and arguments made at the interim hearing held on ~~5~~[May 9](#), 2024 (the “**Interim Hearing**”); and notice of the Interim Hearing having been given in accordance with Bankruptcy Rules 2002, 4001(b), (c) and (d), and all applicable Local Bankruptcy Rules; and the Interim Hearing having been held and concluded; and all objections, if any, to the interim relief requested in the Motion having been withdrawn, resolved or overruled by the Court; and it appearing that approval of the interim relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtors and their estates (the “**Estates**”) pending the Final Hearing, and otherwise is fair and reasonable and in the best interests of the Debtors, their Estates and all parties in interest, and is essential for the continued operation of the Debtors’ business and the preservation of the value of the Debtors’ assets; and after due deliberation and consideration, and good and sufficient cause appearing therefor;

**BASED UPON THE RECORD ESTABLISHED AT THE INTERIM HEARING, THE COURT MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW:<sup>4</sup>**

<sup>4</sup> The findings and conclusions set forth herein constitute the Bankruptcy Court’s findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent that any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

A. **Disposition.** The relief requested in the Motion is granted on an interim basis in accordance with the terms of this Interim Order. Any objections to the Motion with respect to the entry of this Interim Order that have not been withdrawn, waived or settled, and all reservations of rights included therein, are hereby denied and overruled on the merits. This Interim Order shall become effective immediately upon its entry and any applicable stay (including under Bankruptcy Rule 6004) is waived to permit such effectiveness.

B. **Petition Date.** On May 7, 2024 (the “**Petition Date**”), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code with the Bankruptcy Court.

C. **Debtors in Possession.** The Debtors have continued in the management and operation of their businesses and properties as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. As of the date hereof, no trustee or examiner has been appointed.

D. **Jurisdiction and Venue.** This Court has jurisdiction over the Chapter 11 Cases, the Motion, and the parties and property affected hereby pursuant to 28 U.S.C. §§ 157 and 1334. Venue for the Chapter 11 Cases and proceedings on the Motion is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

E. **Committee.** As of the date hereof, the United States Trustee for the District of Delaware (the “**U.S. Trustee**”) has not appointed an official committee of unsecured creditors in these Cases pursuant to section 1102 of the Bankruptcy Code (the “**Committee**”).

F. **Notice.** Notice of the Motion and the Interim Hearing have been provided in accordance with the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules, and no other

or further notice of the DIP Motion with respect to the relief requested at the Interim Hearing or entry of this Interim Order shall be required.

G. **Debtors' Stipulations.** Subject to the limitations in Paragraph 24, and after consultation with their attorneys and financial advisors, the Debtors irrevocably admit, stipulate, acknowledge, and agree as follows (Paragraphs G(i) through (xi) below are referred to, collectively, as the "**Debtors' Stipulations**"):

(i) *Prepetition Senior Secured Convertible Notes.* Each of the Debtors is party to that certain *Indenture*, dated as of December 6, 2022, as amended by that certain *First Supplemental Indenture*, dated as of June 29, 2023, as further amended by that certain *Second Supplemental Indenture*, dated as of September 20, 2023 (as further amended, amended and restated, supplemented or otherwise modified from time to time prior to the Petition Date, the "**2022 Senior Convertible Notes Indenture**" and together with all other agreements, guarantees, pledge, collateral and security documents, control agreements, instruments, certificates, notes, and other documents executed, recorded and/or delivered in connection therewith, including, without limitation, the Intercreditor Agreement (as defined below), collectively, the "**Senior Convertible Notes Documents**") among (i) ProSomnus, Inc., as the issuer, (ii) ProSomnus Holdings and ProSomnus Sleep Technologies, as guarantors party thereto (the "**Senior Convertible Notes Guarantors**," and together with ProSomnus, Inc., the "**Senior Convertible Notes Loan Parties**"), and (iii) Wilmington Trust, National Association, as trustee and collateral agent (in such capacity, the "**Senior Convertible Notes Agent**"). Pursuant to the 2022 Senior Convertible Notes Indenture, the issuer issued Senior Secured Convertible Notes due December 6, 2025 (the "**Senior Convertible Notes**" and the holders thereof, the "**Senior Convertible**

**Noteholders**” which together with the Senior Convertible Notes Agent comprise the “**Senior Convertible Notes Secured Parties**”) in the aggregate principal amount of up to \$21,959,807.00, comprised of: (i) an initial offering of Senior Convertible Notes on December 6, 2022 in the aggregate principal amount of \$16,959,807.00 (the “**Senior Convertible Initial Notes**”), and (ii) a subsequent offering of Senior Convertible Notes on April 17, 2024 in the aggregate principal amount of up to \$5,000,000.00 (the “**Bridge Notes**”). Pursuant to the Senior Convertible Notes Documents, each of the Senior Convertible Notes Guarantors, among other things, unconditionally and irrevocably guaranteed, on a joint and several basis, the payment in full in cash of all of the Senior Convertible Notes Obligations (as defined below).

(ii) *Prepetition Senior Secured Convertible Note Obligations.* As of the Petition Date, the Senior Convertible Notes Loan Parties were justly and lawfully indebted and liable, without defense, challenge, objection, claim, counterclaim, or offset of any kind, to the Senior Convertible Notes Secured Parties, on a joint and several basis, in the aggregate amount of not less than \$17,567,846.00 on account of principal amounts outstanding under the Senior Convertible Notes, plus all other amounts that may be due or owing under the Senior Convertible Note Documents (collectively, the “**Senior Convertible Notes Obligations**”).

(iii) *Prepetition Senior Secured Exchange Notes.* Each of the Debtors is party to that certain *Indenture*, dated as of October 11, 2023 (as further amended, amended and restated, supplemented or otherwise modified from time to time prior to the Petition Date, the “**2023 Senior Exchange Notes Indenture**” and together with all other agreements, guarantees, pledge, collateral and security documents, control agreements, instruments, certificates, notes, and other documents executed, recorded and/or delivered in connection therewith, collectively, the “**Senior**

**Exchange Notes Documents**” and together with the Senior Convertible Notes Documents, the “**Senior Notes Documents**”) among (i) ProSomnus, Inc., as the issuer, (ii) ProSomnus Holdings and ProSomnus Sleep Technologies, as guarantors party thereto (the “**Senior Exchange Notes Guarantors**,” and together with ProSomnus, Inc., the “**Senior Exchange Notes Loan Parties**” which together with the Senior Convertible Notes Loan Parties comprise the “**Senior Loan Parties**”), and (iii) Wilmington Trust, National Association, as trustee and collateral agent (in such capacity, the “**Senior Exchange Notes Agent**” and together with the Senior Convertible Notes Agent, the “**Prepetition Senior Agents**”). Pursuant to the 2023 Senior Exchange Notes Indenture, the issuer issued Senior Secured Convertible Exchange Notes due December 6, 2025 (the “**Senior Exchange Notes**” and the holders thereof, the “**Senior Exchange Noteholders**,” and together with the Senior Exchange Notes Agent, the “**Senior Exchange Notes Secured Parties**,” which collectively with the Senior Convertible Note Secured Parties comprise the “**Senior Secured Parties**”) in the aggregate principal amount of \$3,391,961.00 in exchange for \$3,391,961.00 principal amount of Senior Convertible Notes.

(iv) *Prepetition Senior Secured Exchange Notes Obligations.* As of the Petition Date, the Senior Exchange Notes Loan Parties were justly and lawfully indebted and liable, without defense, challenge, objection, claim, counterclaim, or offset of any kind, to the Senior Exchange Notes Secured Parties, on a joint and several basis, in the aggregate amount of not less than \$3,391,961.00 on account of principal amounts outstanding under the Senior Exchange Notes, plus all other amounts that may be due or owing under the Senior Exchange Note Documents (collectively, the “**Senior Exchange Notes Obligations**” and together with the Senior Convertible Notes Obligations, the “**Senior Notes Obligations**”).

(v) *Prepetition Subordinate Secured Convertible Notes*. Each of the Debtors is party to that certain *Indenture*, dated as of December 6, 2022, as amended by that certain *First Supplemental Indenture*, dated as of June 29, 2023, as further amended by that certain *Second Supplemental Indenture*, dated as of September 20, 2023 (as further amended, amended and restated, supplemented or otherwise modified from time to time prior to the Petition Date, the “**2022 Subordinate Convertible Notes Indenture**” and together with all other agreements, guarantees, pledge, collateral and security documents, control agreements, instruments, certificates, notes, and other documents executed, recorded and/or delivered in connection therewith, collectively, the “**Subordinate Convertible Notes Documents**”) among (i) ProSomnus, Inc., as the issuer, (ii) ProSomnus Holdings and ProSomnus Sleep Technologies, as guarantors party thereto (the “**Subordinated Convertible Notes Guarantors**,” and together with ProSomnus, Inc., the “**Subordinate Convertible Notes Loan Parties**”), and (iii) Wilmington Trust, National Association, as trustee and collateral agent (in such capacity, the “**Subordinate Convertible Notes Agent**”). Pursuant to the 2022 Subordinate Convertible Notes Indenture, the issuer issued Subordinated Secured Convertible Notes due April 6, 2026 (the “**Subordinated Convertible Notes**” and the holders thereof, the “**Subordinated Convertible Noteholders**”) in the aggregate principal amount of \$17,453,141.00. Pursuant to the Subordinated Convertible Notes Documents, each of the Subordinated Convertible Notes Guarantors, among other things, unconditionally and irrevocably guaranteed, on a joint and several basis, the payment in full in cash of all of the Subordinated Convertible Notes Obligations (as defined below).

(vi) *Prepetition Subordinate Secured Convertible Notes Obligations*. As of the Petition Date, the Subordinated Convertible Notes Loan Parties were justly and lawfully indebted and liable, without defense, challenge, objection, claim, counterclaim, or offset of any kind, to the Subordinated Convertible Notes Secured Parties, on a joint and several basis, in the aggregate amount of not less than \$5,315,252.00 on account of principal amounts outstanding under the Subordinated Convertible Notes, plus all other amounts that may be due or owing under the Subordinated Convertible Note Documents (collectively, the “**Subordinate Convertible Notes Obligations**”).

(vii) *Prepetition Subordinate Secured Convertible Exchange Notes*. Each of the Debtors is party to that certain *Indenture*, dated as of October 11, 2023 (as further amended, amended and restated, supplemented or otherwise modified from time to time prior to the Petition Date, the “**2023 Subordinated Exchange Notes Indenture**” and together with all other agreements, guarantees, pledge, collateral and security documents, control agreements, instruments, certificates, notes, and other documents executed, recorded and/or delivered in connection therewith, collectively, the “**Subordinated Exchange Notes Documents**” and together with the Senior Convertible Notes Documents, Senior Exchange Notes Documents, and Subordinated Convertible Notes Documents, the “**Prepetition Notes Documents**”) among (i) ProSomnus, Inc., as the issuer, (ii) ProSomnus Holdings and ProSomnus Sleep Technologies, as guarantors party thereto (the “**Subordinated Exchange Notes Guarantors**,” and together with ProSomnus, Inc., the “**Subordinated Exchange Notes Loan Parties**” which collectively with the Subordinated Convertible Notes Loan Parties and the Senior Loan Parties comprise the “**Prepetition Loan Parties**”), and (iii) Wilmington Trust, National Association, as trustee and

collateral agent (in such capacity, the “**Subordinated Exchange Notes Agent**” and together with the Subordinated Convertible Notes Agent, the “**Prepetition Subordinated Agents**” which collectively with the Prepetition Senior Agents comprise the “**Prepetition Agents**”). Pursuant to the 2023 Subordinated Exchange Notes Indenture, the issuer issued Subordinated Convertible Exchange Notes due April 6, 2026 (the “**Subordinated Exchange Notes**” and the holders thereof, the “**Subordinated Exchange Noteholders**,” and collectively with the Subordinated Convertible Noteholders, Subordinated Notes Agent, and Subordinated Exchange Notes Agent, the “**Subordinated Secured Parties**” which together with the Senior Secured Parties comprise the “**Prepetition Secured Parties**”) in the aggregate principal amount of \$12,137,889.00 in exchange for \$12,079,169.00<sup>5</sup> principal amount of Subordinated Convertible Notes. Pursuant to the Subordinated Exchange Notes Documents, each of the Subordinated Exchange Notes Guarantors, among other things, unconditionally and irrevocably guaranteed, on a joint and several basis, the payment in full in cash of all of the Subordinated Exchange Notes Obligations (as defined below).

(viii) *Prepetition Subordinate Secured Convertible Exchange Notes Obligations.* As of the Petition Date, the Subordinated Exchange Note Loan Parties were justly and lawfully indebted and liable, without defense, challenge, objection, claim, counterclaim, or offset of any kind, to the Subordinated Exchange Notes Secured Parties, on a joint and several basis, in the aggregate amount of not less than \$12,137,889.00 on account of principal amounts outstanding under the Subordinated Exchange Notes, plus all other amounts that may be due or owing under the Subordinated Exchange Notes Documents (collectively, the “**Subordinate Exchange Notes**”).

<sup>5</sup> The \$12,137,889.00 of Subordinated Exchange Notes exchanged includes \$58,720.00 of accrued and unpaid paid-in-kind interest on the Subordinated Convertible Notes exchanged.



**Obligations**” and together with the Subordinate Convertible Notes Obligations, the **“Subordinate Note Obligations**” and together with the Senior Notes Obligations, the **“Prepetition Obligations”**).

(ix) *Prepetition Liens and Prepetition Collateral*. As more fully set forth in the Prepetition Notes Documents, prior to the Petition Date, the Prepetition Loan Parties, as applicable, granted: (1) with respect to the Senior Convertible Notes Obligations, to the Senior Convertible Notes Agent, for the benefit of the Senior Convertible Notes Secured Parties, a first-priority security interest in and continuing lien (the **“Senior Convertible Notes Lien”**) on substantially all of the Debtors’ assets (the **“Senior Convertible Note Collateral”**); (2) with respect to the Senior Exchange Notes Obligations, to the Senior Exchange Notes Agent, for the benefit of the Senior Exchange Notes Secured Parties, a first-priority security interest in and continuing lien (the **“Senior Exchange Notes Lien”** and together with the Senior Convertible Notes Lien, the **“Prepetition Senior Liens”**) on substantially all of the Debtors’ assets (the **“Senior Exchange Notes Collateral”** and together with the Senior Convertible Notes Collateral, the **“Prepetition Senior Collateral”**) that is *pari passu* with the Senior Convertible Notes Lien; (3) with respect to the Subordinated Convertible Notes Obligations, to the Subordinated Convertible Notes Agent, for the benefit of the Subordinated Convertible Notes Secured Parties, a second-priority security interest in and continuing lien (the **“Subordinated Convertible Notes Lien”**) on substantially all of the Debtors’ assets (the **“Subordinated Convertible Notes Collateral”**) that is junior to the Prepetition Senior Liens; and (4) with respect to the Subordinated Exchange Notes Obligations, to the Subordinated Exchange Notes Agent, for the benefit of the Subordinated Exchange Notes Secured Parties, a second-priority security interest

in and continuing lien (the “**Subordinated Exchange Note Lien**” and together with the Subordinated Convertible Notes Lien, the “**Prepetition Subordinated Liens**” which together with the Prepetition Senior Liens comprise the “**Prepetition Liens**”) on substantially all of the Debtors’ assets (the “**Subordinated Exchange Note Collateral**” and together with the Subordinated Convertible Note Collateral, the “**Prepetition Subordinated Collateral**” which together with the Prepetition Senior Collateral comprises the “**Prepetition Collateral**”) that is *pari passu* with the Subordinated Convertible Notes Lien.

(x) *Intercreditor Agreement.* The Senior Secured Parties and the Subordinated Secured Parties, in their respective capacities as such (collectively, the “**Prepetition Secured Parties**”) with respect to collateral and proceeds thereof are governed by that certain *Amended and Restated Intercreditor Agreement* dated as of October 11, 2023 (as amended, restated, supplemented, or otherwise modified in accordance with its terms, the “**Intercreditor Agreement**”).

(xi) *Validity, Extent, Perfection and Priority of Prepetition Liens and Prepetition Obligations.* The Debtors irrevocably acknowledge, stipulate, and agree that as of the Petition Date: (a) the Prepetition Liens on the Prepetition Collateral were valid, binding, enforceable, non-avoidable, and properly perfected and were granted to, or for the benefit of, the Prepetition Secured Parties for fair consideration and reasonably equivalent value; (b) the Prepetition Senior Liens were senior in priority over any and all other liens on the Prepetition Senior Collateral; (c) the Prepetition Subordinated Liens were senior in priority over any and all other liens on the Prepetition Subordinated Collateral except the Prepetition Senior Liens on the Prepetition Collateral, subject in each case to the Intercreditor Agreement, other than certain other liens that

are permitted to be senior to the Prepetition Senior Liens under the Senior Notes Documents (solely to the extent such liens were valid, non-avoidable, and senior in priority to the Prepetition Senior Liens as of the Petition Date and properly perfected as of the Petition Date or perfected subsequent to the Petition Date as permitted by section 546(b) of the Bankruptcy Code (collectively the “**Prepetition Permitted Liens**”));<sup>6</sup> (c) the Prepetition Obligations constitute legal, valid, binding, and non-avoidable obligations of the Prepetition Loan Parties enforceable in accordance with the terms of the applicable Prepetition Notes Documents; (d) no offsets, recoupments, challenges, objections, defenses, causes of action, claims, or counterclaims of any kind or nature to any of the Prepetition Liens or Prepetition Obligations exist, and no portion of the Prepetition Liens or Prepetition Obligations is subject to any challenge or defense including avoidance, disallowance, disgorgement, recharacterization, or subordination (equitable or otherwise) pursuant to the Bankruptcy Code or applicable non-bankruptcy law; (e) the Debtors and their estates have no claims, objections, challenges, causes of action, and/or choses in action, including avoidance claims under Chapter 5 of the Bankruptcy Code or applicable state law equivalents or actions for recovery or disgorgement, against any of the Prepetition Secured Parties or any of their respective affiliates, agents, attorneys, advisors, professionals, officers, directors, and employees arising out of, based upon or related to the Prepetition Obligations; (f) the Debtors have irrevocably waived, discharged, and released any right to challenge any of the Prepetition Obligations, the priority of the Debtors’ obligations thereunder, and the validity, extent, and priority of the Prepetition Liens securing the Prepetition Obligations; and (g) the

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<sup>6</sup> For the avoidance of doubt, Prepetition Permitted Liens include all validly perfected liens created pursuant to equipment leases.

Prepetition Obligations constitute allowed, secured claims within the meaning of sections 502 and 506 of the Bankruptcy Code.

H. **Prepetition Permitted Liens.** Nothing herein shall constitute a finding or ruling by this Court that any alleged Prepetition Permitted Lien is valid, senior, enforceable, prior, perfected, or non-avoidable.<sup>7</sup> For the avoidance of doubt, the DIP Liens created through this Interim Order shall not prime the Prepetition Permitted Liens.

I. **Intercreditor Agreement; Agreement Among Lenders.** Pursuant to section 510 of the Bankruptcy Code, the Intercreditor Agreement, any other applicable intercreditor or subordination provisions contained in any of the Prepetition Notes Documents or otherwise (i) shall remain in full force and effect, (ii) shall continue to govern the relative priorities, rights, and remedies of the Prepetition Secured Parties, and (iii) shall not be deemed to be amended, altered, or modified by the terms of this Interim Order.

J. **Cash Collateral.** All of the Debtors' cash and cash equivalents constituting Prepetition Collateral, including cash on deposit in any account or accounts as of the Petition Date, cash obtained at any time thereafter (including proceeds of the DIP Facility), securities or other property, wherever located, whether subject to control agreements or otherwise, whether as original collateral or proceeds, products, rent or profits of other Prepetition Collateral, constitutes Cash Collateral of the Prepetition Secured Parties.

K. **Findings Regarding Postpetition Financing.**

<sup>7</sup> For the avoidance of doubt, as used in this Interim Order, no reference to the Prepetition Permitted Liens shall refer to or include the Prepetition Liens.

(i) *Request for Postpetition Financing.* The Debtors seek authority to (a) enter into the DIP Facility on the terms described herein and in the DIP Documents, and (b) use Cash Collateral on the terms described herein, in the DIP Credit Agreement, and the other DIP Documents to administer their Chapter 11 Cases and fund their operations in accordance with the Approved Budget (as defined herein). At the Final Hearing, the Debtors will seek final approval of the proposed postpetition financing and use of Cash Collateral arrangements pursuant to a proposed final order (the “**Final Order**” and together with the Interim Order, the “**DIP Orders**”), which shall be in form and substance reasonably acceptable to the Required DIP Lenders and the DIP Agent. Notice of the Final Hearing and Final Order will be provided in accordance with this Interim Order.

(ii) *Need for Postpetition Financing and Use of Cash Collateral.* The Debtors have an immediate and critical need to obtain the financing pursuant to the DIP Facility and to continue to use the Prepetition Collateral (including Cash Collateral) in order to, among other things, (i) pay the fees, costs, and expenses incurred in connection with the Chapter 11 Cases, (ii) fund any obligations benefitting from the Carve-Out (as defined below), (iii) continue their operations, (iv) maintain business relationships with customers, vendors and suppliers, (v) make payroll, and (vi) satisfy other working capital and operational needs and costs of the restructuring, all to the extent provided in, and in accordance with, the Approved Budget, this Interim Order and the DIP Documents. The incurrence of new debt under the DIP Documents and use of Cash Collateral is necessary and vital to the preservation and maintenance of the value of the Debtors’ Estates. Immediate and irreparable harm will be caused to the Debtors and their Estates if immediate financing is not obtained and permission to use Cash Collateral is not

granted. The terms of the proposed financing are fair and reasonable, reflect the Debtors' exercise of prudent business judgment, and are supported by reasonably equivalent value and fair consideration.

(iii) *No Credit Available on More Favorable Terms.* The DIP Facility is the best source of debtor-in-possession financing available to the Debtors. Given their current financial condition, financing arrangements, capital structure, and the circumstances of these Chapter 11 Cases, the Debtors are unable to obtain financing from sources other than the DIP Lenders on terms more favorable than the DIP Facility. To the extent necessary, the Prepetition Secured Parties have consented to the Debtors incurring debtor-in-possession financing and, as applicable, the use of their Cash Collateral, only on the terms and subject to the conditions set forth in the DIP Documents and this Interim Order. The Debtors are unable to obtain unsecured credit allowable under section 503(b)(1) of the Bankruptcy Code as an administrative expense. The Debtors have also been unable to obtain: (a) unsecured credit having priority over that of administrative expenses of the kind specified in sections 503(b), 507(a) and 507(b) of the Bankruptcy Code; or (b) credit secured solely by a lien on property of the Debtors and their Estates that is not otherwise subject to a lien. Financing on terms more favorable than those set forth in the DIP Documents is not available without granting: (1) perfected security interests in and liens on (each as provided herein) the DIP Collateral with the priorities set forth herein (including subject to the Carve-Out); (2) superpriority claims to the extent set forth in this Interim Order; and (3) the other protections set forth in this Interim Order.

(iv) *Use of Cash Collateral and Proceeds of the DIP Facility.* As a condition to the Debtors' entry into the DIP Documents, the extension of credit under the DIP Facility and the

authorization to use Prepetition Collateral, including Cash Collateral, the Debtors and Prepetition Secured Parties have agreed that Cash Collateral and the proceeds of the DIP Facility shall be used solely in accordance with the terms and conditions of this Interim Order and the DIP Documents and in accordance with the Approved Budget. The DIP Lenders are relying upon the Debtors' agreement to comply with the terms set forth in the DIP Documents, the Approved Budget, and this Interim Order in determining to enter into the postpetition financing arrangements provided for therein and as set forth herein.

(v) *Consent of Prepetition Secured Parties.* The holders of Prepetition Liens on the DIP Collateral, including the Senior Secured Parties and the Subordinate Secured Parties, have consented, or are deemed to consent, to the DIP Facility as set forth in the DIP Documents.

(vi) *Application of Proceeds of Collateral.* As a condition to entry into the DIP Documents, the extension of credit under the DIP Facility and authorization to use Cash Collateral, the Debtors have agreed that, as of and commencing on the date of entry of this Interim Order, the Debtors shall apply the proceeds of DIP Collateral in accordance with this Interim Order and the DIP Documents.

(vii) *Roll-In.*

1. Upon entry of the Interim Order, [but subject to paragraph 24 of this Interim Order](#), the obligations arising under the Bridge Notes (including accrued interest) and the Senior Notes in an aggregate amount of up to the Roll-In Amount shall be converted on a cashless dollar-for-dollar basis into principal obligations constituting DIP Obligations, without any further action by the Debtors or any other party (collectively, the “**DIP Roll-In Obligations**”).<sup>8</sup>

<sup>8</sup> The DIP Obligations other than the DIP Roll-In Obligations shall constitute the “**New Money DIP Obligations.**”

The Roll-In terms provide that the obligations under the Bridge Notes and the Senior Notes subject to the Roll-In will convert to a lower priority upon rolling into the DIP Facility. All of the holders of the Bridge Notes and the Senior Notes have consented to the “roll-in” structure and the Roll-In is an exercise of the Debtors’ sound business judgment.

2. The conversion (or “roll-in”) shall be authorized as compensation for, in consideration for, and solely on account of, the agreement of the Sponsoring Noteholders as DIP Lenders to fund amounts, and provide other consideration to the Debtors under the DIP Facility, and not as payments under, adequate protection for, or otherwise on account of, any Prepetition Obligations. Notwithstanding any other provision of this Interim Order, the Final Order, or the DIP Documents, all rights of the Prepetition Secured Parties shall be fully preserved. The Prepetition Secured Parties would not otherwise consent to the use of their Cash Collateral, and the DIP Lenders would not be willing to provide the DIP Facility or extend credit to the Debtors thereunder, without the inclusion of the DIP Roll-In Obligations in the DIP Obligations upon entry of the Interim Order. Moreover, the roll-in of the DIP Roll-In Obligations into DIP Obligations will enable the Debtors to obtain urgently needed financing to administer these Chapter 11 Cases to fund their operations.

(viii) *Business Judgment and Good Faith.* Based on the Motion and the DIP Declaration, and the record presented to the Court at the Interim Hearing, (i) the terms of the financing embodied in the DIP Facility, including the Roll-In, fees, expenses and other charges paid and to be paid thereunder or in connection therewith, and (ii) the terms on which the Debtors may continue to use the Prepetition Collateral (including Cash Collateral), in each case pursuant to this Interim Order and the DIP Documents, are fair and reasonable, reflect the



Debtors' exercise of prudent business judgment consistent with their fiduciary duties, constitute reasonably equivalent value and fair consideration, and represent the best financing (and terms) available under the circumstances. Any credit extended, loans made, and other financial accommodations extended to the Debtors by the DIP Lenders, including, without limitation, pursuant to this Interim Order, have been extended, issued, or made, as the case may be, in "good faith" within the meaning of section 364(e) of the Bankruptcy Code and in express reliance upon the protections offered by section 364(e) of the Bankruptcy Code, and the DIP Facility, the DIP Liens, and the DIP Superpriority Claims (as defined below) shall be entitled to the full protection of section 364(e) of the Bankruptcy Code in the event that this Interim Order or any provision hereof is vacated, reversed, or modified on appeal or otherwise.

L. **Sections 506(c) and 552(b)**. In light of (i) the Prepetition Secured Parties' agreement that their liens shall be subject to the Carve-Out and (ii) the payment of certain prepetition unsecured claims and administrative expenses as set forth in the Approved Budget (as defined below) and first day motions in accordance with and subject to the terms and conditions of this Interim Order, (a) the Prepetition Secured Parties are each entitled to a waiver of any "equities of the case" exception under section 552(b) of the Bankruptcy Code, and (b) the DIP Secured Parties and the Prepetition Secured Parties, as applicable, are each entitled to a waiver of the provisions of section 506(c) of the Bankruptcy Code, in each case effective upon entry of a Final Order providing for such relief.

M. **Immediate Entry**. Sufficient cause exists for immediate entry of this Interim Order pursuant to Bankruptcy Rule 4001(b)(2). Absent entry of this Interim Order, the Debtors' businesses, properties and estates would be immediately and irreparably harmed. This Court

concludes that entry of this Interim Order is in the best interests of the Debtors' respective estates and stakeholders.

N. **Interim Hearing.** Notice of the Interim Hearing and the relief requested in the Motion has been provided by the Debtors, whether by facsimile, electronic mail, overnight courier or hand delivery, to certain parties-in-interest, including: (i) the United States Trustee for the District of Delaware; (ii) the holders of the twenty (20) largest unsecured claims on a consolidated basis against the Debtors; (iii) counsel to the Sponsoring Noteholders and the proposed DIP Lenders; (iv) counsel to the Prepetition Agents; (v) counsel to the proposed DIP Agent; (vi) the Internal Revenue Service; (vii) the United States Securities and Exchange Commission; (viii) the Office of the United States Attorney for the District of Delaware; (ix) any banking or financial institution that holds Debtors' accounts; (x) all other known parties asserting a lien on the Debtors' assets; and (xi) all parties entitled to notice pursuant to Bankruptcy Rule 2002. The Debtors have made reasonable efforts to afford the best notice possible under the circumstances.

Based upon the foregoing findings and conclusions, the Motion, the First Day Declaration, the DIP Declaration, and the record before the Court with respect to the Motion, and after due consideration and good and sufficient cause appearing therefor,

**IT IS HEREBY ORDERED THAT:**

1. **DIP Financing Approved.** On an interim basis, entry into the DIP Facility is authorized and approved, and the use of Cash Collateral is authorized, in each case, subject to the terms and conditions set forth in this Interim Order and the DIP Documents; [provided, however, that all Case Milestones approved hereby requiring the Debtors to obtain the approval of this Court are approved subject to the Court's availability for such hearing.](#) All objections to

this Interim Order, to the extent not withdrawn, waived, settled or resolved, and all reservations of rights included therein, are hereby denied and overruled on the merits. This Interim Order shall become effective immediately upon its entry. The Debtors are hereby authorized and directed to pay, in accordance with this Interim Order, any principal, interest, fees, expenses, and other amounts described in the DIP Documents and this Interim Order, as such amounts become due and owing, without need to obtain further Court approval (except as otherwise provided herein or in the DIP Documents) subject to, and in accordance with, the terms hereof and thereof. Upon execution and delivery, the DIP Documents shall represent legal, valid, and binding obligations of the Debtors, enforceable against each of the Debtors and their Estates in accordance with their terms. Each officer, sole member, or managing member, as applicable, of a Debtor acting individually is hereby authorized to execute and deliver each of the DIP Documents, and such execution and delivery is conclusive evidence of the respective authority of such officer, sole member, or managing member, as applicable, to act in the name of and on behalf of the Debtors.

### **DIP Facility Authorization**

2. Authorization of the DIP Financing. The Debtors are expressly and immediately authorized and empowered to execute and deliver the DIP Documents, and to incur and to perform the DIP Obligations in accordance with, and subject to, the terms of this Interim Order and the DIP Documents, and to execute, deliver and perform under all instruments, certificates, agreements, and documents which may be required or necessary for the performance by the Debtors under the DIP Documents and the creation and perfection of the DIP Liens described in and provided for by this Interim Order and the DIP Documents.

3. Authorization to Borrow. To prevent immediate and irreparable harm to the Debtors' Estates, and to enable the Debtors to continue to operate their business, and to preserve and maximize the value of their Estates, subject to the terms and conditions set forth in the DIP Documents and this Interim Order, the Debtors are hereby authorized to borrow the Interim New Money Amount and incur the DIP Roll-In Obligations, subject to any limitations on, or conditions to, borrowing under the DIP Documents, which borrowings shall be used solely for purposes permitted under the DIP Documents, including, without limitation, to provide working capital for the Debtors and for other general corporate purposes and to pay interest, fees, costs, charges and expenses, in each case, in accordance with this Interim Order, the DIP Documents, and the Approved Budget.

4. DIP Obligations. Upon execution and delivery of the DIP Documents, the DIP Documents and this Interim Order shall constitute and evidence the validity and binding effect of the Debtors' DIP Obligations. Upon execution and delivery of the DIP Documents and entry of this Interim Order, the DIP Obligations and this Interim Order shall be enforceable against the Debtors and their Estates, and any successors thereto, including without limitation, any trustee appointed in the Chapter 11 Cases, or in any case under Chapter 7 of the Bankruptcy Code upon the conversion of any of the Chapter 11 Cases, or in any other proceedings superseding or related to any of the foregoing (collectively, the "**Successor Cases**"). Upon execution and delivery of the DIP Documents and entry of this Interim Order, the DIP Obligations will include all loans (including the DIP Roll-In Obligations), guarantees, reimbursement obligations, and any other indebtedness or obligations, contingent or absolute, which may now or from time to time be owing by any of the Debtors to the DIP Secured Parties, including, without limitation, all

principal, accrued interest, costs, charges, fees, expenses and other amounts under the DIP Documents. Notwithstanding anything to the contrary contained in the DIP Credit Agreement, and so long as the RSA remains in effect, the DIP Obligations shall be payable in New ProSomnus Common Equity pursuant to the terms of the RSA, *provided, however*, that all fees and expenses of the Lender Professionals (defined below) shall be paid in cash pursuant to the terms of this Interim Order.

5. DIP Collateral. Subject and subordinate to the Carve-Out and the Prepetition Senior Liens, to secure the DIP Obligations, effective immediately upon entry of this Interim Order and execution and delivery of the DIP Documents, pursuant to sections 361, 362, 364(c)(2), and 364(c)(3) of the Bankruptcy Code, the DIP Collateral Agent (for the benefit of the DIP Secured Parties), is hereby granted, continuing, valid, binding, enforceable, non-avoidable, and automatically and properly perfected postpetition security interests in and liens on (collectively, the “**DIP Liens**”) all the DIP Collateral,<sup>9</sup> excluding any causes of action that could be brought pursuant to sections 544, 545, 547, 548 of the Bankruptcy Code, or any applicable state fraudulent transfer statutes (the “**Avoidance Actions**”); *provided, however*, that, subject to entry of the Final Order, the proceeds of (and property received in respect of) such Avoidance Actions (“**Avoidance Proceeds**”) is included in the DIP Collateral on which the DIP Lenders has a DIP Lien.

6. DIP Liens. Upon execution and delivery of the DIP Documents, the DIP Liens securing the DIP Obligations are valid, automatically perfected, non-avoidable, senior in priority, and superior to any security, mortgage, collateral interest, lien, including the Prepetition

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<sup>9</sup> “**DIP Collateral**” has the meaning set forth in the Credit Agreement.

Subordinate Liens, or claim, to any of the DIP Collateral, except that the DIP Liens shall be subject to the priorities set forth on Exhibit 2 hereto.

7. DIP Superpriority Claims. Subject and subordinate to the Carve-Out, upon entry of this Interim Order, the DIP Secured Parties are hereby granted, pursuant to section 364(c)(1) of the Bankruptcy Code, allowed superpriority administrative expense claims in each of the Chapter 11 Cases and any Successor Cases (collectively, the “**DIP Superpriority Claims**”) for all DIP Obligations, except with respect to the Carve-Out, with priority over any and all administrative expense claims and any claims of any kind against the Debtors or their Estates in any of the Chapter 11 Cases and any Successor Cases, at any time existing or arising, of any kind or nature whatsoever, including, without limitation, all administrative expenses of the kind specified in sections 503(b) and 507(b) of the Bankruptcy Code, or specified in or ordered pursuant to sections 105, 326, 327, 328, 330, 331, 361, 362, 363, 364, 365, 503, 506, 507(a), 507(b), 546, 552, 726, 1113 or 1114 of the Bankruptcy Code.

8. DIP Roll-In Obligations. Upon entry of this Interim Order, obligations under the Bridge Notes (including accrued interest) and the Senior Notes in an aggregate amount equal to the Roll-In Amount shall be converted into DIP Roll-In Obligations, without any further action by the Debtors or any other party.

9. No Obligation to Extend Credit. The DIP Secured Parties shall have no obligation to make any loan or advance under the DIP Documents unless all of the conditions precedent under the DIP Documents and this Interim Order have been satisfied in full or waived by the Required DIP Lenders, as applicable, in accordance with the terms of the DIP Documents.

10. Use of Proceeds of DIP Facility. From and after the Petition Date, the Debtors shall use DIP Facility proceeds only for the purposes specifically set forth in this Interim Order and the DIP Documents, and only in compliance with the Approved Budget (subject to the Permitted Variances).

11. No Monitoring Obligation for DIP Facility. The DIP Secured Parties shall have no obligation or responsibility to monitor the Debtors' use of the DIP Facility, and the DIP Secured Parties may rely upon the Debtors' representation that the use of the DIP Facility at any time is in accordance with the requirements of this Interim Order and the DIP Documents. Notwithstanding the foregoing, the Debtors shall provide the DIP Secured Parties with reporting and other information as reasonably requested to ensure compliance with this Interim Order and the DIP Documents

**Authorization to Use Cash Collateral**

12. Authorization to Use Cash Collateral. Subject to the terms and conditions of this Interim Order and the DIP Documents, and in accordance with the Approved Budget (subject to the Permitted Variances), the Debtors are authorized to use Cash Collateral. Nothing in this Interim Order shall authorize the disposition of any DIP Collateral outside the ordinary course of business, except as permitted by this Interim Order and (including the Carve-Out) the DIP Documents, and in accordance with the Approved Budget (subject to the Permitted Variances), as applicable. From and after the Petition Date, the Debtors shall use Cash Collateral only for the purposes specifically set forth in this Interim Order, and only in compliance with the Approved Budget.

13. No Monitoring Obligation for Use of Cash Collateral. The Prepetition Secured Parties shall have no obligation or responsibility to monitor the Debtors' use of the Cash Collateral, and the Prepetition Secured Parties may rely upon the Debtors' representation that the use of the Cash Collateral at any time is in accordance with the requirements of this Interim Order. Notwithstanding the foregoing, the Debtors shall provide the DIP Secured Parties with reporting and other information as reasonably requested to ensure compliance with this Interim Order and the DIP Documents

14. Consent of Prepetition Secured Parties. The Prepetition Secured Parties have consented to or are deemed to consent to (a) the provisions of this Interim Order including the Debtors' entry into the DIP Facility on an interim basis, (b) the granting of the DIP Liens and DIP Superpriority Claims on the terms and subject to the conditions set forth herein, (c) the Approved Budget, and (d) the DIP Roll-In Obligations.

**Provisions Common to DIP Financing and Use of Cash Collateral**

15. The Debtors, the DIP Agent and Required DIP Lenders (or as otherwise provided in the DIP Documents) may enter into one or more amendments, waivers, consents, or other modifications to and under the DIP Documents, ~~in each case~~ in accordance with the terms of the applicable DIP Documents and in such form as agreed to the Debtors and the Required DIP Lenders (or as otherwise provided in the DIP Documents) ~~agree and no further approval of this Court shall be required for~~ on the following conditions: (a) with respect to amendments, waivers, consents, or other modifications that do not constitute a Material Change (as defined below) to the terms of such DIP Document, the Debtors shall provide the United States Trustee and counsel to the Committee (if any) a copy of such amendment, waiver, consent, or other



modification not later than three (3) days before the effective date of the same; and (b) with respect to amendments, waivers, consents, or other modifications to and under the DIP Documents ~~(and any fees paid in connection therewith) that does not materially and adversely affect the Debtors or the Senior Secured Parties or (A) which does not~~ that (i) shorten the maturity of the DIP Facility, (ii) ~~increase~~ increases the principal amount of, the rate of interest on, priority of, or the fees payable in connection with the DIP Facility, or (iii) ~~change~~ changes any event of default, ~~add~~ adds any covenants, or ~~amend~~ amends the covenants to be materially more restrictive; ~~provided, however, any such amendment, waiver, consent, or other modification shall be served by~~ (each, a “Material Change”), the Debtors ~~on~~ shall file with the ~~U.S. Trustee Court~~ Court and ~~counsel to the Committee (if any) two days in advance of its effectiveness, to the extent reasonably practicable. No consent to any such~~ serve in accordance with Local Rule 2002-1(b) a motion requesting Court approval of the amendment, ~~waiver, consent,~~ or modification ~~shall be implied by any action, inaction, or acquiescence,~~ which motion may be considered on an expedited basis, subject to the availability of the ~~DIP Secured Parties~~ Court.

16. Approved Budget.

(i) Attached to this Interim Order as Exhibit 1 is a 13-week budget approved by the DIP Agent, Required DIP Lenders, and Sponsoring Noteholders, which sets forth, among other things, projected cash receipts and cash disbursements (the “**Approved Budget**”). Commencing at 5:00 p.m. (Eastern Time) on each Thursday beginning with the week of May 20, 2024, and continuing at 5:00 p.m. (Eastern Time) on each Thursday thereafter, the Debtors shall deliver to the DIP Agent, Required DIP Lenders, and Sponsoring Noteholders an updated budget, and if such updated budget is in form and substance satisfactory to the DIP Agent, Required DIP

Lenders, and Sponsoring Noteholders, it shall become the “Approved Budget” for purposes of the DIP Documents and the DIP Order, and to the extent such updated budget is not satisfactory to the DIP Agent, the Required DIP Lenders and the Sponsoring Noteholders, the previous Approved Budget shall continue to be the “Approved Budget.” Any amendments, supplements or modifications to the Approved Budget shall be subject to the prior written approval of the DIP Agent (acting at the direction of the Required DIP Lenders). Upon the prior written consent of the DIP Agent to a proposed updated budget, or an amendment, supplement or modification to the Approved Budget, such proposed updated budget, amendment, supplement or modification shall be effective. Until any such updated budget, amendment, supplement or modification has been affirmatively approved (as provided in the immediately preceding sentence), the Debtors shall be subject to and be governed by the terms of the Approved Budget then in effect. Any such Approved Budgets shall be served on the U.S. Trustee and counsel to the Committee (if any).

(ii) The Approved Budget is approved on an interim basis. The proceeds of the DIP Facility and Cash Collateral under this Interim Order shall be used by the Debtors solely in accordance with the Approved Budget (subject to Permitted Variances), this Interim Order and the DIP Documents.

(iii) Other than with respect to the Carve-Out, and except as provided in Paragraph 25, none of the DIP Secured Parties’ and the Prepetition Secured Parties’ consent (deemed or otherwise) to, or acknowledgement of, the Approved Budget shall be construed as consent to use the proceeds of the DIP Facility or Cash Collateral beyond the Maturity Date of the DIP Facility or the occurrence of the Termination Date, regardless of whether the aggregate funds shown on the Approved Budget have been expended.

17. Budget Reporting. The Debtors shall at all times comply with the Approved Budget and the permitted variances thereto set forth in the DIP Credit Agreement. By no later than 5:00 p.m. (Eastern Time) on May 20, 2024 (which shall not be a Testing Date, as defined below), and no later than 5:00 p.m. (Eastern Time) on each Monday thereafter (each, a “**Testing Date**”), the Debtors shall deliver to the DIP Agent and the Sponsoring Noteholders a variance report for the applicable Testing Period (as defined below) in form and detail required by the Credit Agreement (a “**Variance Report**”)<sup>10</sup> showing comparisons of (a) aggregate actual cash receipts since the Petition Date and for the Testing Period then most recently ended on a line by line basis, compared to the aggregate projected cash receipts of the Debtors since the Petition Date on a line by line basis and for such Testing Period<sup>11</sup> as set forth in the Approved Budget (any such difference on an aggregate basis, a “**Receipts Variance**”) and (b) actual cash disbursements on a line by line basis of the Debtors since the Petition Date and for such Testing Period compared to the projected cumulative cash disbursements on a line by line basis since the Petition Date and for such Testing Period as set forth in the Approved Budget (any such difference on an aggregate basis, a “**Disbursements Variance**” and together with the Receipts Variance, a “**Variance**”). Each Variance Report shall indicate whether there are any adverse variances that exceed the Permitted Variances (as defined below) and shall provide a written explanation for such variances. “**Permitted Variances**” shall mean, as of the applicable Testing Date, (i) any Receipts Variance, or (ii) a Disbursements Variance of up to 20% on a cumulative

<sup>10</sup> The Variance Report may be made available by the DIP Agent to the DIP Lenders

<sup>11</sup> “**Testing Period**” shall mean the full calendar week (on a Monday to Sunday basis) ending on the last Sunday before the Testing Date. The first Testing Period shall cover a cumulative rolling three-week period.

rolling four-week basis, provided that to the extent the actual cash receipts in any such period exceed the amounts for such period in the applicable Budget, or if the cash disbursements in any such period are less than the amounts for such period in the applicable Budget, then the Budget Variance for such receipts or disbursements, as applicable, for the next succeeding period shall be increased by an amount equal to such difference (and shall continue to roll over into successive periods to the extent such additional budgeted capacity is unused by the Debtors).

18. Modification of Automatic Stay. The automatic stay imposed under section 362 of the Bankruptcy Code is hereby modified and vacated to the extent necessary to permit the Debtors, the DIP Secured Parties, and the Prepetition Secured Parties to accomplish the transactions contemplated by this Interim Order, including to: (a) permit the Debtors to grant the DIP Liens and DIP Superpriority Claims; (b) permit the Debtors to perform such acts as the DIP Agent may reasonably request to assure the perfection and priority of the liens granted herein; (c) permit the Debtors to incur all liabilities and obligations to the DIP Secured Parties under this Interim Order and the DIP Documents; and (d) authorize the Debtors to pay, and the DIP Secured Parties to retain and apply, payments made in accordance with the terms of this Interim Order.

19. Perfection of DIP Liens. This Interim Order shall be sufficient and conclusive evidence of the creation, validity, perfection, and priority of all liens granted herein, including the DIP Liens, without the necessity of filing or recording any financing statement, mortgage, deed of trust, notice, or other instrument or document which may otherwise be required under the law or regulation of any jurisdiction or the taking of any other action (including, for the avoidance of doubt, entering into any deposit account control agreement) to validate or perfect

(in accordance with applicable nonbankruptcy law) the DIP Liens or to entitle the DIP Secured Parties and the Prepetition Secured Parties to the priorities granted herein. Notwithstanding the foregoing, the DIP Agent is authorized, but not required, to file, as each deems necessary or advisable, such financing statements, security agreements, mortgages, notices of liens and other similar documents to perfect in accordance with applicable non-bankruptcy law or to otherwise evidence the DIP Liens, and all such financing statements, mortgages, notices and other documents shall be deemed to have been filed or recorded as of the Petition Date; *provided, however*, that no such filing or recordation shall be necessary or required in order to create or perfect the DIP Liens. The Debtors are authorized to execute and deliver promptly upon demand to the DIP Agent all such financing statements, mortgages, notices and other documents as each may reasonably request. The DIP Agent may, in its discretion, file a photocopy of this Interim Order as a financing statement with any filing or recording office or with any registry of deeds or similar office in addition to or in lieu of such financing statements, notices of lien or similar instruments.

20. Carve-Out. The DIP Liens and the Prepetition Liens are subordinate to the following: (i) quarterly fees required to be paid pursuant to 28 U.S.C. § 1930(a)(6) (the “**U.S. Trustee Fees**”), together with interest payable thereon pursuant to applicable law and any fees payable to the Clerk of the Bankruptcy Court; (ii) the allowed, accrued, and unpaid reasonable fees and expenses of professionals employed by the Debtors and any Committee pursuant to Sections 327 and 1103 of the Bankruptcy Code (the “**Case Professionals**”) capped at the amounts set forth in the Approved Budget. The Debtors shall establish an escrow into which will be deposited, on a monthly basis, sufficient funds from the Carve-Out to pay the Debtors’

unpaid and/or not-yet-allowed professional fees incurred in these cases consistent with the Approved Budget. Payment from the escrow shall be made upon Court approval of the Case Professionals' fees and any hold back of professional fees instituted in these cases.

21. Preservation of Rights Granted Under this Interim Order.

a. Other than the Carve-Out and other claims and liens expressly granted or permitted by this Interim Order and the DIP Documents, no claim or lien having a priority superior to or *pari passu* with those granted by this Interim Order to the DIP Secured Parties shall be permitted while any of the DIP Obligations remain outstanding. Except as expressly provided in or permitted under this Interim Order, the DIP Liens shall not be subject or subordinate to or made *pari passu* with: (i) any lien or security interest that is avoided and preserved for the benefit of the Debtors' estates under section 551 of the Bankruptcy Code; (ii) any other lien or security interest whether under section 361, 363, or 364 of the Bankruptcy Code or otherwise; (iii) any liens arising after the Petition Date, including, without limitation, any liens or security interests granted in favor of any federal, state, municipal, or other domestic or foreign governmental unit (including any regulatory body), commission, board, or court for any liability of the DIP Secured Parties; or (iv) any intercompany or affiliate liens or security interests of the DIP Secured Parties.

b. Upon an Event of Default, interest, including, where applicable, default interest, shall accrue and be paid as and to the extent set forth in the DIP Credit Agreement. Notwithstanding any order that may be entered dismissing any of the Chapter 11 Cases under section 1112 of the Bankruptcy Code or converting any of these Chapter 11 Cases to cases under chapter 7 of the Bankruptcy Code: (i) the DIP Liens and the DIP Superpriority Claims shall

continue in full force and effect and shall maintain their priorities as provided in this Interim Order until all DIP Obligations shall have been indefeasibly paid in full (and such DIP Liens and DIP Superpriority Claims shall, notwithstanding such dismissal, remain binding on all parties in interest); (ii) the other rights granted in this Interim Order shall not be affected; and (iii) to the greatest extent allowed by applicable law, this Court shall retain jurisdiction, notwithstanding such dismissal, for purposes of enforcing the claims, liens, and security interests referred to in this paragraph and otherwise in this Interim Order.

c. If any or all of the provisions of this Interim Order are hereafter reversed, ~~or modified, vacated or stayed on appeal~~, or modified, vacated or stayed on appeal, the DIP Agent, the DIP Lenders and the Prepetition Secured Parties shall be entitled to all of the rights, remedies, protections, and benefits granted under section 364(e) of the Bankruptcy Code.

d. Except as expressly provided in this Interim Order or in the DIP Documents, the DIP Liens, the DIP Superpriority Claims and all other rights and remedies of the DIP Agent and the DIP Lenders granted by the provisions of this Interim Order and the DIP Documents shall survive, and shall not be modified, impaired, or discharged by: (i) the entry of an order converting any of the Chapter 11 Cases to a case under chapter 7, dismissing any of the Chapter 11 Cases, terminating the joint administration of the Chapter 11 Cases or by any other act or omission of the Debtors; (ii) the entry of an order approving the sale of any DIP Collateral pursuant to section 363(b) of the Bankruptcy Code (except to the extent permitted by the DIP Documents); or (iii) the entry of an order confirming a chapter 11 plan in any of the Chapter 11 Cases, and pursuant to section 1141(d)(4) of the Bankruptcy Code, the DIP Secured Parties have waived any discharge as to any remaining DIP Obligations. The terms and provisions of this

Interim Order and the DIP Documents shall continue in these Chapter 11 Cases, in any Successor Cases if these Chapter 11 Cases cease to be jointly administered and in any superseding chapter 7 cases under the Bankruptcy Code, and the DIP Liens and the DIP Superpriority Claims and all other rights and remedies of the DIP Agent and the DIP Lenders granted by the provisions of this Interim Order and the DIP Documents shall continue in full force and effect until the DIP Obligations are indefeasibly paid in full, as set forth herein and in the DIP Documents and the RSA.

22. Approval of DIP Fees. In consideration for the DIP Financing and the consent to the use of Cash Collateral in accordance with the terms of this Interim Order, the DIP Secured Parties shall be paid all prepetition and postpetition fees, expenses, and other amounts payable under the DIP Documents as such become due, including, without limitation, exit fees and the reasonable and documented fees and expenses of the DIP Secured Parties in connection with the DIP Facility, without regard to whether or not the transactions contemplated hereby are consummated (all such fees, together, the “**DIP Fees**”), subject to the review procedures set forth in paragraph 23. The DIP Fees shall be fully earned and payable in accordance with the terms of the DIP Documents, without the need for any further order of this Court. The DIP Fees shall be part of the DIP Obligations. Any and all DIP Fees paid prior to the Petition Date by any of the Debtors to the DIP Secured Parties in connection with or with respect to the DIP Facility in each case is hereby approved in full. Notwithstanding anything to the contrary in this Interim Order or the DIP Documents, (i) consideration of the Exit Fee is reserved until the Final Hearing, and (ii) so long as the RSA remains in effect, the Exit Fee, if approved at the Final Hearing, shall be payable in New ProSomnus Common Equity pursuant to the terms of the RSA.



23. Lender and Lender Professionals’ Fees. Professionals for (i) the Prepetition Agents,<sup>12</sup> consisting of (a) Pryor Cashman LLP (as counsel to the Prepetition Agents) and (b) Cross & Simon, LLC (as local counsel to the Prepetition Agents) and (ii) the DIP Secured Parties and Ad Hoc Group<sup>1213</sup> ((i) and (ii) collectively, the “Lender Professionals”), consisting of: (i)a) Kilpatrick Townsend & Stockton LLP (as counsel to the DIP Lenders and the Ad Hoc Group), (ii)b) Morris James LLP (as local counsel to the DIP Lenders and the Ad Hoc Group), and (iii)c) Seward & Kissel LLP (as counsel to the DIP Agent), and (d) one local counsel to the DIP Agent), shall not be required to comply with the U.S. Trustee fee guidelines or file applications or motions with, or obtain approval of, this Court for compensation and reimbursement of fees and expenses. The Lender Professionals shall submit copies of summary invoices to the Debtors, the U.S. Trustee and counsel for any Committee (collectively, the “Fee Review Parties”). The summary invoices shall provide the specific individuals providing the services, the total number of hours billed for each individual, the hourly fee for such individual, and a summary description of services provided by the applicable Lender Professional (which shall not be required to contain time entries and which may be redacted or modified to the extent necessary to delete any information subject to the attorney-client privilege or any other confidential information), and shall be subject to all applicable privilege and work product doctrines. Any objections raised by any Fee Review Party with respect to such invoices must be in writing and state with particularity the grounds therefor and must be submitted to the

<sup>12</sup> For the avoidance of doubt, this is inclusive of the reasonable and documented fees and expenses of the Prepetition Agents.

<sup>1213</sup> “Ad Hoc Group” means the ad hoc group of secured noteholders who collectively hold approximately 94.95% in principal amount of the Prepetition Obligations.

applicable professional within ten (10) calendar days after receipt of an invoice (the “**Review Period**”), and any failure by any such party to deliver a fee objection within such ten (10) day period shall constitute a waiver of any right of such party to object to the applicable invoice. If no written objection is received by 12:00 prevailing Eastern Time, on the last date of the Review Period, the Debtors shall pay such invoices within five (5) days thereafter. If an objection to a professional’s invoice is received within the Review Period, the Debtors shall promptly pay the undisputed amount of the invoice without the necessity of filing formal fee applications, regardless of whether the invoiced amount arose or was incurred before or after the Petition Date, and the Court shall have jurisdiction to determine the disputed portion of such invoice if the parties are unable to resolve the dispute consensually. Notwithstanding any provision herein to the contrary, any objection to, and any hearing on an objection to, payment of any fees, costs, and expenses set forth in a professional fee invoice in respect of the Lender Professionals shall be limited to the reasonableness of the particular items or categories of the fees, costs, and expenses that are the subject of such objection. The Debtors shall timely pay in accordance with the terms and conditions of this Interim Order (a) the undisputed fees, costs, and expenses reflected on any invoice to which a Fee Objection has been timely filed and (b) all fees, costs and expenses on any invoice to which no Fee Objection has been timely filed.

24. Effect of Stipulations on Third Parties. The Debtors’ Stipulations contained in Paragraph G hereof shall be binding in all circumstances upon the Debtors upon entry of this Interim Order and upon their Estates upon entry of the Final Order. The Debtors’ Stipulations shall be binding upon each other party-in-interest, including the Committee (if any), except to the extent a party in interest (including any chapter 11 trustee or if the Chapter 11 Cases are

converted to cases under chapter 7 prior to the expiration of the Challenge Period (as defined below) the chapter 7 trustee in such Successor Case) obtains any necessary standing and properly files a contested matter, adversary proceeding, or other matter, by ~~no later than (a) as to the Committee (if any), sixty (60) calendar days following the date of formation of a Committee, or the earlier of (b) as to all other parties in interest,~~ seventy-five (75) calendar days following entry of the Interim Order; and (ii) the deadline to object to the Debtors' chapter 11 plan (the “**Challenge Period**,” and the date that is the next calendar day after the termination of the Challenge Period in the event that either (i) no Challenge (as defined below) is properly raised during the Challenge Period or (ii) with respect only to those parties who properly file a contested matter, adversary proceeding, or other matter challenging or otherwise objecting to the admissions, stipulations, findings, or releases included in the Debtors' Stipulations (each, a “**Challenge**”), such Challenge is fully and finally adjudicated, (i) and (ii) shall be referred to as the “**Challenge Period Termination Date**”) and second, obtains a final, non-appealable order in favor of such party-in-interest sustaining any such Challenge in any such timely-filed contested matter, adversary proceeding, or other action (any such Challenge timely brought for which such a final and non-appealable order is so obtained, a “**Successful Challenge**”). Notwithstanding the previous sentence, the filing of a motion seeking standing to file a Challenge before the Challenge Period Termination Date, which attaches a proposed Challenge in accordance with the Bankruptcy Rules, shall extend the Challenge Period solely with respect to (1) the party that filed the standing motion and (2) the Challenges asserted by that party until two business days after the Court approves the standing motion, or such other time period ordered by the Court in approving the standing motion. Except as otherwise expressly provided herein, from and after

the Challenge Period Termination Date and for all purposes in these Chapter 11 Cases and any Successor Cases (and after the dismissal of these Chapter 11 Cases or any Successor Cases), and without further notice, motion, or application to, order of, or hearing before this Court, (i) any and all payments made to or for the benefit of the Prepetition Secured Parties (whether made prior to, on, or after the Petition Date) shall not be subject to counterclaim, set-off, subordination, recharacterization, defense, disallowance, recovery or avoidance by any party in interest, (ii) any and all such Challenges by any party-in-interest shall be deemed to be forever released, waived, and barred, (iii) all of the Prepetition Obligations shall be deemed to be fully allowed claims within the meaning of section 506 of the Bankruptcy Code, and (iv) the Debtors' Stipulations shall be binding on all parties in interest in these Chapter 11 Cases or any Successor Cases, including any Committee or chapter 11 or chapter 7 trustee. Notwithstanding the foregoing, to the extent any Challenge is timely asserted, the Debtors' Stipulations and the other provisions in clauses (i) through (iv) in the immediately preceding sentence shall nonetheless remain binding and preclusive on any Committee and on any other party-in-interest from and after the Challenge Period Termination Date, except to the extent that such Debtors' Stipulations or the other provisions in clauses (i) through (iv) of the immediately preceding sentence were expressly challenged in such Challenge and such Challenge becomes a Successful Challenge; provided, that all other Stipulations (other than those subject to a Successful Challenge) shall remain binding on any Committee or other party-in-interest. Notwithstanding any provision to the contrary herein, nothing in this Interim Order shall be construed to grant standing on any party in interest, including the Committee, to bring any Challenge on behalf of the Debtors' Estates. The failure of any party-in-interest, including any Committee, to obtain an order of this

Court prior to the Challenge Period Termination Date granting standing to bring any Challenge on behalf of the Debtors' estates shall not be a defense to failing to commence a Challenge prior to the Challenge Period Termination Date as required under this Paragraph 24 or to require or permit an extension of the Challenge Period Termination Date. No portion of the Carve-Out, any Cash Collateral, any other DIP Collateral, or any proceeds of the DIP Facility, including any disbursements set forth in the Approved Budget or obligations benefitting from the Carve-Out, shall be used for the payment of Allowed Professional Fees, disbursements, costs or expenses incurred by any person, including, without limitation, any Committee, in connection with challenging the DIP Secured Parties' or the Prepetition Secured Parties' liens or claims, preventing, hindering or delaying any of the DIP Secured Parties' or the Prepetition Secured Parties' enforcement or realization upon any of the DIP Collateral, or initiating or prosecuting any claim or action against any DIP Secured Party or Prepetition Secured Party; provided that, notwithstanding the foregoing, proceeds from the DIP Facility and/or Cash Collateral not to exceed \$20,000 in the aggregate may be used on account of Allowed Professional Fees incurred by Committee Professionals (if any) in connection with the investigation of avoidance actions or any other claims or causes of action (but not the prosecution of such actions) on account of the Prepetition Obligations.

25. Remedies.

a. Upon (i) the occurrence and during the continuance of an Event of Default (as such term is defined in the DIP Credit Agreement); (ii) the Debtors' failure to comply with the terms of this Interim Order (including, without limitation, its failure to comply with the Approved Budget, subject to any Permitted Variances); or (iii) the Debtors' failure to comply

with any of the Case Milestones set forth in the RSA and DIP Credit Agreement, unless waived in writing by the Sponsoring Noteholders, and following written notice thereof by the DIP Agent to the Debtors, the Committee (if any), and the U.S. Trustee (which notice may be given by e-mail) (the “**Default Notice**”), then the DIP Lenders shall be fully authorized, in their sole discretion, to (i) cease making advances to the Debtor under the DIP Facility, (ii) terminate the Debtors’ use Cash Collateral and/or the DIP Facility; (iii) declare all DIP Obligations to be immediately due and payable; and/or (iv) invoke the right to charge interest at the default rate (an additional 2.00% per annum); provided, however, that during the Remedy Notice Period (defined below), the Debtors may use Cash Collateral solely to meet payroll obligations and pay expenses to avoid immediate and irreparable harm to the Debtors’ estates, in each case accordance with the Approved Budget, and as agreed by the Required DIP Lenders in their reasonable discretion.

b. Further, upon transmission of a Default Notice or upon the Termination Date, the Debtors, the Committee (if any) and the U.S. Trustee shall have five (5) calendar days from the date of transmission of the Default Notice (the “**Remedy Notice Period**”) to obtain an order of the Court on notice to the DIP Agent (a) enjoining or restraining the DIP Lenders/DIP Agent from taking action or exercising rights and remedies based upon the Event of Default specified in the Default Notice; ~~or~~ (b) challenging whether an Event of Default in the Default Notice has occurred or is continuing without cure; or (c) seeking such other relief that the Court may hear (a “**Restraint on Remedies**”). Immediately upon expiration of the Remedy Notice Period, unless a Restraint on Remedies has timely been obtained from the Court, or with respect to and upon the Termination Date, the DIP Agent (on behalf of the DIP Lenders) shall have the right, free of the restrictions of section 362 or under any other section of the Bankruptcy Code or

Bankruptcy Rules (including, without limitation, Bankruptcy Rule 4001(a)), to exercise contractual, legal and equitable rights and remedies as to all or such part of the DIP Collateral as it shall elect including, without limitation, (x) foreclosure on all or any portion of the DIP Collateral, and to apply the proceeds of the DIP Collateral to the repayment of the DIP Obligations; and (y) take any other actions or exercise any other rights or remedies permitted under the Interim Order, the DIP Documents or applicable law to effect the repayment of the DIP Obligations. The Debtors shall cooperate fully with the DIP Agent and the DIP Lenders in their exercise of rights and remedies, whether against the DIP Collateral or otherwise.

26. Payments Free and Clear. Any and all payments or proceeds remitted to the DIP Agent, the DIP Lenders, the Prepetition Agents, or the Prepetition Secured Parties pursuant to the provisions of this Interim Order, the Final Order (if and when entered), the DIP Documents, or any subsequent orders of the Court shall be irrevocable and received free and clear of any claim, charge, assessment or other liability, whether asserted or assessed by, through or on behalf of the Debtors

27. No Marshalling. Subject to entry of the Final Order, the DIP Secured Parties and the Prepetition Secured Parties shall not be subject to the equitable doctrine of “marshalling” or any other similar doctrine with respect to any of the DIP Collateral or Prepetition Collateral, as applicable.

28. Section 552(b). Subject to entry of the Final Order, the DIP Secured Parties and the Prepetition Secured Parties shall each be entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code, and the “equities of the case” exception under section 552(b) of the Bankruptcy Code shall not apply to the DIP Secured Parties or the Prepetition Secured

Parties, as applicable with respect to proceeds, product, offspring or profits of any of the Prepetition Collateral or DIP Collateral, as applicable.

29. Section 506(c). Subject to entry of the Final Order, no costs or expenses of administration which have or may be incurred in the Chapter 11 Case at any time shall be charged against or recovered from the DIP Lenders, the Prepetition Secured Parties, their respective claims, the DIP Collateral, or the Prepetition Collateral pursuant to Section 506(c) of the Bankruptcy Code or any similar principle of law without the prior written consent of the DIP Lenders or the Prepetition Secured Parties, as applicable, and no such consent shall be implied from any other action, inaction or acquiescence by the DIP Lenders or the Prepetition Secured Parties.

30. Limitation of Liability. In determining to make any loan or other extension of credit under the DIP Credit Agreement, to permit the use of Cash Collateral or in exercising any rights or remedies as and when permitted pursuant to this Interim Order and the DIP Documents, the DIP Agent and the DIP Lenders, in their capacities as such, shall not (i) be deemed to be in “control” of the operations of the Debtors; (ii) owe any fiduciary duty to the Debtors, their respective creditors, shareholders, or estates; and (iii) be deemed to be acting as a “Responsible Person” or “Owner” or “Operator” with respect to the operation or management of the Debtors (as such terms or similar terms are used in the United States Comprehensive Environmental Response, Compensation and Liability Act, 29 U.S.C. §§ 9601, *et seq.*, as amended, or any similar federal or state statute).

31. Proofs of Claim. The Prepetition Agents shall not be required to file proofs of claim in the Chapter 11 Cases or any successor case in order to assert claims on behalf of itself



and the Prepetition Secured Parties for payment of the Prepetition Obligations arising under the Prepetition Notes Documents, including, without limitation, any principal, premium, unpaid interest, fees, expenses, and other amounts under the Prepetition Notes Documents. The statements of claim in respect of the Prepetition Obligations set forth in this Interim Order, together with any evidence accompanying the Motion and presented at the Interim Hearing, are deemed sufficient to and do constitute proofs of claim in respect of such debt and such secured status. In addition, none of the DIP Secured Parties shall be required to file proofs of claim with respect to the DIP Obligations.

32. No Third-Party Rights. Except as explicitly provided for herein or in any of the DIP Documents, this Interim Order does not create any rights for the benefit of any third party, creditor, equity holder, or direct, indirect, or incidental beneficiary.

33. Final Hearing. The Final Hearing on the Motion shall be held on ~~\_\_\_\_\_~~ June 5, 2024, 2024, at ~~\_\_\_:\_\_\_~~ 10:00 a.m., prevailing Eastern Time; provided that the Final Hearing may be adjourned or otherwise postponed upon the Debtors filing a notice of such adjournment with the consent of the DIP Agent (acting at the direction of the Required DIP Lenders). The Debtors shall promptly serve copies of this Interim Order (which shall constitute adequate notice of the Final Hearing) to the parties having been given notice of the Interim Hearing, and to any other party that has filed a request for notices with this Court. Any objections or responses to entry of the Final Order shall be filed on or before **4:00 p.m.**, prevailing Eastern Time, on ~~\_\_\_\_\_~~ May 29, 2024.

34. Necessary Action. The Debtors are authorized to take any and all such reasonable actions and to make, execute and deliver any and all instruments as may be reasonably necessary

to implement the terms and conditions of this Interim Order and the transactions contemplated hereby.

35. Enforceability. This Interim Order shall constitute findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052 and shall take effect and be enforceable immediately upon entry thereof. Notwithstanding Bankruptcy Rules 4001(a)(3), 6004(h), 6006(d), 7062 or 9014 of the Bankruptcy Rules, any applicable Local Bankruptcy Rules, or Rule 62(a) of the Federal Rules of Civil Procedure, this Interim Order shall be immediately effective and enforceable upon its entry and there shall be no stay of execution or effectiveness of this Interim Order.

36. Headings. The headings in this Interim Order are for purposes of reference only and shall not limit or otherwise affect the meaning of this Interim Order.

37. Priority of Terms. To the extent of any conflict between or among (a) the express terms or provisions of any of the DIP Documents or the Motion, on the one hand, and (b) the terms and provisions of this Interim Order, on the other hand, unless such term or provision herein is phrased in terms of “as defined in” or “as set forth in” any of the DIP Documents, the Prepetition Notes Documents, or other agreement, the terms and provisions of this Interim Order shall govern.

38. Retention of Jurisdiction. This Court retains jurisdiction (i) with respect to all matters arising from or related to the DIP Documents and the implementation of this Interim Order and (ii) to enforce the same. This retention of jurisdiction shall survive confirmation and consummation of any chapter 11 plan for any one or more of the Debtors notwithstanding the terms of provisions of any such chapter 11 plan or any order confirming any such chapter 11

plan.

**Exhibit 1**

Budget

| ~~94656658.11~~ 94656658.12

| 94656658.15

**Exhibit 2**

Lien Priorities

1. Prepetition Permitted Liens
2. Carve-Out
3. Prepetition Senior Liens
4. DIP Liens
5. Prepetition Subordinated Liens

| ~~94656658.11~~ [94656658.12](#)

| [94656658.15](#)

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