

**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)

**Objection Deadline: May 29, 2024 at 4:00 p.m. (ET)**

**Hearing Date: June 5, 2024 at 10:00 a.m. (ET)**

**MOTION OF DEBTORS FOR ENTRY OF AN ORDER AUTHORIZING THE  
RETENTION AND PAYMENT OF CERTAIN PROFESSIONALS UTILIZED BY THE  
DEBTORS IN THE ORDINARY COURSE OF BUSINESS**

The above-captioned debtors and debtors in possession (the “**Debtors**”) hereby move (the “**Motion**”), pursuant to sections 105(a), 328, 330, and 331 of title 11 of the United States Code (the “**Bankruptcy Code**”), Rules 2014 and 2016 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”); and Rule 2014-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “**Local Rules**”) for entry of an order substantially in the form of Exhibit A attached hereto (the “**Order**”), authorizing the retention and payment of certain professionals utilized by the Debtors in the ordinary course of business. In support of the Motion, the Debtors rely upon the *Declaration of Brian Dow, Chief Financial Officer of Debtors, in Support of Chapter 11 Petitions and First Day Pleadings* [Docket No. 14] (the “**First Day Declaration**”). In further support of the Motion, the Debtors, by and through their undersigned counsel, respectfully represent:

<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.



**JURISDICTION AND VENUE**

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

2. The predicates for the relief requested herein are Bankruptcy Code sections 105(a), 328, 330 and 331, Bankruptcy Rules 2014 and 2016, and Local Rule 2014-1.

**BACKGROUND**

3. On May 7, 2024 (the “**Petition Date**”), each of the Debtors filed a voluntary petition in this Court commencing a case for relief under chapter 11 of the Bankruptcy Code (the “**Chapter 11 Cases**”). The factual background regarding the Debtors, including their business operations, their capital and debt structures, and the events leading to the filing of the Chapter 11 Cases, is set forth in detail in the First Day Declaration and is fully incorporated herein by reference.

4. On May 9, 2024, the Court entered an order authorizing the joint administration of the Chapter 11 Cases for procedural purposes pursuant to Bankruptcy Rule 1015(b) [Docket No. 41].

5. The Debtors continue to manage and operate their business as debtors in possession pursuant to Bankruptcy Code sections 1107 and 1108. No trustee or examiner has been requested in the Chapter 11 Cases and no committees have yet been appointed.

**RELIEF REQUESTED**

6. The Debtors customarily retain the services of various professionals to represent their interests in matters arising in the ordinary course of their business, unrelated to the Chapter 11 Cases (the “**Ordinary Course Professionals**”). A list of the Debtors’ current Ordinary Course Professionals is attached as Exhibit 1 to the proposed order submitted herewith.

7. The work of the Ordinary Course Professionals is directly related to the preservation of the value of the Debtors’ estates. Even though the amount of fees and expenses incurred by the Ordinary Course Professionals represent a fraction of the value of their estates, the Debtors cannot continue to operate as debtors in possession unless they have access to these professionals.

8. Given the necessity of these services, the delay associated with the application procedures applicable to bankruptcy professionals would hinder the Debtors’ ongoing business operations. Further, some Ordinary Course Professionals may not be able to abide by such procedures, which would leave the Debtors looking for replacements. This would impose a cost that the Debtors cannot currently absorb, as it would require new professionals to take additional time to get acquainted with the specifics of the Debtors’ business, and may result in the Debtors paying these new professionals higher rates for the same work.

9. The relief sought in this Motion may result in avoiding the additional cost of preparing retention and fee applications. This cost would be significant, and would be borne by the Debtors’ estates. Moreover, individual applications by each of these Ordinary Course Professionals would unnecessarily burden the Clerk’s office, this Court, and the United States Trustee (the “**U.S. Trustee**”).

10. By contrast, granting this Motion will benefit the Debtors, their estates, and creditors by providing cost-effective access to professionals who have an existing relationship with, and understanding of, the Debtors and their operations. Accordingly, because it is in the best interests of all of the parties and the creditors to avoid any disruption in the professional services rendered by the Ordinary Course Professionals in the day-to-day operations of the Debtors' business, this Motion should be granted.

11. By this Motion, the Debtors seek authorization to: (a) retain the Ordinary Course Professionals under Bankruptcy Code section 327 without the necessity of a separate, formal retention application approved by this Court for each Ordinary Course Professional; and (b) pay the Ordinary Course Professionals under Bankruptcy Code sections 330 and 331 for services rendered and expenses incurred after the Petition Date, subject to certain limits set forth below, without the necessity of additional Court approval.

12. In contrast, the Debtors have filed individual retention applications for the professionals that the Debtors seek to employ in connection with the conduct of the Chapter 11 Cases (the "**Chapter 11 Professionals**").<sup>2</sup> The Chapter 11 Professionals will be compensated and reimbursed only in accordance with applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and any orders entered in the Chapter 11 Cases governing professional compensation and reimbursement for services rendered and charges and disbursements incurred.

13. Although the Debtors believe that some of the Ordinary Course Professionals may not be "professional persons" as contemplated by Bankruptcy Code section 327 and, thus, that no retention or payment authorization is necessary, out of an abundance of caution the Debtors seek

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<sup>2</sup> As of the filing of this Motion, the proposed Chapter 11 Professionals in the Chapter 11 Cases consist of: (a) Polsinelli PC ("**Polsinelli**") as counsel; (ii) Gavin/Solmonese LLC ("**G/S**") as financial advisor; and (iii) Kurtzman Carson Consultants LLC ("**KCC**") as administrative advisor.

an order authorizing the retention and payment of all Ordinary Course Professionals under Bankruptcy Code section 327.

14. Although certain of the Ordinary Course Professionals may hold unsecured claims against the Debtors, the Debtors do not believe that any of the Ordinary Course Professionals have an interest materially adverse to the Debtors, their estates, creditors, or shareholders.

**BASIS FOR RELIEF**

15. The Debtors desire to continue to employ and retain the Ordinary Course Professionals to render services to their estates that are similar to those rendered prior to the Petition Date. Although the automatic stay and other aspects of the Chapter 11 Cases may decrease the Debtors' need for certain Ordinary Course Professionals' services, the Debtors cannot now quantify or qualify that need.

16. Accordingly, the Debtors request that they be permitted to employ and retain the Ordinary Course Professionals on terms substantially similar to those in effect prior to the Petition Date, but subject to the terms described below.

**A. Payment of Fees and Expenses**

17. The Debtors propose that they be permitted to pay 100% of the interim fees and disbursements to each of the Ordinary Course Professionals upon the submission to the Debtors of an appropriate invoice setting forth in reasonable detail the nature of the services rendered after the Petition Date, provided, however, that if the amount due any Ordinary Course Professional exceeds \$50,000 per month on average over any three-month period on a rolling basis (the "**Monthly Fee Limit**"), then such Ordinary Course Professional shall submit copies of its monthly invoices summarizing in reasonable detail the services rendered and expenses incurred in connection therewith (the "**Monthly Invoices**") by hand, overnight delivery, or email on: (a) the

Debtors, c/o ProSomnus, Inc., 5675 Gibraltar Dr., Pleasanton, California 94588; (b) proposed counsel to the Debtors, Polsinelli PC, 222 Delaware Avenue, Suite 1101, Wilmington, Delaware 19801, Attn: Shanti M. Katona (skatona@polsinelli.com) and Katherine M. Devanney (kdevanney@polsinelli.com); (c) counsel to the Sponsoring Noteholders and DIP Lenders, Kilpatrick Townsend & Stockton LLP, 1114 Avenue of the Americas, New York, New York 10036, Attn: David M. Posner (dposner@ktslaw.com) and Gianfranco Finizio (gfinizio@ktslaw.com) and Morris James LLP, 500 Delaware Avenue, Suite 1500, Wilmington, Delaware 19801, Attn: Eric J. Monzo (emonzo@morrisjames.com) and Brya M. Keilson (bkeilson@morrisjames.com); (d) counsel to the Prepetition Agents, Pryor Cashman LLP, 7 Times Square, 40th Floor, New York, New York 10036, Attn: Seth H. Lieberman (slieberman@pryorcashman.com); (e) counsel to the DIP Agent, Seward & Kissel LLP, One Battery Park Plaza, New York, NY 10004, Attn: Gregg Bateman (bateman@sewkis.com); and (f) the Office of the United States Trustee, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801, Attn: Jon Lipshie (jon.lipshie@usdoj.gov) (individually, a “**Notice Party**” and collectively, the “**Notice Parties**”).

18. Any Notice Party may object to the payment of fees and expenses above the Monthly Fee Limit by serving a written objection upon the Ordinary Course Professional, the Debtors, and the other Notice Parties within fourteen (14) days of receiving the Monthly Invoices. The objection shall state the nature of the objection and identify the amount of the fees or costs to which the objection is made. In the absence of any timely objection, the Debtors would be authorized to pay 100% of the fees and expenses above the Monthly Fee Limit. All objections not resolved by the parties would be preserved and presented to the Court by the objecting party at the next scheduled omnibus hearing.

**B. Submission of Rule 2014 Affidavit**

19. By this Motion, the Debtors request that all Ordinary Course Professionals be excused from submitting separate applications for their proposed retention. The Debtors recognize, however, the importance of providing the Court and the U.S. Trustee information about each Ordinary Course Professional who is an attorney.

20. The Debtors thus propose that while they be permitted to continue to employ, retain, and compensate all Ordinary Course Professionals identified on Exhibit 1 to the proposed order, each Ordinary Course Professional be required to file with the Court and serve upon the Notice Parties an “Affidavit of Proposed Professional” within fifteen (15) days of the date of service of an order granting this Motion.

21. The Debtors further request that the Notice Parties be given fourteen (14) days from the date of service of an Ordinary Course Professional’s Affidavit to object to the retention of such Ordinary Course Professional (the “**Objection Deadline**”). Objections, if any, shall be served upon the Notice Parties. If any such objection cannot be resolved within five (5) days of service, the matter will be set for hearing before the Court on a date scheduled by the Court and agreeable to the Ordinary Course Professional, the Debtors, and the objecting party. If no objection is submitted on or before the Objection Deadline, or if any objection submitted is timely resolved as set forth above, the Debtors request that, without further order of the Court, the employment, retention, and compensation of the Ordinary Course Professional be deemed approved.

**C. Additional Ordinary Course Professionals**

22. The Debtors also request that they be authorized to employ and retain additional Ordinary Course Professionals as necessary, in the ordinary course of business (“**Additional Ordinary Course Professionals**”), (a) without the need to file individual retention applications;

and (b) without the need for any further hearing or notice to any other party, by filing with the Court a supplement (the “**Supplement**”) to Exhibit 1 to the proposed Order.

23. The Debtors propose that the Notice Parties be given fourteen (14) days after service of each Additional Ordinary Course Professional’s affidavit to object to the retention of such Additional Ordinary Course Professional. If no objection is submitted pursuant to the objection procedures described above, the Debtors shall be authorized to retain the Additional Ordinary Course Professional as a final matter.

24. The Debtors submit that the retention of the Ordinary Course Professionals and the payment of interim compensation on the basis set forth herein are in the best interests of the Debtors’ estates. Although generally the Ordinary Course Professionals with whom the Debtors have previously dealt wish to provide services to the Debtors on an ongoing basis, some might be unwilling to do so if they can be paid on a regular basis only through a cumbersome, formal application process. If the Debtors lose the expertise, experience, and institutional knowledge of these Ordinary Course Professionals, the estates will undoubtedly incur significant and unnecessary expenses, as the Debtors will be forced to retain other professionals without similar background and expertise. Therefore, it is in the best interests of the Debtors’ estates to avoid any disruption in the professional services required in the day-to-day operation of the Debtors’ business.

#### **APPLICABLE AUTHORITY**

25. The Debtors do not believe that the Ordinary Course Professionals are “professionals” within the meaning of section 327(a) of the Bankruptcy Code. Case law considers the following factors to determine whether an entity is a “professional” in this context:

- (a) whether the entity controls, manages, administers, invests, purchases, or sells assets that are significant to the debtor’s reorganization;



- (b) whether the entity is involved in negotiating the terms of a plan of reorganization;
- (c) whether the entity is directly related to the type of work carried out by the debtor or to the routine maintenance of the debtor's business operations;
- (d) whether the entity is given discretion or autonomy to exercise its own professional judgment in some part of the administration of the debtor's estate;
- (e) the extent of the entity's involvement in the administration of the debtor's estate; and
- (f) whether the entity's services involve some degree of special knowledge or skill, such that it can be considered a "professional" within the ordinary meaning of the term.

*See, e.g., In re Am. Tissue, Inc.*, 331 B.R. 169, 173 (Bankr. D. Del. 2005); *In re First Merchants Acceptance Corp.*, 1997 WL 873551, at \*2 (D. Del. Dec. 15, 1997) (defining "professionals" within the meaning of section 327 of the Bankruptcy Code as those whose "occupations . . . play a central role in the administration of the debtor proceeding, and not those occupations which are [merely] involved in the day-to-day mechanics of the debtor's business . . . [or those who are] given discretion or autonomy in some part of administration of the debtor's estate").

26. No factor alone is dispositive and these factors must be considered in their totality. *See First Merchants Acceptance Corp.*, 1997 WL 873551, at \*3. Here, considering all of these factors, the Debtors believe that the Ordinary Course Professionals are not "professionals" within the meaning of section 327(a) of the Bankruptcy Code whose retention must be approved by the Court. In particular, the Ordinary Course Professionals will not be involved in the administration of the Chapter 11 Cases, but rather will provide services in connection with the Debtors' ongoing business operations and services ordinarily provided by non-bankruptcy professionals. Nevertheless, out of an abundance of caution, the Debtors seek the relief requested in this Motion to avoid any subsequent controversy as to the Debtors' employment and payment of the Ordinary

Course Professionals during the Chapter 11 Cases. The Debtors will seek specific court authority under section 327 of the Bankruptcy Code to retain any professionals involved in the actual administration of the Chapter 11 Cases.

### **RESERVATION OF RIGHTS**

27. Nothing in this Motion: (a) is intended or shall be deemed to constitute an assumption of any agreement pursuant to section 365 of the Bankruptcy Code or an admission as to the validity of any claim against the Debtors or their estates; (b) shall impair, prejudice, waive, or otherwise affect the rights of the Debtors or their estates to contest the validity, priority, or amount of any claim against the Debtors or their estates; (c) shall impair, prejudice, waive, or otherwise affect the rights of the Debtors or their estates with respect to any and all claims or causes of action against any third party; or (d) shall be construed as a promise to pay a claim or continue any applicable program postpetition, which decision shall be in the discretion of the Debtors. Any payment made pursuant to an order of the Court granting the relief requested herein is not intended to be nor should it be construed as an admission as to the validity of any claim or a waiver of the Debtors' rights to subsequently dispute such claim.

### **NOTICE**

28. Notice of this Motion will be given to: (a) the United States Trustee for the District of Delaware; (b) the holders of the twenty (20) largest unsecured claims on a consolidated basis against the Debtors; (c) counsel to the Prepetition Agents; (d) counsel to the Sponsoring Noteholders and DIP Lenders; (e) counsel to the DIP Agent; (f) the Internal Revenue Service; (g) the United States Securities and Exchange Commission; (h) the Office of the United States Attorney for the District of Delaware; (i) any banking or financial institutions which hold the Debtors' accounts; and (j) all parties entitled to notice pursuant to Bankruptcy Rule 2002. In light

of the nature of the relief requested herein, the Debtors submit that no other or further notice is necessary

**NO PRIOR REQUEST**

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

**WHEREFORE**, the Debtors respectfully request that the Court enter the proposed order, substantially in the form attached hereto as Exhibit A, granting the relief requested in the Motion and such other and further relief as may be just and proper.

Dated: May 22, 2024  
Wilmington, Delaware

Respectfully submitted,

**POLSINELLI PC**

/s/ Michael V. DiPietro  
Shanti M. Katona (Del. Bar No. 5352)  
Katherine M. Devanney (Del. Bar No. 6356)  
Michael V. DiPietro (Del. Bar No. 6781)  
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-and-

Mark B. Joachim (Admitted Pro Hac Vice)  
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mjoachim@polsinelli.com

*Proposed Counsel to the Debtors and  
Debtors in Possession*

**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)

**Objection Deadline: May 29, 2024 at 4:00 p.m. (ET)**

**Hearing Date: June 5, 2024 at 10:00 a.m. (ET)**

**NOTICE OF MOTION**

**PLEASE TAKE NOTICE** that the above-captioned debtors and debtors in possession (the “**Debtors**”) have filed the *Motion of Debtors for Entry of an Order Authorizing the Retention and Payment of Professionals Utilized by Debtors in the Ordinary Course of Business* (the “**Motion**”) with the United States Bankruptcy Court for the District of Delaware (the “**Bankruptcy Court**”).

**PLEASE TAKE FURTHER NOTICE** that objections, if any, to entry of an order approving the Motion must be filed on or before **May 29, 2024 at 4:00 p.m. (ET)** (the “**Objection Deadline**”) with the Clerk of the Bankruptcy Court, 824 N. Market Street, 3<sup>rd</sup> Floor, Wilmington, Delaware 19801 and served, so actually received by the Objection Deadline, upon (a) the Debtors, c/o ProSomnus, Inc., 5675 Gibraltar Dr., Pleasanton, California 94588; (b) proposed counsel to the Debtors, Polsinelli PC, 222 Delaware Avenue, Suite 1101, Wilmington, Delaware 19801, Attn: Shanti M. Katona (skatona@polsinelli.com) and Katherine M. Devanney (kdevanney@polsinelli.com); (c) counsel to the Sponsoring Noteholders and DIP Lenders,

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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.

Kilpatrick Townsend & Stockton LLP, 1114 Avenue of the Americas, New York, New York 10036, Attn: David M. Posner (dposner@ktslaw.com) and Gianfranco Finizio (gfinizio@ktslaw.com) and Morris James LLP, 500 Delaware Avenue, Suite 1500, Wilmington, Delaware 19801, Attn: Eric J. Monzo (emonzo@morrisjames.com) and Brya M. Keilson (bkeilson@morrisjames.com); (d) counsel to the Prepetition Agents, Pryor Cashman LLP, 7 Times Square, 40th Floor, New York, New York 10036, Attn: Seth H. Lieberman (slieberman@pryorcashman.com); (e) counsel to the DIP Agent, Seward & Kissel LLP, One Battery Park Plaza, New York, NY 10004, Attn: Gregg Bateman (bateman@sewkis.com); and (f) the Office of the United States Trustee, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801, Attn: Jon Lipshie (jon.lipshie@usdoj.gov).

**PLEASE TAKE FURTHER NOTICE** that a hearing to consider approval of the Motion will be held on **June 5, 2024 at 10:00 a.m.** before the Honorable John T. Dorsey, at the Bankruptcy Court, 824 N. Market Street, 5<sup>th</sup> Floor, Courtroom No. 5, Wilmington, Delaware 19801. Only those objections made in writing and timely filed and served in accordance with the above procedures will be considered by the Bankruptcy Court at such hearing.

**PLEASE TAKE FURTHER NOTICE THAT IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE, THE BANKRUPTCY COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT FURTHER NOTICE OR HEARING.**

Dated: May 22, 2024  
Wilmington, Delaware

Respectfully submitted,

**POLSINELLI PC**

/s/ Michael V. DiPietro  
Shanti M. Katona (Del. Bar No. 5352)  
Katherine M. Devanney (Del. Bar No. 6356)  
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-and-

Mark B. Joachim (Admitted Pro Hac Vice)  
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*Proposed Counsel to the Debtors and  
Debtors in Possession*

**Exhibit A**

Proposed 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 No. \_\_**

**ORDER AUTHORIZING THE RETENTION AND PAYMENT OF  
CERTAIN PROFESSIONALS UTILIZED BY THE DEBTORS IN THE  
ORDINARY COURSE OF BUSINESS**

Upon the motion (the “**Motion**”)<sup>2</sup> of the above-captioned debtors and debtors in possession (the “**Debtors**”), for entry of an order (the “**Order**”) pursuant to sections 105(A), 328, 330, and 331 of title 11 of the United States Code (the “**Bankruptcy Code**”), Rules 2014 and 2016 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”); and Rule 2014-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “**Local Rules**”); authorizing the retention and payment of professionals utilized by the Debtors in the ordinary course of business; all as more fully set forth in the Motion; and the Court having found that it has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and the Court having found that venue of this case and the Application in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and the Court having found that the relief requested in the Motion is in the best interests of the Debtors’ estates, their creditors, and other parties in interest; and the

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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 not defined in this Order have the meaning ascribed to them in the Motion.



Court having found that the Debtors provided appropriate notice of the Motion and the opportunity for a hearing on the Motion under the circumstances; and the Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing, if any, before the Court (the “**Hearing**”); and the Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefor, it is hereby

**ORDERED, ADJUDGED, AND DECREED THAT:**

1. The Motion is granted as set forth herein.
2. Subject to the Procedures (as defined below), the Debtors are authorized to employ and retain the Ordinary Course Professionals listed on the attached Exhibit 1, without the need to file individual retention applications and obtain retention orders for each.
3. The following procedures shall govern the retention and payment of Ordinary Course Professionals (the “**Procedures**”):
  - a) Each Ordinary Course Professional shall complete an affidavit, substantially in the form attached hereto as Exhibit 2 (each, an “**Affidavit**”), and provide such Affidavit to counsel for the Debtors. Upon receipt of such Affidavit, counsel for the Debtors shall file the same with the Court and have it served on the following parties: (i) the Debtors, c/o ProSomnus, Inc., 5675 Gibraltar Dr., Pleasanton, California 94588; (ii) proposed counsel to the Debtors, Polsinelli PC, 222 Delaware Avenue, Suite 1101, Wilmington, Delaware 19801, Attn: Shanti M. Katona (skatona@polsinelli.com) and Katherine M. Devanney (kdevanney@polsinelli.com); (iii) counsel to the Sponsoring Noteholders and DIP Lenders, Kilpatrick Townsend & Stockton LLP, 1114 Avenue of the Americas, New York, New York 10036, Attn: David M. Posner (dposner@ktslaw.com) and Gianfranco Finizio (gfinizio@ktslaw.com) and Morris James LLP, 500 Delaware Avenue, Suite 1500, Wilmington, Delaware 19801, Attn: Eric J. Monzo (emonzo@morrisjames.com) and Brya M. Keilson (bkeilson@morrisjames.com); (iv) counsel to the Prepetition Agents, Pryor Cashman LLP, 7 Times Square, 40th Floor, New York, New York 10036, Attn: Seth H. Lieberman (slieberman@pryorcashman.com); (v) counsel to the DIP Agent, Seward & Kissel LLP, One Battery Park Plaza, New York, NY 10004, Attn: Gregg Bateman (bateman@sewkis.com); and (vi) the Office of the United States Trustee, 844 King Street,

Suite 2207, Lockbox 35, Wilmington, Delaware 19801, Attn: Jon Lipshie (jon.lipshie@usdoj.gov) (collectively, the “**Reviewing Parties**”).

b) The Reviewing Parties shall have fourteen (14) days after the filing and service of an Affidavit to object to the retention of the Ordinary Course Professional filing such Affidavit (the “**Objection Deadline**”). An objecting party shall serve its objection upon the Reviewing Parties and the relevant Ordinary Course Professional so that any such objection is actually received on or before the Objection Deadline.

c) If any such objection cannot be resolved within five (5) days of service, the matter will be set for hearing before the Court on a date scheduled by the Court and agreeable to the Ordinary Course Professional, the Debtors, and the objecting party. If no objection is received by the Objection Deadline with respect to an Ordinary Course Professional, the Debtors shall be authorized to retain and pay that Ordinary Course Professional in accordance with these Procedures.

d) Once the Debtors retain an Ordinary Course Professional in accordance with these Procedures, they may pay such Ordinary Course Professional 100% of the fees and 100% of the expenses incurred, upon the submission to, and approval by, the Debtors of an appropriate invoice setting forth in reasonable detail the nature of the services rendered and expenses actually incurred; provided, however, that the Ordinary Course Professional’s total compensation and reimbursement will not exceed \$50,000 per month on average over any three-month period on a rolling basis (the “**Monthly Fee Limit**”).

e) If an Ordinary Course Professional’s fees and expenses exceed the Monthly Fee Limit, such Ordinary Course Professional shall file a fee application (a “**Fee Application**”) on account of the excess amount over the applicable limit and apply for compensation and reimbursement of such amount in compliance with Sections 330 and 331 of the Bankruptcy Code and the applicable provisions of the Bankruptcy Rules, the Local Rules, and any other procedures and orders of the Court. The U.S. Trustee reserves the right to request that any Ordinary Course Professional who is regularly exceeding the Monthly Fee Limit be the subject of a retention application pursuant to Bankruptcy Code section 327.

f) Each Fee Application shall be served upon: (i) the Debtors, c/o ProSomnus, Inc., 5675 Gibraltar Dr., Pleasanton, California 94588; (ii) proposed counsel to the Debtors, Polsinelli PC, 222 Delaware Avenue, Suite 1101, Wilmington, Delaware 19801, Attn: Shanti M. Katona (skatona@polsinelli.com) and Katherine M. Devanney (kdevanney@polsinelli.com); (iii) counsel to the Sponsoring Noteholders and DIP Lenders, Kilpatrick Townsend & Stockton LLP, 1114 Avenue of the Americas, New York, New York 10036, Attn: David M. Posner (dposner@ktslaw.com) and Gianfranco Finizio (gfinizio@ktslaw.com) and Morris James LLP, 500 Delaware Avenue, Suite 1500, Wilmington, Delaware 19801, Attn: Eric J. Monzo (emonzo@morrisjames.com) and Brya M. Keilson (bkeilson@morrisjames.com); (iv) counsel to the Prepetition Agents, Pryor Cashman LLP, 7 Times Square, 40th Floor, New York, New York 10036, Attn: Seth H. Lieberman (slieberman@pryorcashman.com); (v) counsel to the DIP Agent, Seward & Kissel LLP, One Battery Park Plaza, New York, NY 10004, Attn: Gregg Bateman

(bateman@sewkis.com); and (vi) the Office of the United States Trustee, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801, Attn: Jon Lipshie (jon.lipshie@usdoj.gov) (individually, a “**Notice Party**” and collectively, the “**Notice Parties**”). The Notice Parties shall then have fourteen (14) days to object to the Fee Application. If, after fourteen (14) days, no objection is filed, the fees requested in the Fee Application shall be deemed approved, and the Ordinary Course Professional may be paid one-hundred percent (100%) of its fees and one-hundred percent (100%) of its expenses without the need for further action from such Ordinary Course Professional.

g) At three-month intervals (each, a “**Quarter**”) during the pendency of these Chapter 11 Cases, the Debtors shall file with the Court and serve on the Reviewing Parties no later than thirty (30) days after the end of such Quarter a statement that shall include the following information for each Ordinary Course Professional: (i) the name of the Ordinary Course Professional; (ii) the amounts paid as compensation for services rendered and reimbursement of expenses incurred by that Ordinary Course Professional during the reported Quarter broken down by month; (iii) all postpetition payments made to that Ordinary Course Professional to such date; and (iv) a general description of the services rendered by that Ordinary Course Professional.

h) The Debtors may retain additional Ordinary Course Professionals from time to time during the Chapter 11 Cases by (i) including each additional Ordinary Course Professional on an amended version of Exhibit 1 hereto that shall be filed with the Court and served on the Reviewing Parties and (ii) having such additional Ordinary Course Professional comply with the Procedures.

4. Any payment made pursuant to this Order is not intended and should not be construed as an admission as to the validity or priority of any claim or a waiver of the Debtors’ rights to dispute such claim subsequently, and any such payment is not intended and should not be construed as an assumption or any executory contract or obligation of the Debtors.

5. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Application.

6. The terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

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

**EXHIBIT 1**

Ordinary Course Professionals

<b>Individual / Firm</b>	<b>Type of Professional</b>
Marcum LLP	SEC Compliance
Moss Adams LLP	Audit
Andersen Tax LLC	Tax Advisor

**EXHIBIT 2**

Affidavit of Proposed Professional

**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. \_\_**

**AFFIDAVIT OF [INSERT FULL NAME OF PROFESSIONAL]**

I, [AFFIANT], being duly sworn, state the following:

1. I am the [Title] of [Insert Full Name of Professional] (the “Firm”), which maintains offices at [Insert Address of Professional].

2. Neither I, the Firm, nor any professional thereof, insofar as I have been able to ascertain, has any connection with the above-captioned debtors and debtors in possession (the “Debtors”), their creditors, any other party-in-interest, their respective attorneys and accountants, the United States Trustee or any person employed in the office of the United States Trustee, or any judge in the Bankruptcy Court or District Court for the District of Delaware or any person employed in the offices of the same, except as set forth in this affidavit.

3. The Firm, through myself and other professionals and paraprofessionals of the Firm, has provided certain [Insert General Description of Services] to the Debtors with respect to [Fill in Description of Aspects] of the Debtors’ business.

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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.

4. The Debtors have requested, and the Firm has agreed, to continue to provide services to the Debtors pursuant to section 327 of Title 11 of the United States Code (the “**Bankruptcy Code**”) with respect to such matters. Additionally, the Debtors have requested, and the Firm proposes, to render the following services to the Debtors:

5. **[INSERT DESCRIPTION OF SPECIFIC SERVICES RENDERED]**

6. The Firm's current customary rates are **[Insert Fee/Rate Scale]**. In the normal course of business, the Firm revises its regular rates on **[Insert Date]** of each year and requests that, effective **[Insert Date]** of each year, the aforementioned rates be revised to the regular rates which will be in effect at that time.

7. In the past year, the Firm has rendered services to the Debtors for which the Debtors have been invoiced in the amount of **[\$Insert Amount]**. Additionally, since May 7, 2024 (the “**Petition Date**”), the Firm has provided services to the Debtors that have not yet been billed or that have been billed but for which payment has not been received. The value of such services does not exceed **[\$Insert Amount]**.

8. Except as set forth herein, no promises have been received by the Firm as to compensation in connection with the Chapter 11 Cases other than in accordance with the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware and any orders of this Court.

9. As of the Petition Date, the Firm **[was/was not]** party to an agreement that provides for indemnification. **[A copy of such agreement, if any, is attached as an exhibit to this Affidavit].**

10. Except for its affiliated entities, the Firm has no agreement with any entity to share any compensation received from the Debtors.

11. The Firm and its professionals may have in the past, currently, and may in the future provide services to entities that are creditors of the Debtors in matters totally unrelated to the matters with respect to which the Firm is to be engaged by the Debtors. However, neither I, the Firm, nor any professional thereof, insofar as I have been able to ascertain, holds or represents any interest adverse to the Debtors or their estates in the matters upon which the Firm is to be engaged.

12. The foregoing constitutes the statement of the Firm pursuant to Bankruptcy Code sections 329 and 504 and Bankruptcy Rule 2014.

13. I declare under penalty of perjury under the laws of the United States of America that, to the best of my knowledge and belief, and after reasonable inquiry, the foregoing is true and correct.

By: \_\_\_\_\_  
**[Name of Affiant]**  
**[Address of Affiant]**