

**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)

**MOTION OF DEBTORS FOR ENTRY OF ORDER (I) APPROVING  
DISCLOSURE STATEMENT AND FORM AND MANNER OF NOTICE OF  
DISCLOSURE STATEMENT HEARING, (II) ESTABLISHING SOLICITATION  
AND VOTING PROCEDURES, (III) SCHEDULING CONFIRMATION HEARING,  
(IV) ESTABLISHING NOTICE AND OBJECTION PROCEDURES FOR  
CONFIRMATION OF PLAN, AND (V) GRANTING RELATED RELIEF**

The above-captioned debtors and debtors in possession (the “**Debtors**”) in the above-captioned chapter 11 cases, respectfully represent as follows:

**RELIEF REQUESTED**

1. By this motion (the “**Motion**”), pursuant to sections 105, 341, 502, 1125, 1126, and 1128 of title 11 of the United States Code (the “**Bankruptcy Code**”), Rules 2002, 3003, 3017, 3018, 3020, and 9006 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and Rules 2002-1, 3017-1, and 9006-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “**Local Rules**”), the Debtors request entry of an order:

- i. approving the form and manner of notice of hearing to consider the *Disclosure Statement for Joint Chapter 11 Plan of Reorganization of ProSomnus, Inc. and its*

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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.



*Debtor Affiliates*, filed contemporaneously herewith (as may be amended, supplemented, or otherwise modified, the “**Disclosure Statement**”)<sup>2</sup>;

- ii. approving the Disclosure Statement as containing adequate information pursuant to section 1125 of the Bankruptcy Code;
  - iii. scheduling a hearing (the “**Confirmation Hearing**”) to consider confirmation of the *Joint Chapter 11 Plan of Reorganization of ProSomnus, Inc. and its Debtor Affiliates*, filed contemporaneously herewith (as may be amended, supplemented, or otherwise modified, the “**Plan**”);
  - iv. approving the Debtors’ procedures for solicitation of votes on the Plan;
  - v. approving the Debtors’ confirmation procedures for the Plan; and
  - vi. granting related relief.
2. A proposed form of order granting the relief requested herein is attached hereto as

Exhibit A (the “**Proposed Order**”). For the Court’s convenience, the below chart provides the key dates sought pursuant to the Proposed Order, subject to the Court’s availability.

<b>Confirmation Event</b>	<b>Date/Deadline</b>
Disclosure Statement Objection Deadline	<b>June 17, 2024 at 4:00 p.m. (prevailing Eastern Time)</b>
Deadline to Reply to Disclosure Statement Objection(s)	<b>June 19, 2024</b>
Disclosure Statement Hearing	<b>June 24, 2024 at 1:00 p.m. (prevailing Eastern Time)</b>
Voting Record Date	<b>June 24, 2024</b>
Solicitation Date	<b>No later than 4 business days following entry of the Proposed Order</b>
Deadline for Publication Notice	<b>No later than 5 business days following entry of the Proposed Order</b>
Voting Deadline	<b>July 19, 2024 at 4:00 p.m. (prevailing Eastern Time)</b>
Plan Supplement Filing	<b>July 19, 2024</b>

<sup>2</sup> Unless otherwise noted, capitalized terms used in this Motion, but not defined herein shall have the meaning ascribed to such terms in the Plan or Disclosure Statement, as applicable.

Plan Confirmation Objection Deadline	<b>July 22, 2024 at 4:00 p.m. (prevailing Eastern Time)</b>
Deadline to File (i) Reply to Plan Objection(s), (ii) Brief in Support of Plan Confirmation, (iii) Declarations in Support of Confirmation, and (iv) Voting Certification	<b>July 26, 2024 at 12:00 p.m. (prevailing Eastern Time)</b>
Confirmation Hearing	<b>July 30, 2024 at 10:00 a.m. (prevailing Eastern Time)</b>

3. For the Court's reference, a list of the various exhibits and documents cited throughout the Motion is set forth below:

<b>Document</b>	<b>Exhibit</b>
Proposed Order	<u>Exhibit A</u> to this Motion
Disclosure Statement Notice	<u>Exhibit B</u> to this Motion
Disclosure Statement	Docket No. 87
Plan	Docket No. 86
Confirmation Hearing Notice	<u>Exhibit 1</u> to Proposed Order
Master Ballot of Class 1 (Senior Notes Claims)	<u>Exhibit 2-A</u> to Proposed Order
Beneficial Ballot of Class 1 (Senior Notes Claims)	<u>Exhibit 2-B</u> to Proposed Order
Class 1 Registered Holder Ballot (Senior Notes Claims)	<u>Exhibit 2-C</u> to Proposed Order
Class 2 Registered Ballot (Subordinated Notes Claims)	<u>Exhibit 3</u> to Proposed Order
Notice of Non-Voting Status – Unimpaired Classes	<u>Exhibit 4</u> to Proposed Order
Notice of Non-Voting Status – Impaired Classes	<u>Exhibit 5</u> to Proposed Order

### **BACKGROUND**<sup>3</sup>

4. Beginning on May 7, 2024 (the “**Petition Date**”), the Debtors each commenced with the Court a voluntary case under chapter 11 of the Bankruptcy Code. The Debtors are authorized to continue to operate their business and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been requested in the Chapter 11 cases and no committees have yet been appointed.

5. The Debtors’ chapter 11 cases are being jointly administered for procedural purposes pursuant to Bankruptcy Rule 1015(b) and Local Rule 1015-1.

6. The Debtors are medical technology companies focused on the development, manufacturing, and marketing of personalized, precision intraoral medical devices, a novel noninvasive option for treating and managing patients with obstructive sleep apnea (“**OSA**”). The Debtors commenced their chapter 11 cases on a prearranged basis with the support, pursuant to the terms of a restructuring support agreement (the “**Restructuring Support Agreement**”), of creditors holding approximately 100% of the issued and outstanding 2022 Senior Convertible Notes, 100% of the issued and outstanding 2023 Senior Convertible Exchange Notes, 94.95% of the issued and outstanding 2022 Subordinated Convertible Notes, 100% of the issued and outstanding 2023 Subordinated Convertible Exchange Notes, and 100% of the issued and outstanding 2024 Senior Bridge Notes (collectively, the “**Sponsoring Noteholders**”). With the support of the Sponsoring Noteholders, the Debtors are seeking to implement a comprehensive restructuring, which, as described below, will be implemented through a chapter 11 plan of reorganization. Contemporaneously herewith, the Debtors filed the Plan and Disclosure Statement.

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<sup>3</sup> Capitalized terms used in this section, but not defined herein, have the meanings ascribed to them in the First Day Declaration.

The Debtors seek to have a hearing to consider the adequacy of the Disclosure Statement on June 24, 2024 at 1:00 p.m. (prevailing Eastern Time).

7. Additional information regarding the Debtors' business, capital structure, and the circumstances leading to the commencement of these chapter 11 cases is set forth in 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**"), and incorporated by reference herein.

### **JURISDICTION AND VENUE**

8. 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.

9. The statutory predicates for the relief requested herein are Bankruptcy Code sections 105(a), 1123(a), 1124, 1125, 1126, and 1128; Bankruptcy Rules 2002, 3016, 3017, 3018, 3020, and 9006; and Local Rules 2002-1 and 3017-1.

### **THE DISCLOSURE STATEMENT**

10. Under section 1125 of the Bankruptcy Code and Bankruptcy Rule 3016(b), the Debtors prepared and filed the Disclosure Statement to provide parties adequate information and disclosure regarding the terms of the Plan. The Debtors intend to provide parties with copies of the Disclosure Statement, once approved, in connection with the Debtors' solicitation of votes to accept or reject the Plan.

## I. Approval of the Disclosure Statement

11. Pursuant to section 1125(b) of the Bankruptcy Code, a plan proponent must provide holders of impaired claims and equity interests with “adequate information” regarding a proposed chapter 11 plan of reorganization. Section 1125(a)(1) of the Bankruptcy Code defines “adequate information” as:

information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor’s books and records, including a discussion of the potential material Federal tax consequences of the plan to the debtor, any successor to the debtor, and a hypothetical investor typical of the holders of claims or interests in the case, that would enable such a hypothetical investor of the relevant class to make an informed judgment about the plan.

11 U.S.C. § 1125(a)(1).

12. Accordingly, a debtor’s disclosure statement must provide sufficient information to permit an informed judgment by impaired creditors entitled to vote on the plan. *See, e.g., Century Glove, Inc. v. First Am. Bank of N.Y.*, 860 F.2d 94, 100 (3d Cir. 1988) (“[Section] 1125 seeks to guarantee a minimum amount of information to the creditor asked for its vote.”); *In re Phoenix Petroleum, Co.*, 278 B.R. 385, 392 (Bankr. E.D. Pa. 2001) (“[T]he general purpose of the disclosure statement is to provide ‘adequate information’ to enable ‘impaired’ classes of creditors and interest holders to make an informed judgment about the proposed plan and determine whether to vote in favor of or against that plan.”). The essential requirement of a disclosure statement is that it “clearly and succinctly inform the average unsecured creditor what it is going to get, when it is going to get it, and what contingencies there are to getting its distribution.” *In re Keisler*, No. 08-34321, 2009 WL 1851413, at \*4 (Bankr. E.D. Tenn. June 29, 2009) (quoting *In re Ferretti*, 128 B.R. 16, 19 (Bankr. D.N.H. 1991)).

13. Whether a disclosure statement required under section 1125(b) contains adequate information “is not governed by any otherwise applicable nonbankruptcy law, rule, or regulation.” 11 U.S.C. § 1125(d). Instead, bankruptcy courts have broad discretion to determine the adequacy of the information contained in a disclosure statement. *See, e.g., In re Lisanti Foods, Inc.*, 329 B.R. 491, 507 (D.N.J. 2005) (“Section 1125 affords the Bankruptcy Court substantial discretion in considering the adequacy of a disclosure statement.” (citing *In re River Village Assoc.*, 181 B.R. 795, 804 (E.D. Pa. 1995))); *In re Phoenix Petroleum Co.*, 278 B.R. at 393 (noting that the determination of what is adequate information is “largely within the discretion of the bankruptcy court” (quoting *Texas Extrusion Corp. v. Lockheed Corp. (In re Texas Extrusion Corp.)*, 844 F.2d 1142, 1157 (5th Cir. 1988))).

14. Congress granted bankruptcy courts wide discretion in determining the adequacy of a disclosure statement to facilitate effective reorganizations of debtors in a broad range of businesses, taking into account the various circumstances that accompany chapter 11 cases. *See* H.R. Rep. No. 595, 95th Cong., 1st Sess. 408–09 (1977); *see also In re Copy Crafters Quickprint Inc.*, 92 B.R. 973, 979 (Bankr. N.D.N.Y. 1988) (noting that the adequacy of a disclosure statement “is to be determined on a case-specific basis under a flexible standard that can promote the policy of Chapter 11 towards fair settlement through a negotiation process between informed interested parties”). Accordingly, the determination of whether a disclosure statement contains adequate information is made on a case-by-case basis, focusing on the unique facts and circumstances of each case. *See Oneida Motor Freight, Inc. v. United Jersey Bank*, 848 F.2d 414, 417 (3d Cir. 1988) (“From the legislative history of § 1125 we discern that adequate information will be determined by the facts and circumstances of each case.”).

15. In that regard, in determining whether a disclosure statement contains adequate information, courts generally examine a list of factors, including, but not limited to, whether the disclosure statement contains the following types of information, as applicable:

- i. the circumstances that gave rise to the filing of the bankruptcy petition;
- ii. an explanation of the available assets and their value;
- iii. the anticipated future of the debtor(s);
- iv. the source of the information provided in the disclosure statement;
- v. a disclaimer, which typically indicates that no statements or information concerning the debtor or its assets or securities are authorized, other than those set forth in the disclosure statement;
- vi. the condition and performance of the debtor while in chapter 11;
- vii. information regarding claims against the estate;
- viii. a liquidation analysis setting forth the estimated return that creditors would receive under chapter 7;
- ix. the accounting and valuation methods used to produce the financial information in the disclosure statement;
- x. information regarding the future management of the debtor, including the amount of compensation to be paid to any insiders, directors and/or officers of the debtor;
- xi. a summary of the plan of reorganization;
- xii. an estimate of all administrative expenses, including attorneys' fees and accountants' fees;
- xiii. the collectability of any accounts receivable;
- xiv. any financial information, valuations, or *pro forma* projections that would be relevant to creditors' determinations of whether to accept or reject the plan;
- xv. information relevant to the risks being taken by the creditors and interest holders;
- xvi. the actual or projected value that can be obtained from avoidable transfers;
- xvii. the existence, likelihood, and possible success of non-bankruptcy litigation;
- xviii. the tax consequences of the plan; and

xix. the relationship of the debtor with its affiliates.

*See, e.g., In re Scioto Valley Mortg. Co.*, 88 B.R. 168, 170–71 (Bankr. S.D. Ohio 1988); *see also In re Oxford Homes, Inc.*, 204 B.R. 264, 269 n.17 (Bankr. D. Me. 1997) (using a similar list). Such a list is not meant to be comprehensive and a debtor is not required to provide all the information on the list. Rather, the bankruptcy court must decide what is appropriate in each case in light of the particular facts and circumstances present. *See Ferretti*, 128 B.R. at 18–19 (adopting a similar list); *see also In re Phoenix Petroleum Co.*, 278 B.R. at 393 (making use of a similar list but cautioning that “no one list of categories will apply in every case”).

16. The Disclosure Statement provides many of the types of information identified in the applicable categories above, including:

- i. a detailed overview of the Plan;
- ii. a summary of the Restructuring Support Agreement, including the milestones contemplated thereunder (Art. III);
- iii. key events leading to the commencement of the Debtors’ chapter 11 cases (Art. V);
- iv. the Debtors’ prepetition indebtedness (Art. IV.C);
- v. an overview of a liquidation analysis under chapter 7 (Art. IX.C; Exhibit D);
- vi. risk factors affecting the Debtors (Art. VII);
- vii. the relationship of the Debtors with their affiliates (Art. IV.B; Exhibit C);
- viii. requirements for confirmation of the Plan (Art. IX); and
- ix. tax consequences of the Plan (Art. XI).

17. Based on the foregoing, the Debtors submit the Disclosure Statement contains sufficient information for a voting creditor to make an informed judgment whether to vote to accept or reject the Plan. Thus, the Debtors respectfully request the Court approve the Disclosure Statement as containing adequate information in satisfaction of the requirements of section 1125 of the Bankruptcy Code.

## II. The Disclosure Statement Provides Adequate Notice of the Release, Exculpation, and Injunction Provisions in the Plan

18. Pursuant to Bankruptcy Rule 3016(c), “[i]f a plan provides for an injunction against conduct not otherwise enjoined under the Code, the plan and disclosure statement shall describe in specific and conspicuous language (bold, italic, or underlined text) all acts to be enjoined and identify the entities that would be subject to the injunction.” Fed. R. Bankr. P. 3016(c).

19. The Plan includes injunctions, releases, and exculpations highlighted in bold in Article VIII. The Disclosure Statement describes in detail the releases provided under the Plan, the entities providing such releases, and the entities being released in Section VII.A. Additionally, Section II.N of the Disclosure Statement sets forth the terms of the release, exculpation, and injunction provisions in the Plan. Each of the foregoing sections is set forth in conspicuous, bold print in the Plan, Disclosure Statement and the Confirmation Hearing Notice (as defined below). Accordingly, the Debtors respectfully submit that the Disclosure Statement complies with Bankruptcy Rule 3016(c).

## III. Approval of the Disclosure Statement Notice<sup>4</sup>

20. In accordance with Bankruptcy Rules 3017(a) and 2002 and Local Rule 3017-1, in connection with the filing of this Motion, the Debtors will serve a notice of the hearing to consider approval of the Disclosure Statement (the “**Disclosure Statement Notice**” and, such hearing, the “**Disclosure Statement Hearing**”), in the form annexed hereto as Exhibit B, by electronic transmission and/or by first class mail on (i) the United States Trustee for the District of Delaware;

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<sup>4</sup> Contemporaneously with the filing of this Motion, the Debtors filed the *Motion of Debtors For Entry of Order (I) Shortening Notice of Hearing on Motion for an Order Approving Disclosure Statement and (II) Granting Related Relief* (the “**Motion to Shorten**”), which requests, among other relief, that the Court shorten the required 35 days’ notice to schedule the Disclosure Statement Hearing on June 24, 2024 at 1:00 p.m. (prevailing Eastern Time), shorten the required 28 day objection deadline and establish June 17, 2024 at 4:00 p.m. (prevailing Eastern Time) as the deadline to object to the Disclosure Statement Motion.

(ii) counsel to the Prepetition Agents; (iii) counsel to the Sponsoring Noteholders and DIP Lenders; (iv) counsel to the DIP Agent; (v) the Internal Revenue Service; (vi) the United States Securities and Exchange Commission; (vii) the Office of the United States Attorney for the District of Delaware; (viii) all parties identified on the Debtors' creditor matrix; (ix) all holders of equity interests in ProSomnus, Inc.; and (x) any other party entitled to notice pursuant to Bankruptcy Rule 2002.

21. The Debtors will also provide, at their expense, by electronic and/or first class mail, copies of the Disclosure Statement and the Plan with the Disclosure Statement Notice to: (i) the U.S. Trustee; (ii) the U.S. Securities and Exchange Commission; (iii) all parties that request or that are required to receive notice pursuant to Bankruptcy Rule 2002; and (iv) all parties who have specifically requested such documents in the manner specified in the Disclosure Statement Notice. The Disclosure Statement and the Plan are available free-of-charge on the Debtors' claims agent's website at <https://www.kccllc.net/prosomnus> (the "**Case Website**").

#### **IV. Approval of Procedures for the Filing of Objections to the Disclosure Statement**

22. The Debtors propose the procedures described below for parties to object or respond to the approval of the Disclosure Statement (the "**Disclosure Statement Objection Procedures**").

23. The Debtors propose objections and responses, if any, to approval of the Disclosure Statement, must: (i) be in writing; (ii) conform to the applicable Bankruptcy Rules and the Local Rules; (iii) set forth the name of the objecting party and the nature and amount of Claims or Interests held or asserted by such party against the Debtors' estates or property; (iv) provide the basis for the objection and the specific grounds therefor, and provide proposed language that, if accepted and incorporated by the Debtors, would obviate such objection; and (v) be filed, together with proof of service.

24. The Debtors further propose that registered users of the Bankruptcy Court's case filing system must electronically file their objections and responses. All other parties-in-interest must file their objections and responses in writing, together with proof of service thereof, with the Clerk of the U.S. Bankruptcy Court for the District of Delaware, 824 Market Street N., 3rd Floor, Wilmington, Delaware 19801.

25. In accordance with Bankruptcy Rule 3017(a), any objection or response also must be served upon 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); (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); and (vii) counsel to any official committee appointed in the Chapter 11 cases.

26. Additionally, any objection or response will be served upon any other entity designated by the Court (collectively with the above, the "**Notice Parties**") so as to be actually

received by the Notice Parties no later than **June 17, 2024 at 4:00 p.m. (prevailing Eastern Time)**).

27. The Debtors submit, if there are objections to the Disclosure Statement, it will assist the Court and may streamline the Disclosure Statement Hearing if the Debtors reply to any such objections. Accordingly, the Debtors request they be authorized to file and serve an omnibus reply to any such objections in accordance with Local Rule 9006-1(d) and that the Court set **June 19, 2024** as the deadline for filing and serving such omnibus reply.

28. Requiring objections and responses to the Disclosure Statement to be filed and served in accordance with the Disclosure Statement Objection Procedures will afford the Court, the Debtors, and other parties-in-interest sufficient time before the Disclosure Statement Hearing to consider and potentially resolve any objections and responses to the Disclosure Statement. Based upon the foregoing, the Debtors respectfully request the Court approve the Disclosure Statement Objection Procedures.

### **THE SOLICITATION PROCEDURES**

29. In connection with the Disclosure Statement and Plan, the Debtors propose to implement the solicitation and balloting procedures described below. The Debtors submitted their application for entry of an order authorizing the Debtors to retain and employ Kurtzman Carson Consultants, LLC (“**KCC**”) as their administrative advisor, pursuant to section 327(a) of the Bankruptcy Code on May 15, 2024 [Docket No. 67]. The Debtors plan to enlist the assistance of KCC to, among other things, implement the solicitation and balloting procedures described below.<sup>5</sup>

### **PARTIES ENTITLED TO VOTE**

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<sup>5</sup> KCC was previously retained by the Debtors, pursuant to 28 U.S.C § 156(c), as claims and noticing agent in these chapter 11 cases by order dated May 9, 2024 [Docket No. 51].

30. The Debtors propose the following classes (each a “**Voting Class**” and, collectively, the “**Voting Classes**”) are impaired but entitled to receive distributions under the Plan and, thus, may vote to accept or reject the Plan, subject to certain exceptions discussed below:

Class	Description
Class 1	Senior Notes Claims
Class 2	Subordinated Notes Claims

31. Section 1126(f) of the Bankruptcy Code provides that, for the purposes of soliciting votes on confirmation of a plan of reorganization, “a class that is not impaired under a plan, and each holder of a claim or interest of such class, are conclusively presumed to have accepted the plan, and solicitation of acceptances with respect to such class from the holders of claims or interests of such class is not required.” 11 U.S.C. § 1126(f).

32. The Plan does not impair certain Claims. Pursuant to section 1126 of the Bankruptcy Code, the holders of such Claims are unimpaired and, therefore, presumed to accept the Plan pursuant to section 1126(f) of the Bankruptcy Code. Moreover, holders of Claims and Interests in several classes are impaired and otherwise not entitled to receive a distribution under the Plan and, therefore, are deemed to reject the Plan pursuant to section 1126(g) of the Bankruptcy Code (collectively with the holders of Claims deemed to accept the Plan pursuant to section 1126(f) of the Bankruptcy Code, the “**Non-Voting Creditors and Interest Holders**”).

33. Holders of Claims and/or Interests in the following classes (collectively, the “**Non-Voting Classes**”) constitute Non-Voting Creditors and Interest Holders who are not entitled to vote:

<b>Class</b>	<b>Type of Claim or Interest</b>	<b>Impairment</b>	<b>Voting</b>
Class 3	Other Secured Claims	Unimpaired	No (Deemed to accept)
Class 4	Other Priority Claims	Unimpaired	No (Deemed to accept)
Class 5	General Unsecured Claims	Unimpaired	No (Deemed to accept)
Class 6	Section 510(b) Claims	Impaired	No (Deemed to reject)
Class 7	Interests	Impaired	No (Deemed to reject)

34. Because Class 3 (Other Secured Claims); Class 4 (Other Priority Claims); and Class 5 (General Unsecured Claims) are presumed to accept the Plan, in an effort to conserve the resources of the Debtors' estates, the Debtors propose to send to holders of such Claims, if any, a notice of non-voting status, substantially in the form annexed hereto as Exhibit 4 (the "**Notice of Non-Voting Status – Unimpaired Classes**"), which sets forth the manner in which a copy of the Plan and Disclosure Statement may be obtained. The Debtors also propose to send to such holders of Claims an opt out form (the "**Opt Out Form**") annexed to the Notice of Non-Voting Status – Unimpaired Classes as Annex A, which provides such holders with the option to opt out of the releases, exculpations, and injunctions contained in Article VIII of the Plan. The Debtors propose that Opt Out Forms must be completed in accordance with the instructions contained therein and submitted so as to be **actually received** by the Voting Agent no later than the Voting Deadline of **July 19, 2024 at 4:00 p.m. (prevailing Eastern Time)**. These Classes will also receive the Confirmation Hearing Notice (defined below). The Debtors submit that such notice satisfies the requirements of Bankruptcy Rule 3017(d). The Debtors request the Court determine the Debtors are not required to distribute copies of the Plan or Disclosure Statement to any holder of an unimpaired Claim unless otherwise requested.

35. Section 510(b) Claims (Class 6) shall not receive or retain any property under the Plan. Similarly, Interests (Class 7) are being cancelled and holders thereof shall neither receive nor retain any property under the Plan. Accordingly, pursuant to section 1126(g) of the Bankruptcy Code, holders of such Claims and Interests are conclusively deemed to have rejected the Plan and, thus, are not entitled to vote. The Debtors propose to send to holders of Claims in Class 6 (Section 510(b) Claims) and all holders of Interests in Class 7 (Interests) a notice of non-voting status, substantially in the form annexed hereto as Exhibit 5 (“**Notice of Non-Voting Status – Impaired Classes**” and together with the **Notice of Non-Voting Status – Unimpaired Classes**, the “**Notices of Non-Voting Status**”) and the Confirmation Hearing Notice. The Debtors propose that all brokerage firms and banks or their agents of Class 7 (Interests) served with a Notice of Non-Voting Status and Confirmation Hearing Notice be required to serve such notices on any holder for whose benefit such shares are registered.

#### V. **Temporary Allowance of Claims**

36. With respect to the Class 1 (Senior Notes Claims) and Class 2 (Subordinated Notes Claims) held by brokers, banks, commercial banks, trust companies, dealers, or other agents or nominees (each a “**Nominee**” and, collectively, the “**Nominees**”) on behalf of the underlying beneficial holders (the “**Beneficial Holders**”), the Debtors propose that, solely for voting purposes, the voting amounts of those Claims shall be the amounts set forth on the books and records of the applicable Nominee as of the Voting Record Date as evidenced by the securities position report from DTC. To the extent there are any holders of Senior Notes Claims or Subordinated Notes Claims registered directly with the Wilmington Trust, National Association, as trustee and collateral agent (the “**Indenture Trustee**” and such holders, the “**Registered Holders**”), the Debtors propose that, solely for voting purposes, the voting amounts of those Claims shall be the amounts set forth on the books and records of the Indenture Trustee as of the Voting Record Date.

The Indenture Trustee must provide a register of any such holders in electronic Microsoft Excel format to the Debtors no later than one (1) business day following the Voting Record Date.

## **VI. The Voting Record Date**

37. Bankruptcy Rule 3017(d) provides, in relevant part, that, for the purposes of soliciting votes in connection with the confirmation of a plan of reorganization, “creditors and equity security holders [must] include holders of stock, bonds, debentures, notes and other securities of record on the date the order approving the disclosure statement is entered or another date fixed by the court, for cause, after notice and a hearing.” Fed. R. Bankr. P. 3017(d).

38. To identify and set the universe of creditors and Interest holders entitled to vote on the Plan, the Debtors request that the Court set **June 24, 2024** as the date for determining which creditors are entitled to vote on the Plan (the “**Voting Record Date**”).

39. In addition, the Debtors request the Court establish the Voting Record Date as the date for determining which creditors and Interest holders in Non-Voting Classes are entitled to receive a Notice of Non-Voting Status. The Debtors believe the Voting Record Date is appropriate, as it facilitates the determination of which creditors are entitled to vote on the Plan or, in the case of Non-Voting Creditors and Interest Holders, to receive the applicable Notice of Non-Voting Status.

## **VII. Approval of Solicitation Packages and Procedures for Distribution Thereof**

40. Bankruptcy Rule 3017(d) lists the materials that must be provided to holders of Claims and Interests for the purpose of soliciting votes on a chapter 11 plan and providing adequate notice of the hearing to consider confirmation thereof. Specifically, Bankruptcy Rule 3017(d) provides, in relevant part, that:

[u]pon approval of a disclosure statement, — except to the extent that the court orders otherwise with respect to one or more unimpaired classes of creditors or equity security holders — the

debtor in possession, trustee, proponent of the plan, or clerk as the court orders shall mail to all creditors and equity security holders, and in a chapter 11 reorganization case shall transmit to the United States trustee:

- (a) the plan or a court-approved summary of the plan;
- (b) the disclosure statement approved by the court;
- (c) notice of the time within which acceptances and rejections of the plan may be filed; and
- (d) any other information as the court may direct, including any court opinion approving the disclosure statement or a court-approved summary of the opinion.

Fed. R. Bankr. P. 3017(d).

41. The Debtors propose to mail or cause to be mailed solicitation packages (the “**Solicitation Packages**”) containing the information described below as soon as practicable after entry of an order approving the Disclosure Statement (as approved, the “**Disclosure Statement**”) as containing adequate information pursuant to section 1125 of the Bankruptcy Code, but not later than four (4) business days after the date of entry of an order approving the Disclosure Statement (the “**Solicitation Date**”), to the U.S. Trustee and holders of Claims in the Voting Classes, as required by Bankruptcy Rule 3017(d).

42. In accordance with Bankruptcy Rule 3017(d), Solicitation Packages shall contain copies of:

- (a) the Proposed Order, as entered by the Court and without attachments;
- (b) the *Notice of Hearing to Consider Confirmation of the Chapter 11 Plan Filed by the Debtors and Related Voting and Objection Deadlines*, in substantially the form of Exhibit 1 to the Proposed Order (the “**Confirmation Hearing Notice**”);
- (c) a link to the Case Website containing the Plan and Disclosure Statement; and

- (d) a Ballot substantially conforming to Official Bankruptcy Form No. B 314, in the form described below, and a postage-prepaid return envelope.<sup>6</sup>

43. The Plan and Disclosure Statement will be available at no charge via the Case Website. Any creditor entitled to receive a copy of the Plan and the Disclosure Statement may request an electronic copy on a USB flash drive or paper copy by contacting KCC in writing at ProSomnus, Inc., *et al.*, Ballot Processing Center c/o KCC, 222 N. Pacific Coast Highway, Suite 300, El Segundo, California 90245, or by email via <https://www.kccllc.net/prosomnus/inquiry>. Upon receipt of such request, the Debtors will provide such creditor or Interest holder with a USB flash drive or paper copy, as applicable, of the Plan and the Disclosure Statement at no cost to the creditor or Interest holder within five (5) business days thereafter.

44. The Debtors will not mail Solicitation Packages to creditors that have Claims that have already been paid in full; *provided, however*, if any such creditor would be entitled to receive a Solicitation Package for any other reason, then the Debtors will send such creditor a Solicitation Package in accordance with the procedures set forth herein.

45. The Debtors anticipate the United States Postal Service may return some Solicitation Packages as undeliverable. The Debtors submit it is costly and wasteful to mail Solicitation Packages to the same addresses from which mail previously was returned as undeliverable. Therefore, the Debtors request the Court waive the strict notice rule and excuse the Debtors from mailing Solicitation Packages to addresses from which the Debtors received mailings returned as undeliverable, unless the Debtors are provided with a new mailing address sufficiently before the Voting Deadline.

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<sup>6</sup> Service of the Solicitation Package to the Beneficial Holders of Claims in the Voting Classes may be performed electronically, or otherwise in their Nominees' customary practice, in which case they may not contain pre-addressed stamped return envelopes.

46. The Debtors further request authority to make non-substantive changes to the Disclosure Statement, the Plan, and related documents without further order of the Court, including ministerial changes to correct typographical and grammatical errors, and to make conforming changes among the Disclosure Statement, the Plan, and any other materials in the Solicitation Packages prior to mailing.

47. The Debtors submit they have shown good cause for implementing the proposed notice and service procedures and requests the Court's approval thereof.

### **VIII. Approval of Notices of Non-Voting Status**

48. Bankruptcy Rule 3017(d) permits a court to order that the Plan and Disclosure Statement need not be mailed to unimpaired classes. In lieu thereof, a bankruptcy court may order that "notice that the class is designated in the plan as unimpaired and notice of the name and address of the person from whom the plan or summary of the plan and disclosure statement may be obtained upon request and at the plan proponent's expense, [and] notice of the time fixed for filing objections to and the hearing on confirmation" be mailed to such classes.

49. As discussed above, the Non-Voting Classes are (i) unimpaired and presumed to accept the Plan, and/or (ii) impaired and deemed to reject the Plan. In addition to the Confirmation Hearing Notice, the Debtors propose to mail (a) to holders of Claims in Class 3 (Other Secured Claims, Class 4 (Other Priority Claims), and Class 5 (General Unsecured Claims) a Notice of Non-Voting Status – Unimpaired Classes, including the Opt-Out annexed thereto as Annex A and (b) to holders of Claims in Class 6 (Section 510(b) Claims) and Interests in Class 7 (Interests) a Notice of Non-Voting Status – Impaired Classes.

50. Each Notice of Non-Voting Status provides (i) notice of the approval of the Disclosure Statement, (ii) notice of the filing of the Plan, (iii) notice of the holder's non-voting status, and (iv) information on how to obtain copies of the Disclosure Statement and Plan.

Additionally, the Notice of Non-Voting Status – Unimpaired Classes contains detailed information regarding to the release, exculpation and injunction provisions contained in the Plan, and instructions for opting out of those provisions.

51. The Debtors submit that mailing the applicable Notice of Non-Voting Status and Confirmation Hearing Notice to Non-Voting Classes satisfies the requirements of Bankruptcy Rule 3017(d). Accordingly, the Debtors request that the Court direct that the Solicitation Package need not be mailed to Non-Voting Creditors and Interest Holders.

#### **IX. Approval of Forms of Ballots**

52. Bankruptcy Rule 3017(d) requires the Debtors to mail a form of ballot, which substantially conforms to Official Bankruptcy Form No. B 314, to “creditors and equity security holders entitled to vote on the plan.” Fed. R. Bankr. P. 3017(d). The Debtors propose to distribute to holders of Claims in the Voting Classes ballots substantially in the forms attached to the Proposed Order as Exhibit 2-A, 2-B, 2-C, and 3 (collectively, the “**Ballots**”), which are incorporated herein by reference. Although the Ballots are based on Official Bankruptcy Form No. B 314, they have been modified to address the specific circumstances of these Chapter 11 Cases and to include certain additional information that the Debtors believe is relevant and appropriate for the Voting Classes.

53. First, with respect to the holders of Class 1 (Senior Notes Claims), the Debtors books and records reflect that only one such Claim is held by a Nominee on behalf of Beneficial Holders. Accordingly, once the Voting Record Date has passed, the Debtors will cause to be distributed to such Nominee, a Solicitation Package, including a beneficial ballot (the “**Beneficial Ballots**”), to distribute via first class mail to the Beneficial Holder of such Claim as of the Voting Record Date. The Debtors will also cause a Master Ballot (as defined below) to be distributed to the Nominee for use in tabulating votes cast on Beneficial Ballot submitted to the Nominee (as

described more fully below). If it is a Nominee's customary and accepted practice to forward the solicitation information to (and collect votes from) Beneficial Holders by voter information form ("VIF"), e-mail, telephone or other customary means of communication, the Nominee may employ that method of communication in lieu of sending the paper Beneficial Ballot and/or Solicitation Package.

54. The Debtors request the Court require such Nominee, upon receipt of the Solicitation Package, to promptly distribute such Solicitation Package including the Beneficial Ballot (or a summary thereof) to the Beneficial Holder using one of the following two methods (to be selected by the Nominee) within five (5) business days of receipt of the Solicitation Package:

- (a) **Pre-Validated Ballots**: The Nominee may "pre-validate" a Beneficial Ballot by (i) signing the Beneficial Ballot; (ii) indicating on the Beneficial Ballot the amount and the account number of the Claims held by the Nominee for the Beneficial Holder; (iii) including a medallion guarantee stamp on the Beneficial Ballot, and (iv) forwarding such Beneficial Ballot (including the Nominee's DTC participant number), together with the other materials requested to be forwarded, to the Beneficial Holder for voting. The Beneficial Holder must then complete the information requested in the Beneficial Ballot, and return the Beneficial Ballot directly to KCC in the pre-addressed, postage-paid return envelope so that it is RECEIVED by KCC on or before the Voting Deadline. A list of the Beneficial Holders to whom "pre-validated" Beneficial Ballots were delivered should be maintained by Nominees for inspection for at least one (1) year from the Voting Deadline.
- (b) **Master Ballots**: If the Nominee elects not to pre-validate Beneficial Ballots, the Nominee may obtain the votes of Beneficial Holders by forwarding to the Beneficial Holders the unsigned Beneficial Ballots, VIF, e-mail, or other customary method of collecting votes from a Beneficial Holder. If it is the Nominee's customary internal practice to provide Beneficial Holders with an electronic link to solicitation materials (including, but not limited to, the Disclosure Statement and Plan), the Nominee may follow such customary practice in lieu of forwarding the flash drive or paper copies containing the Disclosure Statement and Plan. Each such Beneficial Holder must then indicate his, her, or its vote on the Beneficial Ballot, complete the information requested on the Beneficial Ballot, review the certifications contained on the Beneficial Ballot, execute the Beneficial Ballot, and return the Beneficial Ballot to the Nominee. If it is the accepted practice for a Nominee to collect votes through a VIF, e-

mail, or other customary method of communication, the Beneficial Holder shall follow the Nominee's instruction for completing and submitting its vote to the Nominee. After collecting the Beneficial Holders' votes, the Nominee should, in turn, complete a master ballot (the "**Master Ballot**") compiling the votes and other information from the Beneficial Holders, execute the Master Ballot, and deliver the Master Ballot to KCC so that it is RECEIVED by KCC on or before the Voting Deadline. All Beneficial Ballots returned by Beneficial Holders should either be forwarded to KCC (along with the Master Ballot) or retained by Nominees for inspection for at least one (1) year from the Voting Deadline. EACH NOMINEE SHOULD ADVISE ITS BENEFICIAL HOLDERS TO RETURN THEIR BENEFICIAL BALLOTS TO THE NOMINEE BY A DATE CALCULATED BY THE NOMINEE TO ALLOW IT TO PREPARE AND RETURN THE MASTER BALLOT TO KCC SO THAT IT IS RECEIVED BY KCC ON OR BEFORE THE VOTING DEADLINE.<sup>7</sup>

55. In addition, the Debtors propose to provide a Class 1 Ballot and Solicitation Packages by first class mail directly to the holders of known Class 1 Claims entitled to vote on the Plan as of the Voting Record Date whose Claims are not beneficially owned by a Nominee.

56. Similarly, the Debtors' books and records reflect that none of the Class 2 (Subordinated Notes Claims) are owned by a Nominee on behalf of a Beneficial Holder. Accordingly, the Debtors propose to distribute by first class mail the Solicitation Packages and Class 2 Ballots in substantially the form attached to the Proposed Order as Exhibit 3 directly to the Debtors' known holders of such Claims entitled to vote on the Plan.

57. Bankruptcy Rule 3017(c) provides that, "[o]n or before approval of [a] disclosure statement, the court shall fix a time within which the holders of claims and interests may accept or reject [a] plan." Fed. R. Bankr. P. 3017(c). The Debtors anticipate completing substantially all mailing of the Solicitation Packages by the Solicitation Date. Based on such schedule, the Debtors propose that, to be counted as a vote to accept or reject the Plan, each Ballot and Opt Out Form

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<sup>7</sup> Notwithstanding the foregoing, Nominees are authorized to transmit Solicitation Packages and collect votes to accept or to reject the Plan from Beneficial Holders in accordance with their customary practices, including the use of a "voting instruction form" in lieu of (or in addition to) a Beneficial Ballot, and collecting votes from Beneficial Holders through online voting, by phone, facsimile, or other electronic means.

must be properly executed, completed, and delivered to KCC: (i) by first-class mail (whether in the return envelope provided with each Ballot or otherwise); (ii) by overnight courier; by (iii) by hand delivery or (iv) via KCC’s online balloting portal, if applicable, so that it is actually received by KCC no later than **July 19, 2024** (the “**Voting Deadline**”). The Debtors submit the proposed solicitation period is a sufficient period within which creditors can make an informed decision whether to accept or reject the Plan and/or opt out of the Third Party Release contained therein.

58. Registered Holders of Senior Notes Claims or Subordinated Notes Claims may submit their Ballots via the customized online balloting portal on the Debtors’ case website to be maintained by KCC (the “**E-Ballot Portal**”). If applicable, instructions for electronic, online transmission of Ballots will be set forth on the forms of Ballots. The encrypted ballot data and audit trail created by such electronic submission shall become part of the record of any Ballot submitted in this manner and the creditor’s electronic signature will be deemed to be immediately legally valid and effective. In addition, Nominees may return their Master Ballots via electronic mail to ProSomnusBallots@kcellc.com.

## **X. Tabulation Procedures**

59. In addition, the Debtors request the following procedures apply to tabulating Ballots:

- (a) If a holder of a Claim casts more than one Ballot voting the same Claim(s) or Interest(s) before the Voting Deadline, the last valid Ballot received on or before the Voting Deadline shall be deemed to reflect such holder’s intent, and thus, to supersede any prior Ballot.
- (b) If a holder of a Claim casts a Ballot that is properly completed, executed, and timely returned to KCC, but does not indicate either an acceptance or rejection of the Plan, the Ballot will not be counted.
- (c) If a holder of a Claim casts a Ballot that is properly completed, executed, and timely returned to KCC, but indicates both an acceptance and a rejection of the Plan, the Ballot will not be counted.

- (d) A holder of a Claim shall be deemed to have voted the full amount of its Claim or Interest in each Class and shall not be entitled to split its vote within a particular Class. Any Ballot that partially accepts and partially rejects the Plan will not be counted.
- (e) If a holder of a Claim casts Ballots received by KCC on the same day, but which are voted inconsistently, such Ballots will not be counted.
- (f) The following Ballots shall not be counted:
  - i. any Ballot received after the Voting Deadline, unless the Debtors shall have granted, or the Court shall have ordered, an extension of the Voting Deadline in writing with respect to such Ballot;
  - ii. any Ballot that is illegible or contains insufficient information to permit the identification of the claimant or interest holder;
  - iii. any Ballot cast by a person or entity that does not hold a Claim or Interest in a Class that is entitled to vote to accept or reject the Plan;
  - iv. any Ballot cast by a person who is not entitled to vote, even if such individual holds a Claim or Interest in a Voting Class;
  - v. any unsigned Ballot, *provided, however*, that any Ballot cast via the E-Ballot Portal will be deemed to contain an electronic signature;
  - vi. any Ballot which the Court determines, after notice and a hearing, that such vote was not solicited or procured in good faith or in accordance with the provisions of the Bankruptcy Code; or
  - vii. any Ballot transmitted to KCC by means not specifically approved herein.
- (g) If a Ballot is being signed by a trustee, executor, administrator, guardian, attorney in fact, officer of a corporation, or otherwise acting in a fiduciary or representative capacity, such person should indicate such capacity when signing and, if requested by KCC, the Debtors, or the Court, must submit proper evidence to the requesting party to so act on behalf of such Holder. In addition, authorized signatories should provide their name and mailing address if it is different from that set forth on the attached mailing label or if no such mailing label is attached to the Ballot.
- (h) A holder of Claims in more than one Class must use separate Ballots for each Class of Claims.
- (i) The Debtors, subject to any further order of the Bankruptcy Court, may waive any defect or irregularity as to any particular Ballot at any time, either

before or after the close of voting, and any such waiver shall be documented in the Voting Certification.

- (j) Neither the Debtors, nor any other Entity, will be under any duty to provide notification of defects or irregularities with respect to delivered Ballots other than as provided in the Voting Certification, nor will any of them incur any liability for failure to provide such notification.
  - (k) Unless waived by the Debtors, subject to further order of the Bankruptcy Court, any defects or irregularities in connection with deliveries of Ballots must be cured prior to the Voting Deadline or such Ballots will not be counted.
  - (l) The Debtors are authorized to enter into stipulations or other agreements with the holder of any Claim or Interest agreeing to the amount of a Claim or Interest for voting purposes.
- ii. In addition to the foregoing generally applicable voting and ballot tabulation procedures, the following procedures shall apply to holders of Senior Notes Claims and Subordinated Notes Claims who hold their position through a Nominee:
- (a) if a Beneficial Ballot is signed by a trustee, executor, administrator, guardian, attorney-in-fact, officer of a corporation, or another person acting in a fiduciary or representative capacity, such person should indicate such capacity when signing and, if requested, must submit proper evidence satisfactory to the Debtors of authority to so act. Authorized signatories should submit the separate Beneficial Ballot of each Beneficial Holder for whom they are voting;
  - (b) any vote returned to a Nominee by a Beneficial Holder (whether transmitted by Beneficial Ballot or other customary means of submitting a vote) will not be counted for purposes of acceptance or rejection of the Plan until such Nominee properly completes and delivers to KCC that Beneficial Ballot (properly validated) or a Master Ballot casting the vote of such Beneficial Holder;
  - (c) Any Beneficial Holder holding a Senior Notes Claim and/or Subordinated Notes Claim as a record Holder in its own name is permitted to vote on the Plan by completing and signing a Beneficial Ballot and returning it directly to KCC on or before the Voting Deadline;
  - (d) votes cast by Beneficial Holders through Nominees will be applied to the applicable positions held by such Nominees as of the Voting Record Date, as evidenced by the applicable securities position report(s) obtained from DTC. Votes submitted by a Nominee pursuant to a Master Ballot will not be counted in excess of the amount of such Claims held by such Nominee as of the Voting Record Date;

- (e) if conflicting votes or “over-votes” are submitted by a Nominee pursuant to a Master Ballot, the Debtors will use reasonable efforts to reconcile discrepancies with the Nominees. If over-votes on a Master Ballot are not reconciled prior to the preparation of the Voting Certification, the Debtors shall apply the votes to accept and to reject the Plan in the same proportion as the votes to accept and to reject the Plan submitted on the Master Ballot that contained the over-vote, but only to the extent of the Nominee’s position in Class 1 (Senior Notes Claims) and/or Class 2 (Subordinated Notes Claims), as applicable;
- (f) for purposes of tabulating votes, each Nominee or Beneficial Holder will be deemed to have voted the principal amount of its Claims in Class 1 (Senior Notes Claims) or Class 2 (Subordinated Notes Claims), as applicable, although any principal amounts may be adjusted by KCC to reflect the amount of the Claim actually voted, including prepetition interest;
- (g) a single Nominee may complete and deliver to KCC multiple Master Ballots. Votes reflected on multiple Master Ballots will be counted, except to the extent that they are duplicative of other Master Ballots. If two or more Master Ballots are inconsistent, the latest received valid Master Ballot received prior to the Voting Deadline will, to the extent of such inconsistency, supersede and revoke any prior received Master Ballot. Likewise, if a Beneficial Holder submits more than one vote to its Nominee whether via Beneficial Ballot or other acceptable voting method, (i) the latest received valid vote before the submission deadline imposed by the Nominee shall be deemed to supersede any prior Beneficial Ballot submitted by the Beneficial Holder; and (ii) the Nominee shall complete the Master Ballot accordingly; and
- (h) the Debtors will, upon written request, reimburse Nominees for customary mailing and handling expenses incurred by them in forwarding the Solicitation Package and Beneficial Ballot to the Beneficial Holders for which they are the Nominee.
- (i) No fees or commissions or other remuneration will be payable to any broker, dealer, or other person for soliciting votes from Beneficial Holders with respect to the Plan.

60. To assist in the solicitation process, the Debtors request the Court grant KCC the authority to contact parties that submit incomplete or otherwise deficient Ballots to make a reasonable effort to cure such deficiencies; *provided, however*, that KCC is not obligated to do so.

## CONFIRMATION

### **XI. The Confirmation Hearing**

61. Bankruptcy Rule 3017(c) provides that, “[o]n or before approval of the disclosure statement, the court shall . . . fix a date for the hearing on confirmation” of a chapter 11 plan. Fed. R. Bankr. P. 3017(c). Pursuant to Bankruptcy Rule 2002(b), creditors must receive at least twenty-eight (28) days’ notice of a confirmation hearing. In accordance with these rules, and in view of the Debtors’ proposed solicitation schedule outlined herein, the Debtors request that a hearing on confirmation of the Plan (the “**Confirmation Hearing**”) be scheduled for **July 30, 2024 at 10:00 a.m. (prevailing Eastern Time)**, or on such date and time as is convenient to the Court. The Confirmation Hearing may be adjourned or continued from time to time by the Court or the Debtors without further notice other than adjournments announced in open Court or as indicated in any notice of agenda of matters scheduled for hearing filed with the Court.

### **XII. Plan Supplement**

62. The Debtors propose that the Court authorize them to file and serve a supplement to the Plan (the “**Plan Supplement**”) on or before **July 19, 2024** and to further supplement the Plan Supplement as necessary thereafter.

### **XIII. Objection Procedures**

63. Pursuant to Bankruptcy Rule 3020(b)(1), objections to confirmation of a plan must be filed and served “within a time fixed by the court.” Bankruptcy Rule 2002(b) provides that parties must receive at least twenty-eight (28) days’ notice of the deadline for filing objections to confirmation. In view of the Debtors’ proposed solicitation schedule outlined herein, and in connection with the Motion to Shorten filed contemporaneously herewith, the Debtors propose **July 22, 2024 at 4:00 p.m. (prevailing Eastern Time)** as the deadline to object or respond to confirmation of the Proposed Plan (the “**Plan Objection Deadline**”).

64. The Debtors request that objections and responses, if any, to confirmation of the Proposed Plan: (i) be in writing; (ii) conform to the Bankruptcy Rules and the Local Rules; (iii) set forth the name of the objecting party and the nature and amount of Claims or Interests held or asserted by the objecting party against the Debtors' estates or property; (iv) provide the basis for the objection and the specific grounds thereof; and (v) be filed, together with proof of service.

65. The Debtors further request that registered users of the Bankruptcy Court's case filing system must electronically file their objections and responses. All other parties in interest must file their objections and responses in writing with the Clerk of the U.S. Bankruptcy Court for the District of Delaware, 824 N. Market Street, 3rd Floor, Wilmington, Delaware 19801.

66. Any objection or response also must be served upon and received by the Notice Parties no later than the Plan Objection Deadline. Pursuant to Bankruptcy Rule 3020(b), "[i]f no objection is timely filed, the [C]ourt may determine that the plan has been proposed in good faith and not by any means forbidden by law without receiving evidence on such issues." Fed. R. Bankr. P. 3020(b)(2).

67. The Debtors submit that, if there are objections to confirmation, it will assist the Court and may streamline the Confirmation Hearing if the Debtors file a reply to any such objections. Accordingly, the Debtors request they be authorized to file and serve individual replies or an omnibus reply to any such confirmation objections in accordance with Local Rule 9006-1(d) no later than **July 26, 2024 at 12:00 p.m. (prevailing Eastern Time)** (the "**Reply Deadline**").

68. The Debtors also request the Court establish the Reply Deadline as the deadline for the Debtors to file their brief in support of confirmation of the Plan, the Voting Certification and any affidavits or declarations in support of confirmation of the Plan. In addition, the Debtors request that any party in interest be permitted to file and serve a statement in support of

confirmation of the Plan and/or reply to any objection to confirmation of the Plan by the Reply Deadline.

69. Accordingly, the Debtors respectfully request the Court approve the procedures for filing objections to the Plan and replies thereto.

#### **XIV. Confirmation Hearing Notice**

70. Pursuant to Bankruptcy Rule 3017(d), notice of a plan confirmation objection deadline and hearing must be provided to all creditors and equity security holders in accordance with Bankruptcy Rule 2002. Bankruptcy Rules 2002(b) and (d) require notice to all creditors, indenture trustees, and equity security holders of the time set for filing objections to, and the hearing to consider confirmation of a plan.

71. In accordance with the foregoing, by **no later than the Solicitation Date**, the Debtors propose to provide a copy of the Confirmation Hearing Notice setting forth, among other things, (i) the Voting Deadline; (ii) the Plan Objection Deadline and procedures for filing objections and responses to confirmation of the Plan; and (iii) the time, date, and place for the Confirmation Hearing, with service provided by electronic and/or first class mail on the Notice Parties.

72. The Debtors submit the foregoing notice procedures comply with all notice requirements under Bankruptcy Rules 3017(d) and 2002(b) and (d). Accordingly, the Debtors request the Court find that such notice is due and proper and no further notice is necessary. However, Bankruptcy Rule 2002(l) permits the Court to “order notice by publication if it finds that notice by mail is impracticable or that it is desirable to supplement notice.” Fed. R. Bankr. P. 2002(l). Therefore, in addition to the foregoing distribution of the Confirmation Hearing Notice, the Debtors may publish the Confirmation Hearing Notice, as may be modified for publication, one time within five (5) business days of the entry of the Disclosure Statement Order (or as soon

as practicable thereafter) in the national edition of one of the following newspapers: *The Wall Street Journal*, *the New York Times*, or *USA Today*. The Debtors also intend to file the Confirmation Hearing Notice, with any necessary technical or formatting modifications, in a Form 8-K to be filed with the United States Securities and Exchange Commission shortly after the Disclosure Statement is approved.

73. The Debtors respectfully submit that publication of the Confirmation Hearing Notice as contemplated herein will enable the Debtors to reach the widest audience possible and provide sufficient notice of the Confirmation Hearing and related deadlines to parties that are not otherwise directly served with the Confirmation Hearing Notice. The Debtors submit that their proposed publication notice is consistent with what is customarily approved by the Court and is an appropriate means of providing notice to parties that do not otherwise receive the Confirmation Hearing Notice by mail.

#### **NOTICE**

74. Notice of this Motion will be provided to the following parties (each as defined in the First Day Declaration): (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) all Nominees; and (j) all parties entitled to notice pursuant to Bankruptcy Rule 2002. The Debtors respectfully submit no further notice is required.

**NO PRIOR REQUEST**

75. No previous request for the relief sought herein has been made by the Debtors to this or any other court.

**WHEREFORE**, the Debtors respectfully request that the Court grant the relief requested herein and such other and further relief as it deems just and proper.

Dated: May 24, 2024  
Wilmington, Delaware

Respectfully submitted,

**POLSINELLI PC**

/s/ Shanti M. Katona  
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-and-

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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 (I) APPROVING DISCLOSURE STATEMENT AND FORM AND MANNER  
OF NOTICE OF DISCLOSURE STATEMENT HEARING, (II) ESTABLISHING  
SOLICITATION AND VOTING PROCEDURES, (III) SCHEDULING  
CONFIRMATION HEARING, (IV) ESTABLISHING NOTICE AND OBJECTION  
PROCEDURES FOR CONFIRMATION OF PLAN,  
AND (V) GRANTING RELATED RELIEF**

Upon the motion (the “**Motion**”)<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the “**Debtors**”), for entry of an order (i) approving the form and manner of notice and hearing to consider the *Disclosure Statement for Joint Chapter 11 Plan of Reorganization of ProSomnus, Inc. and its Debtor Affiliates* [Docket No. \_\_] (the “**Disclosure Statement**”), (ii) approving the Disclosure Statement as containing adequate information pursuant to section 1125 of the Bankruptcy Code, (iii) scheduling a hearing (the “**Confirmation Hearing**”) to consider confirmation of the *Joint Chapter 11 Plan of Reorganization of ProSomnus, Inc. and its Debtor Affiliates* [Docket No. \_\_\_\_] (the “**Plan**”), (iv) approving the solicitation procedures for the Plan, and (v) approving the confirmation procedures for the Plan pursuant to sections 105, 502, 1125, 1126, and 1128 of title 11 of the Bankruptcy Code, Rules 2002, 3003, 3017, 3018, 3020, and 9006

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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 otherwise defined herein have the meanings ascribed to them in the Motion.

of the Bankruptcy Rules and Rules 2002-1, 3017-1, and 9006-1 of the Local Rules, all as more fully set forth in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334, and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated February 29, 2012; and consideration of the Motion and the requested relief being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided to the parties listed therein, and it appearing that no other or further notice need be provided; and the Court having reviewed the Motion; and the Court having held a hearing on the Motion (the “**Hearing**”); and all objections to the Motion having been withdrawn, resolved or overruled; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and it appearing that the relief requested in the Motion is in the best interests of the Debtors and their estates and creditors; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor,

**IT IS FOUND AND DETERMINED THAT:**

A. Notice of the Disclosure Statement Hearing and Disclosure Statement Objection Deadline. The Notice of the Motion and the Disclosure Statement Hearing was good and sufficient notice to all interested parties.

B. The Disclosure Statement. The Disclosure Statement contains adequate information within the meaning of section 1125 of the Bankruptcy Code. No further information is necessary.

C. Balloting and Voting Procedures. The procedures set forth in the Motion for the solicitation and tabulation of votes to accept or reject the Plan provide for a fair and equitable voting process and are consistent with section 1126 of the Bankruptcy Code.

D. Ballots. The ballots substantially in the forms annexed hereto as Exhibit 2-A, 2-B, 2-C, and 3 (collectively, the “**Ballots**”), including all voting instructions provided therein, are consistent with Official Bankruptcy Form No. B 314, address the particular needs of these chapter 11 cases, and provide adequate information and instructions for each individual entitled to vote to accept or reject the Plan. No further information or instructions are necessary.

E. Parties Entitled to Vote. Holders of Claims in Class 1 (Senior Notes Claims) and Class 2 (Subordinated Notes Claims) are impaired under the Plan. Accordingly, holders of Claims in such classes are entitled to vote to accept or reject the Plan on account of such Claims.

F. Parties Not Entitled to Vote. Holders of Claims in Class 3 (Other Secured Claims), Class 4 (Other Priority Claims), and Class 5 (General Unsecured Claims) are unimpaired under the Plan and, accordingly, pursuant to section 1126(f) of the Bankruptcy Code, are conclusively presumed to accept the Plan and are not entitled to vote on account of such Claims. Holders of Claims in Class 6 (Section 510(b) Claims) and holders of Interests in Class 7 (Interests) are impaired and are not entitled to receive or retain property under the Plan. Accordingly, pursuant to section 1126(g) of the Bankruptcy Code such holders are deemed to reject the Plan and are not entitled to vote on account of such Claims or Interests.

G. Notices of Non-Voting Status. The Notices of Non-Voting Status, substantially in the forms attached hereto as Exhibit 4 and Exhibit 5, comply with the Bankruptcy Code, applicable Bankruptcy Rules, and applicable Local Rules and, together with the Confirmation Hearing Notice, provide adequate notice to Non-Voting Creditors and Interest Holders of their non-voting status. No further notice is necessary.

H. Opt Out Form. The Opt Out Form annexed to the Notice of Non-Voting Status – Unimpaired Classes as Annex A complies with the Bankruptcy Code, applicable Bankruptcy

Rules, and applicable Local Rules, contains sufficient information, comports with due process, and is appropriate under the circumstances.

I. Solicitation. The contents of the Solicitation Packages comply with Bankruptcy Rules 2002 and 3017 and Local Bankruptcy Rule 9006-1 and constitute sufficient notice to all interested parties of the Record Date, Voting Deadline, Plan Objection Deadline, Confirmation Hearing, and other related matters.

J. The Debtors' proposed manner of distribution for the Solicitation Packages is sufficient under the circumstances of these chapter 11 cases and reasonably ensures that the Solicitation Packages are timely received by the holders of Claims in the Voting Classes.

K. The period proposed by the Debtors in the Motion during which the Debtors may solicit votes to accept or reject the Plan is a reasonable and sufficient period of time for the Voting Classes to make an informed decision regarding whether to accept or reject the Plan and timely return Ballots evidencing such decision.

L. Notice of Confirmation Hearing and Plan Objection Deadline. The procedures set forth in the Motion regarding notice to all parties of the time, date, and place of the hearing to consider confirmation of the Plan (the "**Confirmation Hearing**") and for filing objections or responses to the Plan, provide due, proper, and adequate notice, comport with due process, comply with Bankruptcy Rules 2002 and 3017 and constitute sufficient notice to all parties entitled to such notice. No further notice is required.

M. Notice. All other notices to be provided pursuant to the procedures set forth in the Motion are good and sufficient notice to all parties in interest of all matters pertinent hereto and of all matters pertinent to the Confirmation Hearing. No further notice is required.

N. Relief is Warranted. The legal and factual bases set forth in the Motion establish just and sufficient cause to grant the relief requested therein.

**IT IS HEREBY ORDERED THAT:**

1. The Motion is GRANTED, as set forth herein.

**The Disclosure Statement**

2. The Disclosure Statement contains adequate information in accordance with section 1125 of the Bankruptcy Code and is **APPROVED** (as approved, the “**Disclosure Statement**”).

3. All objections to approval of the Disclosure Statement, if any, that have not been withdrawn or resolved as provided for in the record of the Hearing are overruled.

4. The form and manner of the notice of the hearing to consider approval of the Disclosure Statement complied with all applicable Bankruptcy Rules and Local Rules.

5. The Disclosure Statement (including all applicable exhibits thereto) provides sufficient notice of the injunction, exculpation, and release provisions contained in Article VIII of the Plan, in accordance with Bankruptcy Rule 3016(c).

**Solicitation and Voting Procedures**

*The Voting Record Date*

6. The Voting Record Date shall be set as **June 24, 2024 at 4:00 p.m. (prevailing Eastern Time)**. Only holders of Claims as of the Voting Record Date shall be entitled to vote to accept or reject the Plan.

7. The record holders of Claims shall be determined, as of the Voting Record Date, based upon the records of the Debtors and KCC. Accordingly, any notice of claim transfer received by the record holder of the Debtors’ debt securities, the Debtors, KCC, or other similarly situated registrar after the Voting Record Date shall not be recognized for purposes of voting or receipt of

the Plan confirmation materials; provided, however, the Debtors may elect to recognize such a claim transfer in their sole discretion.

***Solicitation Packages***

8. The Solicitation Packages are **APPROVED**.
9. The Debtors shall mail the Solicitation Packages no later than **four (4) business days following the date of entry of this Order** (the “**Solicitation Date**”) to the U.S. Trustee and holders of Claims in the Voting Classes entitled to vote on the Plan as of the Voting Record Date, as required by Bankruptcy Rule 3017(d).
10. Solicitation Packages shall contain a copy of:
  - a. this Order (without attachments);
  - b. the Confirmation Hearing Notice;
  - c. a link to the Debtors’ Case Website containing the Plan and Disclosure Statement; and
  - d. a Ballot for the applicable Class and Holder, and a postage-prepaid return envelope.
11. Any creditor entitled to receive a copy of the Plan and the Disclosure Statement may request an electronic copy on a USB flash drive or paper copy by contacting KCC in writing at ProSomnus, Inc., *et al.*, Ballot Processing Center c/o KCC, 222 N. Pacific Coast Highway, Suite 300, El Segundo, California 90245, or by email via <https://www.kccllc.net/prosomnus/inquiry>. Upon receipt of such request, the Debtors will provide such creditor or Interest holder with a USB flash drive or paper copy, as applicable, of the Plan and the Disclosure Statement at no cost to the creditor or Interest holder within five (5) business days thereafter.
12. The Debtors shall not be required to send Solicitation Packages to creditors that have Claims that have already been paid in full; *provided, however*, that if any such creditor would

be entitled to receive a Solicitation Package for any other reason, then the Debtors shall send such creditor a Solicitation Package in accordance with the procedures set forth herein.

13. With respect to addresses from which Solicitation Packages are returned as undeliverable by the United States Postal Service, the Debtors are excused from mailing Solicitation Packages or any other materials related to voting or confirmation of the Plan to those entities listed at such addresses unless the Debtors are provided with accurate addresses for such entities before the Voting Deadline, and failure to mail Solicitation Packages or any other materials related to voting or confirmation of the Plan to such entities will not constitute inadequate notice of the Confirmation Hearing or the Voting Deadline and shall not constitute a violation of Bankruptcy Rule 3017.

*Notices of Non-Voting Status*

14. The Notices of Non-Voting Status are **APPROVED**.

15. To the holders of Claims and Interests in Non-Voting Classes, the Debtors shall send the applicable Notice of Non-Voting Status substantially in the forms attached hereto as Exhibit 4 and Exhibit 5, as applicable.

16. The Opt Out Form, annexed to the Notice of Non-Voting Status – Unimpaired Classes attached hereto as Exhibit 4 is approved. The Notice of Non-Voting Status -Unimpaired Classes (including the Opt Out Form) provides sufficient notice of, and an opportunity for Claims in the unimpaired Non-Voting Classes to opt out of granting the Third-Party Release contained in the Plan.

17. Opt Out Forms must be completed in accordance with the instructions contained therein and submitted so as to be **actually received** by KCC no later than the Voting Deadline of **July 19, 2024 at 4:00 p.m. (prevailing Eastern Time)**.

18. Opt Out Forms received via facsimile, electronic mail, or other electronic transmission will not be counted unless approved by the Debtors; *provided, however*, that Opt Out Forms may be electronically submitted using the Voting Agent’s on-line electronic ballot portal at <https://www.kccllc.net/prosomnus>.

***Ballots***

19. The Ballots, substantially in the form attached hereto as Exhibit 2-A, 2-B, and 3 are **APPROVED**.

20. The Debtors are authorized to make non-substantive changes to the Ballots and related documents without further order of the Court, including ministerial changes to correct typographical and grammatical errors, and to make conforming changes among the Ballots and any other materials in the Solicitation Packages prior to mailing.

21. The Voting Deadline shall be **July 19, 2024 at 4:00 p.m. (prevailing Eastern Time)**.

22. All Ballots must be properly executed, completed, and delivered to KCC by first-class mail, overnight courier, or hand delivery so that they are **actually received** by KCC no later than the Voting Deadline. Registered Holders of Senior Notes Claims or Subordinated Notes Claims may submit their Ballots via the customized online balloting portal on the Debtors’ case website to be maintained by KCC (the “**E-Ballot Portal**”). Parties entitled to vote may cast an electronic Ballot and electronically sign and submit the Ballot instantly by utilizing the E-Ballot Portal (which allows a holder to submit an electronic signature). If applicable, instructions for electronic, online transmission of Ballots will be set forth on the forms of Ballots. The encrypted ballot data and audit trail created by such electronic submission shall become part of the record of any Ballot submitted in this manner and the creditor’s electronic signature will be deemed to be

immediately legally valid and effective. In addition, Nominees may return their Master Ballots via electronic mail to ProSomnusBallots@kccllc.com.

23. The Debtors shall deliver Ballots to record holders of Claims in the Voting Classes, including, without limitation, the Nominees. Once the Voting Record Date has passed, the Debtors will cause to be distributed, to each Nominee, reasonably sufficient numbers of Solicitation Packages, including sufficient Beneficial Ballots, to distribute via first class mail to the Beneficial Holders of such Claims as of the Voting Record Date for whom such Nominee acts. The Debtors will also cause a Master Ballot (as defined below) to be distributed to each Nominee for use in tabulating votes cast on Beneficial Ballots submitted to such Nominee. If it is a Nominee's customary and accepted practice to forward the solicitation information to (and collect votes from) Beneficial Holders by voter information forms ("**VIF**"), e-mail, telephone or other customary means of communication, the Nominee may employ that method of communication in lieu of sending the paper Beneficial Ballot and/or Solicitation Package.

24. Such Nominees shall, upon receipt of the Solicitation Packages, promptly distribute such Solicitation Packages to Beneficial Holders including Beneficial Ballots (or a summary thereof) using one of the following two methods (to be selected by the Nominee) within five (5) business days of receipt of the Solicitation Packages:

- (a) **Pre-Validated Ballots**: The Nominee may "pre-validate" a Beneficial Ballot by (i) signing the Beneficial Ballot; (ii) indicating on the Beneficial Ballot the amount and the account number of the Claims held by the Nominee for the Beneficial Holder; (iii) including a medallion guarantee stamp on the Beneficial Ballot, and (iv) forwarding such Beneficial Ballot (including the Nominee's DTC participant number), together with the other materials requested to be forwarded, to the Beneficial Holder for voting. The Beneficial Holder must then complete the information requested in the Beneficial Ballot, and return the Beneficial Ballot directly to KCC in the pre-addressed, postage-paid return envelope so that it is RECEIVED by KCC on or before the Voting Deadline. A list of the Beneficial Holders to whom "pre-validated" Beneficial Ballots were delivered should be

maintained by Nominees for inspection for at least one (1) year from the Voting Deadline.

- (b) **Master Ballots:** If the Nominee elects not to pre-validate Beneficial Ballots, the Nominee may obtain the votes of Beneficial Holders by forwarding to the Beneficial Holders the unsigned Beneficial Ballots, VIF, e-mail, or other customary method of collecting votes from a Beneficial Holder. If it is the Nominee’s customary internal practice to provide Beneficial Holders with an electronic link to solicitation materials (including, but not limited to, the Disclosure Statement and Plan), the Nominee may follow such customary practice in lieu of forwarding the flash drive or paper copies containing the Disclosure Statement and Plan. Each such Beneficial Holder must then indicate his, her, or its vote on the Beneficial Ballot, complete the information requested on the Beneficial Ballot, review the certifications contained on the Beneficial Ballot, execute the Beneficial Ballot, and return the Beneficial Ballot to the Nominee. If it is the accepted practice for a Nominee to collect votes through a VIF, e-mail, or other customary method of communication, the Beneficial Holder shall follow the Nominee’s instruction for completing and submitting its vote to the Nominee. After collecting the Beneficial Holders’ votes, the Nominee should, in turn, complete a master ballot (the “**Master Ballot**”) compiling the votes and other information from the Beneficial Holders, execute the Master Ballot, and deliver the Master Ballot to KCC so that it is RECEIVED by KCC on or before the Voting Deadline. All Beneficial Ballots returned by Beneficial Holders should either be forwarded to KCC (along with the Master Ballot) or retained by Nominees for inspection for at least one (1) year from the Voting Deadline. EACH NOMINEE SHOULD ADVISE ITS BENEFICIAL HOLDERS TO RETURN THEIR BENEFICIAL BALLOTS TO THE NOMINEE BY A DATE CALCULATED BY THE NOMINEE TO ALLOW IT TO PREPARE AND RETURN THE MASTER BALLOT TO KCC SO THAT IT IS RECEIVED BY KCC ON OR BEFORE THE VOTING DEADLINE.<sup>3</sup>

### ***Tabulation Procedures***

25. The following tabulation procedures are **APPROVED**.
- (a) Whenever a holder of a Claim casts more than one Ballot voting the same Claim(s) before the Voting Deadline, the last valid Ballot received on or before the Voting Deadline shall be deemed to reflect such holder’s intent, and thus, to supersede any prior Ballot.

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<sup>3</sup> Notwithstanding the foregoing, Nominees are authorized to transmit Solicitation Packages and collect votes to accept or to reject the Plan from Beneficial Holders in accordance with their customary practices, including the use of a “voting instruction form” in lieu of (or in addition to) a Beneficial Ballot, and collecting votes from Beneficial Holders through online voting, by phone, facsimile, or other electronic means.

- (b) Whenever a holder of a Claim casts a Ballot that is properly completed, executed and timely returned to KCC, but does not indicate either an acceptance or rejection of the Plan, the Ballot will not be counted.
- (c) Whenever a holder of a Claim casts a Ballot that is properly completed, executed, and timely returned to KCC, but indicates both an acceptance and a rejection of the Plan, the Ballot will not be counted.
- (d) A holder of a Claim shall be deemed to have voted the full amount of its Claim or Interest in each Class and shall not be entitled to split its vote within a particular Class. Any Ballot that partially accepts and partially rejects the Plan will not be counted.
- (e) Whenever a holder of a Claim casts Ballots received by KCC on the same day, but which are voted inconsistently, such Ballots will not be counted.
- (f) The following Ballots shall not be counted:
  - i. any Ballot received after the Voting Deadline, unless the Debtors shall have granted, or the Court ordered, an extension of the Voting Deadline in writing with respect to such Ballot;
  - ii. any Ballot that is illegible or contains insufficient information to permit the identification of the claimant or interest holder;
  - iii. any Ballot cast by a person or entity that does not hold a Claim in a Class that is entitled to vote to accept or reject the Plan;
  - iv. any Ballot cast by a person who is not entitled to vote, even if such individual holds a Claim in a Voting Class;
  - v. any unsigned Ballot, *provided, however*, that any Ballot cast via the E-Ballot Portal will be deemed to contain an electronic signature;
  - vi. any Ballot which the Court determines, after notice and a hearing, that such vote was not solicited or procured in good faith or in accordance with the provisions of the Bankruptcy Code; or
  - vii. any Ballot transmitted to KCC by means not specifically approved herein.
- (g) If a Ballot is being signed by a trustee, executor, administrator, guardian, attorney in fact, officer of a corporation, or otherwise acting in a fiduciary or representative capacity, such person should indicate such capacity when signing and, if requested by KCC, the Debtors, or the Court, must submit proper evidence to the requesting party to so act on behalf of such Holder. In addition, authorized signatories should provide their name and mailing

address if it is different from that set forth on the attached mailing label or if no such mailing label is attached to the Ballot.

- (h) A holder of Claims in more than one Class must use separate Ballots for each Class of Claims.
- (i) The Debtors, subject to contrary order of the Bankruptcy Court, may waive any defect or irregularity as to any particular Ballot at any time, either before or after the close of voting, and any such waiver shall be documented in the Voting Certification.
- (j) Neither the Debtors, nor any other Entity, will be under any duty to provide notification of defects or irregularities with respect to delivered Ballots other than as provided in the Voting Certification, nor will any of them incur any liability for failure to provide such notification.
- (k) Unless waived by the Debtors, subject to contrary order of the Bankruptcy Court, any defects or irregularities in connection with deliveries of Ballots must be cured prior to the Voting Deadline or such Ballots will not be counted.
- (l) The Debtors are authorized to enter into stipulations or other agreements with the holder of any Claim agreeing to the amount of a Claim for voting purposes.

26. In addition to the foregoing generally applicable voting and ballot tabulation procedures, the following procedures shall apply to holders of Senior Notes Claims and Subordinated Notes Claims who hold their position through a Nominee:

- (a) if a Beneficial Ballot is signed by a trustee, executor, administrator, guardian, attorney-in-fact, officer of a corporation, or another person acting in a fiduciary or representative capacity, such person should indicate such capacity when signing and, if requested, must submit proper evidence satisfactory to the Debtors of authority to so act. Authorized signatories should submit the separate Beneficial Ballot of each Beneficial Holder for whom they are voting;
- (b) any vote returned to a Nominee by a Beneficial Holder (whether transmitted by Beneficial Ballot or other customary means of submitting a vote) will not be counted for purposes of acceptance or rejection of the Plan until such Nominee properly completes and delivers to KCC that Beneficial Ballot (properly validated) or a Master Ballot casting the vote of such Beneficial Holder;
- (c) Any Beneficial Holder holding a Senior Notes Claim and/or Subordinated Notes Claim as a record Holder in its own name is permitted to vote on the

Plan by completing and signing a Beneficial Ballot and returning it directly to KCC on or before the Voting Deadline;

- (d) votes cast by Beneficial Holders through Nominees will be applied to the applicable positions held by such Nominees as of the Voting Record Date, as evidenced by the applicable securities position report(s) obtained from DTC. Votes submitted by a Nominee pursuant to a Master Ballot will not be counted in excess of the amount of such Claims held by such Nominee as of the Voting Record Date;
- (e) if conflicting votes or “over-votes” are submitted by a Nominee pursuant to a Master Ballot, the Debtors will use reasonable efforts to reconcile discrepancies with the Nominees. If over-votes on a Master Ballot are not reconciled prior to the preparation of the Voting Certification, the Debtors shall apply the votes to accept and to reject the Plan in the same proportion as the votes to accept and to reject the Plan submitted on the Master Ballot that contained the over-vote, but only to the extent of the Nominee’s position in Class 1 (Senior Notes Claims) and/or Class 2 (Subordinated Notes Claims), as applicable;
- (f) for purposes of tabulating votes, each Nominee or Beneficial Holder will be deemed to have voted the principal amount of its Claims in Class 1 (Senior Notes Claims) or Class 2 (Subordinated Notes Claims), as applicable, although any principal amounts may be adjusted by KCC to reflect the amount of the Claim actually voted, including prepetition interest;
- (g) a single Nominee may complete and deliver to KCC multiple Master Ballots. Votes reflected on multiple Master Ballots will be counted, except to the extent that they are duplicative of other Master Ballots. If two or more Master Ballots are inconsistent, the latest received valid Master Ballot received prior to the Voting Deadline will, to the extent of such inconsistency, supersede and revoke any prior received Master Ballot. Likewise, if a Beneficial Holder submits more than one vote to its Nominee whether via Beneficial Ballot or other acceptable voting method, (i) the latest received valid vote before the submission deadline imposed by the Nominee shall be deemed to supersede any prior Beneficial Ballot submitted by the Beneficial Holder; and (ii) the Nominee shall complete the Master Ballot accordingly; and
- (h) the Debtors will, upon written request, reimburse Nominees for customary mailing and handling expenses incurred by them in forwarding the Solicitation Package and Beneficial Ballot to the Beneficial Holders for which they are the Nominee.
- (i) No fees or commissions or other remuneration will be payable to any broker, dealer, or other person for soliciting votes from Beneficial Holders with respect to the Plan.

27. To assist in the solicitation process, KCC may contact parties that submit incomplete or otherwise deficient ballots to make a reasonable effort to cure such deficiencies; *provided, however*, that KCC is not obligated to do so.

***The Confirmation Hearing***

28. The Confirmation Hearing shall be held on **July 30, 2024 at 10:00 a.m. (prevailing Eastern Time)**; *provided, however*, that the Confirmation Hearing may be adjourned or continued from time to time by the Court or the Debtors without further notice, including adjournments announced in open Court or as indicated in any notice of agenda of matters scheduled for hearing filed by the Debtors with the Court.

***Plan Supplement***

29. The Debtors are authorized to file and serve a supplement to the Plan on or before **July 19, 2024**, and to further supplement such plan supplement as necessary thereafter.

***Confirmation Objection Procedures***

30. The deadline to object or respond to confirmation of the Plan shall be **July 22, 2024 at 4:00 p.m. (prevailing Eastern Time)**.

31. Objections and responses, if any, to confirmation of the Plan, must: (i) be in writing; (ii) conform to the Bankruptcy Rules and the Local Rules; (iii) set forth the name of the objecting party, the nature and amount of Claims or Interests held or asserted by the objecting party against the Debtors' estates or property; (iv) set forth the basis for the objection and the specific grounds therefor, and provide proposed language that, if accepted and incorporated by the Debtors, would obviate such objection; and (v) be filed, together with proof of service.

32. Registered users of this Court's case filing system must electronically file their objections and responses. All other parties in interest must file their objections and responses in

writing with the Clerk of the U.S. Bankruptcy Court for the District of Delaware, 824 N. Market Street, 3rd Floor, Wilmington, Delaware 19801

33. Pursuant to Bankruptcy Rule 3017, any objection or response also must be served upon and received by the following parties by no later than the Plan Objection Deadline: (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).

34. Pursuant to Bankruptcy Rule 3020(b), if no objection is timely filed, this Court may determine that the Plan has been proposed in good faith and not by any means forbidden by law without receiving evidence on such issues.

35. Objections to confirmation of the Plan that are not timely filed, served, and actually received in the manner set forth above shall not be considered and shall be deemed overruled.

36. The Debtors are authorized to file and serve replies or an omnibus reply to any such objections along with their brief in support of confirmation of the Plan, the Voting Certification and any affidavits or declarations in support of confirmation of the Plan on or before **July 26, 2024 at 12:00 p.m. (prevailing Eastern Time)** (the “**Reply Deadline**”). In addition, any party in interest may file and serve a statement in support of confirmation of the Plan and/or a reply to any objections to confirmation of the Plan by the Reply Deadline.

***Confirmation Hearing Notice***

37. The Confirmation Hearing Notice substantially in the form attached hereto as Exhibit 1 is **APPROVED**.

38. The Confirmation Hearing Notice provides due, proper, and adequate notice, comports with due process and complies with Bankruptcy Rules 2002 and 3017 and Local Rule 9006-1.

39. Within four (4) business days from the date of entry of this Order the Debtors shall file and serve the Confirmation Hearing Notice upon all parties in interest in these chapter 11 cases.

40. Within five (5) business days from the date of entry of this Order (or as soon as practicable thereafter), the Debtors may publish the Confirmation Hearing Notice, as may be modified for publication, one time in the national edition of one of the following newspapers: *The Wall Street Journal*, *the New York Times*, or *USA Today*.

41. The Debtors are authorized, but not directed, to file the Confirmation Hearing Notice, with any necessary technical or formatting modifications, in a Form 8-K to be filed with the United States Securities and Exchange Commission shortly after the Disclosure Statement is approved.

42. Service of the Confirmation Hearing Notice, as well as the publication of such notice on the terms set forth herein, constitutes adequate and sufficient notice of the hearing to

consider approval of the Plan, the manner in which a copy of the Plan could be obtained, and the time fixed for filing objections thereto, in satisfaction of the requirements of the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules.

*General*

43. The Debtors are authorized to make non-substantive changes to the Disclosure Statement, the Plan, the Ballots, and related documents without further order of the Court, including, without limitation, changes to correct typographical and grammatical errors and to make conforming changes among the Disclosure Statement, the Plan, and any other materials in the Solicitation Packages prior to mailing.

44. The Debtors are authorized to take all steps necessary or appropriate to carry out this Order.

45. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, or enforcement of this Order.

**Exhibit 1**

Confirmation Hearing Notice

**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)

**NOTICE OF HEARING TO CONSIDER CONFIRMATION OF THE CHAPTER 11  
PLAN FILED BY THE DEBTORS AND RELATED VOTING AND  
OBJECTION DEADLINES**

**PLEASE TAKE NOTICE THAT** on June \_\_, 2024, the United States Bankruptcy Court for the District of Delaware (the “**Court**”) entered an order [Docket No. \_\_] (the “**Disclosure Statement Order**”): (a) approving the *Disclosure Statement for Joint Chapter 11 Plan of Reorganization of ProSomnus, Inc. and its Debtor Affiliates*, including all exhibits and schedules thereto (as may be modified, amended or supplemented from time to time, the “**Disclosure Statement**”); (b) establishing the voting record date, voting deadline, and other related dates in connection with confirmation of the *Joint Chapter 11 Plan of Reorganization of ProSomnus, Inc. and its Debtor Affiliates* (as may be modified, amended or supplemented from time to time, the “**Plan**”);<sup>2</sup> (c) approving procedures for soliciting, receiving, and tabulating votes on the Plan; and (d) approving the manner and forms of notice and other related documents as they relate to the Debtors.

**PLEASE TAKE FURTHER NOTICE THAT** the hearing at which the Court will consider Confirmation of the Plan (the “**Confirmation Hearing**”) will commence on **July 30, 2024 at 10:00 a.m. prevailing Eastern Time**, before the Honorable John T. Dorsey, in the United States Bankruptcy Court for the District of Delaware, located at 824 N. Market Street, 5<sup>th</sup> Floor, Courtroom #5, Wilmington, Delaware 19801.

**PLEASE BE ADVISED:** THE CONFIRMATION HEARING MAY BE CONTINUED FROM TIME TO TIME BY THE COURT OR THE DEBTORS **WITHOUT FURTHER NOTICE** OTHER THAN BY SUCH ADJOURNMENT BEING ANNOUNCED IN OPEN COURT OR BY A NOTICE OF ADJOURNMENT FILED WITH THE COURT AND SERVED ON ALL PARTIES ENTITLED TO NOTICE.

<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 have the meaning given to such terms in the Plan or Disclosure Statement, as applicable.

**CRITICAL INFORMATION REGARDING VOTING ON THE PLAN**

**Voting Record Date.** The voting record date is **June 24, 2024** (the “**Voting Record Date**”), which is the date for determining which Holders of Claims and Interests are entitled to vote on the Plan.

**Voting Deadline.** The deadline for voting on the Plan is **July 19, 2024 at 4:00 p.m. prevailing Eastern Time** (the “**Voting Deadline**”). If you received a Solicitation Package including a Ballot and intend to vote on the Plan, you *must*: (a) follow the instructions carefully; (b) complete *all* of the required information on the Ballot; and (c) execute and return your completed Ballot according to and as set forth in detail in the voting instructions so that it is *actually received* by the Debtors’ administrative agent, Kurtzman Carson Consultants, LLC (the “**Voting Agent**”) on or before the Voting Deadline. *A failure to follow such instructions may disqualify your vote.*

**CRITICAL INFORMATION REGARDING OBJECTING TO THE PLAN**

ARTICLE VIII OF THE PLAN CONTAINS RELEASE, EXCULPATION, AND INJUNCTION PROVISIONS, AND **SECTION 8.04 OF THE PLAN CONTAINS A THIRD-PARTY RELEASE**. **THUS, YOU ARE ADVISED TO REVIEW AND CONSIDER THE PLAN CAREFULLY BECAUSE YOUR RIGHTS MIGHT BE AFFECTED THEREUNDER.**

**THIS NOTICE IS BEING SENT TO YOU FOR INFORMATIONAL PURPOSES ONLY. IF YOU HAVE QUESTIONS WITH RESPECT TO YOUR RIGHTS UNDER THE PLAN OR ABOUT ANYTHING STATED HEREIN OR IF YOU WOULD LIKE TO OBTAIN ADDITIONAL INFORMATION, PLEASE CONTACT THE VOTING AGENT.**

**Plan Objection Deadline.** The deadline for filing objections to the Plan is **July 22, 2024 at 4:00 p.m. prevailing Eastern Time** (the “**Plan Objection Deadline**”). All objections to the relief sought at the Confirmation Hearing *must* (i) be in writing; (ii) conform to the Bankruptcy Rules and the Local Rules; (iii) set forth the name of the objecting party, the nature and amount of Claims or Interests held or asserted by the objecting party against the Debtors’ estates or property; (iv) set forth the basis for the objection and the specific grounds therefor, and provide proposed language that, if accepted and incorporated by the Debtors, would obviate such objection; and (v) be filed, together with proof of service and served upon the following parties so as to be *actually received* on or before the Plan Objection Deadline

- 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).

### **ADDITIONAL INFORMATION**

**Obtaining Solicitation Materials.** The materials in the Solicitation Package are intended to be self-explanatory. If you should have any questions or if you would like to obtain additional solicitation materials (or paper copies of solicitation materials if you received an electronic version), please feel free to contact the Voting Agent by: (a) visiting, free of charge, <https://www.kccllc.net/prosomnus>, (b) calling the Debtors' restructuring hotline at (888) 647-1744 (U.S./Canada) or (310) 751-2628 (International), or (c) email at [ProSomnusInfo@kccllc.com](mailto:ProSomnusInfo@kccllc.com). You may also obtain copies of any pleadings filed in these Chapter 11 Cases for a fee via PACER at: <https://www.deb.uscourts.gov>. Please be advised that the Voting Agent is authorized to answer questions about, and provide additional copies of, solicitation materials, but may not advise you as to whether you should vote to accept or reject the Plan.

**The Plan Supplement.** The Debtors will file the Plan Supplement (as defined in the Plan) on or before **July 19, 2024 at 4:00 p.m. (prevailing Eastern Time)**, and will serve notice on all Holders of Claims and Interests entitled to vote on the Plan, which will: (a) inform parties that the Debtors filed the Plan Supplement; (b) list the information contained in the Plan Supplement; and (c) explain how parties may obtain copies of the Plan Supplement.

### **BINDING NATURE OF THE PLAN:**

**IF CONFIRMED, THE PLAN SHALL BIND ALL HOLDERS OF CLAIMS AND INTERESTS TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, WHETHER OR NOT SUCH HOLDER WILL RECEIVE OR RETAIN ANY PROPERTY OR INTEREST IN PROPERTY UNDER THE PLAN, HAS FILED A PROOF OF CLAIM IN THE CHAPTER 11 CASES, FAILED TO VOTE TO ACCEPT OR REJECT THE PLAN, OR VOTED TO REJECT THE PLAN.**

Dated: June \_\_, 2024  
Wilmington, Delaware

Respectfully submitted,

**POLSINELLI PC**

*/s/ Draft*

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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skatona@polsinelli.com  
kdevanney@polsinelli.com  
mdipietro@polsinelli.com

-and-

Mark B. Joachim (Admitted Pro Hac Vice)  
1401 Eye Street, N.W., Suite 800  
Washington, D.C. 20005  
Telephone: (202) 783-3300  
Facsimile: (202) 783-3535  
mjoachim@polsinelli.com

*Proposed Counsel to the Debtors and  
Debtors in Possession*

**Exhibit 2-A**

Master Ballot of Class 1 (Senior Notes Claims)

**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)

**MASTER BALLOT FOR VOTING TO ACCEPT OR REJECT  
THE JOINT CHAPTER 11 PLAN OF REORGANIZATION OF  
PROSOMNUS, INC. AND ITS DEBTOR AFFILIATES**

**CLASS 1 SENIOR NOTES CLAIMS  
CUSIP 50535EAC2**

**PLEASE READ AND FOLLOW THE ENCLOSED INSTRUCTIONS CAREFULLY  
BEFORE COMPLETING THIS BALLOT.**

**PLEASE REVIEW CAREFULLY THE ACCOMPANYING PLAN AND DISCLOSURE STATEMENT FOR A DESCRIPTION OF THE SAME AND THEIR EFFECTS. HOLDERS OF CLAIMS AGAINST THE DEBTORS TO DETERMINE WHETHER TO VOTE TO ACCEPT OR REJECT THE PLAN.**

**THIS MASTER BALLOT MUST BE COMPLETED, EXECUTED, AND RETURNED SO AS TO BE ACTUALLY RECEIVED BY KURTZMAN CARSON CONSULTANTS LLC (“KCC” OR THE “VOTING AGENT”) BY 4:00 P.M. (PREVAILING EASTERN TIME) ON JULY 19, 2024 (THE “VOTING DEADLINE”).**

Kurtzman Carson Consultants LLC in its capacity as voting agent for and on behalf of the above-captioned debtors and debtors-in-possession (the “**Debtors**”) in the above-captioned bankruptcy cases (the “**Chapter 11 Cases**”) is soliciting votes with respect to the *Joint Chapter 11 Plan of Reorganization of ProSomnus, Inc. and its Debtor Affiliates*, dated May \_\_, 2024 [Docket No. \_\_\_] (together with all schedules and exhibits thereto, and as may be modified, amended, or supplemented from time to time, the “**Plan**”)<sup>2</sup> from the holders of certain Claims against the Debtors. The accompanying *Disclosure Statement for Joint Chapter 11 Plan of Reorganization of ProSomnus, Inc. and its Debtor Affiliates* [Docket No. \_\_\_] (together with all schedules and exhibits thereto, and as may be modified, amended, or supplemented from time to time, the “**Disclosure Statement**”) describes the Plan and contains information to assist you in deciding how to vote on the Plan. The Disclosure Statement also includes a copy of the Plan as

<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 or not otherwise defined shall have the meanings ascribed to them in the Plan.

Exhibit A. On June \_\_, 2024, the Court entered the *Order (I) Approving Proposed Disclosure Statement and Form and Manner of Notice of Disclosure Statement Hearing, (II) Establishing Solicitation and Voting Procedures, (III) Scheduling Confirmation Hearing, (IV) Establishing Notice and Objection Procedures for Confirmation of Proposed Plan, and (V) Granting Related Relief* [Docket No. \_\_] (the “**Solicitation Procedures Order**”). Thus, the Debtors are soliciting votes in accordance with the Court’s Solicitation Procedures Order.

**Please review the Disclosure Statement, the Plan, the Solicitation Procedures Order, and this Master Ballot carefully before you submit this Master Ballot.**

This ballot (the “**Master Ballot**”) is to be used by you, as a bank, broker, nominee or other intermediary, or an agent thereof (each of the foregoing, a “**Nominee**”) for beneficial holders of Senior Notes Claims (Class 1) (each a “**Beneficial Holder**” and together the “**Beneficial Holders**”) as of June 24, 2024 (prevailing Eastern Time) (the “**Voting Record Date**”). This Master Ballot is being sent to Nominees for such Beneficial Holders to cast votes to accept or reject the Plan.

The rights and treatment for each Class are described in the Disclosure Statement. Each of the Disclosure Statement, Plan, and the Solicitation Procedures Order are available on the Debtors’ Case Website. The Solicitation Package you are receiving with this Master Ballot provides instructions detailing how to access electronic versions and request hard copies of each of the (a) Solicitation Procedures Order as entered by the Bankruptcy Court and (b) the Disclosure Statement, as approved by the Court. If you need to obtain additional solicitation materials, you may obtain such information from the Voting Agent by: (i) calling (877) 499-4509 (U.S./Canada) or (917) 281-4800 (International); (b) writing to ProSomnus, Inc., *et al.*, Ballot Processing Center c/o KCC, 222 N. Pacific Coast Highway, Suite 300, El Segundo, California 90245; or (c) or by email at [ProSomnusBallots@kccllc.com](mailto:ProSomnusBallots@kccllc.com). The materials may also be obtained free-of-charge from <https://www.kccllc.net/prosomnus>. You may also obtain such information for a fee via PACER at <https://www.deb.uscourts.gov>.

PLEASE NOTE THAT THE VOTING AGENT IS NOT AUTHORIZED TO PROVIDE LEGAL ADVICE.

Pursuant to the Solicitation Procedures Order, the Bankruptcy Court has approved the Disclosure Statement as containing adequate information under Bankruptcy Code section 1125. Bankruptcy Court approval of the Disclosure Statement does not mean that the Plan has been confirmed by the Bankruptcy Court. Rather, Ballots will be counted and the Court will use the tabulation of the Ballots as part of its determination as to whether or not to confirm (approve) the Plan. This Master Ballot may not be used for any purpose other than for voting to accept or reject the Plan and making certain certifications with respect to the Plan. If you believe that you have received this Master Ballot in error, please contact the Voting Agent **immediately** at the address, telephone number, or email address set forth above.

You are authorized to collect votes to accept or reject the Plan from Beneficial Holders in accordance with your customary practices and any legal requirements, including the use of a “voting instruction form” in lieu of (or in addition to) a Beneficial Ballot, and collecting votes from Beneficial Holders through online voting, by phone, facsimile, or other electronic means.

The Court may confirm the Plan and thereby bind all holders of Claims and Interests. To have the votes of your Beneficial Holders count as either an acceptance or rejection of the Plan, you must complete and return this Master Ballot so that the Voting Agent **actually receives** it on or before the Voting Deadline.

This Master Ballot is not a letter of transmittal and may not be used for any purpose other than to cast votes to accept or reject the Plan.

**Item 1. Certification of Authority to Vote.**

The undersigned hereby certifies that, as of the Voting Record Date, the undersigned (please check the applicable box):

- Is a broker, bank, common representative or other Nominee for the Beneficial Holders of the aggregate principal amount of Claims listed in Item 2 below, and is the record holder of such Notes, or
- Is acting under a power of attorney and/or agency (a copy of which will be provided upon request) granted by a broker, bank, common representative or other Nominee that is the registered holder of the aggregate principal amount of Claims listed in Item 2 below,
- Has been granted a proxy (an original of which is attached hereto) from a broker, bank, common representative or other Nominee, or a beneficial owner, that is the registered holder of the aggregate principal amount of Claims listed in Item 2 below,

and, accordingly, has full power and authority to vote to accept or reject the Plan, on behalf of the Beneficial Holders of the Claims described in Item 2.

**Item 2. Claim Votes on Plan:**

The undersigned transmits the following votes of Beneficial Holders of Claims and certifies that the following Beneficial Holders of such Claims, as identified by their respective customer account numbers set forth below, are the Beneficial Holders of such Claims as of the Voting Record Date and have delivered to the undersigned, as Nominee, Beneficial Ballots (the “**Beneficial Ballots**”) or other vote submissions casting such votes.

Indicate in the appropriate column below the aggregate principal amount voted for each account or attach such information to this Master Ballot in the form of the following table. Please note that each holder must vote all such Beneficial Holder’s Claims to accept or reject the Plan and may not split such vote. Any Beneficial Ballot executed by the Beneficial Holder that does not indicate an acceptance or rejection of the Plan or that indicates both an acceptance and a rejection of the Plan will not be counted.

Your Customer Account Number for Each Beneficial Holder of Claims	Principal Amount Held as of Voting Record Date	Indicate the vote cast from Item 2 of the Beneficial Ballot by checking the appropriate box below			Indicate OPT OUT to giving the Releases by Holders of Claims in Item 3 of the Beneficial Ballot by checking the box below.
		Accept the Plan	or	Reject the Plan	
1	\$	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
2	\$	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
3	\$	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
4	\$	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
5	\$	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
6	\$	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
<b>TOTAL</b>	\$				

**Item 3. Important information regarding Releases, Exculpation, and Injunctions and Creditors’ Rights to Opt-Out.**

**The Plan contains the following provision(s):**

***Section 1.01 Defines “Releasing Parties”***

“Releasing Parties” means, collectively, and in each case in its capacity as such: (a) each Debtor; (b) each Reorganized Debtor; (c) each Non-Debtor Subsidiary; (d) the Sponsoring Noteholders; (e) each DIP Lender; (f) the Prepetition Agents; (g) the DIP Agent; (h) each Holder of Senior Notes Claims; (i) each Holder of Subordinated Notes Claims who is party to or has otherwise signed the Restructuring Support Agreement; (j) all Holders of Claims that vote to accept the Plan; (k) all Holders of Claims or Interests that are deemed to accept the Plan and who do not affirmatively opt out of the releases provided by the Plan; (l) all Holders of Claims or Interests that are deemed to reject the Plan and who do not affirmatively opt out of the releases provided by the Plan; (m) all Holders of Claims who abstain from voting on the Plan and who do not affirmatively opt out of the releases provided by the Plan; (n) all Holders of Claims who vote to reject the Plan and who do not affirmatively opt out of the releases provided by the Plan; and (o) each Related Party of each Entity in clause (a) through (n).

***Section 8.04 Releases by the Releasing Parties***

Effective as of the Effective Date, to the fullest extent permissible under applicable Law, each Releasing Party, in each case on behalf of itself and its respective successors, assigns, and representatives, and any and all other entities who may purport to assert any Claim, Cause of Action, directly or derivatively, by, through, for, or because of a Releasing Party, is deemed to have conclusively, absolutely, unconditionally, irrevocably, and forever released and discharged each Debtor, Reorganized Debtor, and each other Released Party

from any and all Claims (other than Reinstated Claims), interests, obligations, rights, suits, damages, Causes of Action, remedies, and liabilities whatsoever, whether liquidated or unliquidated, fixed or contingent, known or unknown, foreseen or unforeseen, existing or hereafter arising, in Law, equity, contract, tort, or otherwise, whether arising under federal or state statutory or common law, or any other applicable international, foreign, or domestic Law, rule, statute, regulation, treaty, right, duty, requirement, or otherwise, including any derivative claims, asserted or assertable on behalf of any of the Debtors, the Reorganized Debtors, the Estates or their Affiliates, heirs, executors, administrators, successors, assigns, managers, accountants, attorneys, representatives, consultants, agents, and any other Persons claiming under or through them would have been legally entitled to assert (whether individually or collectively), based on or relating to (including the formulation, preparation, dissemination, negotiation, entry into, or filing of, as applicable), or in any manner arising from, in whole or in part, the Debtors (including the management, ownership or operation thereof) or their Estates or the Non-Debtor Subsidiaries, the purchase, sale, or rescission of the purchase or sale of any Security of the Debtors or Non-Debtor Subsidiaries, the Reorganized Debtors, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the business or contractual arrangements between any Debtor or Non-Debtor Subsidiaries and any Released Party, the Debtors' in- or out-of-court restructuring efforts, the decision to file the Chapter 11 Cases, any intercompany transactions, the Chapter 11 Cases, the negotiation, formulation, preparation, or consummation of the Restructuring Support Agreement, the Restructuring Transactions, the Plan (including the Plan Supplement), the solicitation of votes on the Plan, the Disclosure Statement, the New Organizational Documents, the pursuit of Confirmation and Consummation, the DIP Facility, the DIP Facility Documents, the New Money Common Equity Investment Documents, the New Note Documents, the administration and implementation of the Plan, including the issuance or distribution of Securities pursuant to the Plan, or the distribution of property under the Plan or any other related agreement, or upon any other act, omission, transaction, agreement, event, or other occurrence taking place on or before the Effective Date. Notwithstanding anything to the contrary in the foregoing, the releases set forth above do not release (a) any post-Effective Date obligations of any party or Entity under the Plan or the Confirmation Order, any Restructuring Transaction, or any document, instrument, or agreement (including those set forth in the Plan Supplement) executed to implement the Plan, including the assumption of the indemnification provisions as set forth in the Plan; (b) any Cause of Action included on the Schedule of Retained Causes of Action; (c) the rights of any Holder of an Allowed Claim to receive distributions under the Plan; or (d) the liability of any Released Party that otherwise would result from any act or omission to the extent that act or omission subsequently is determined in a Final Order to have constituted fraud, gross negligence or willful misconduct.

Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval, pursuant to Bankruptcy Rule 9019, of the Third-Party Release, which includes by reference each of the related provisions and definitions contained in this Plan, and, further, shall constitute the Bankruptcy Court's finding that the Third-Party Release is: (1) consensual; (2) essential to the confirmation of the Plan; (3) given in exchange for the good and valuable consideration provided by the Released Parties, including the Released Parties' contributions to facilitating the Plan Transactions and implementing the Plan; (4) a good faith settlement and compromise of the Claims released by the Third-Party Release; (5) in

the best interests of the Debtors and their Estates; (6) fair, equitable, and reasonable; (7) given and made after due notice and opportunity for hearing; and (8) a bar to any of the Releasing Parties asserting any Claim or Cause of Action of any kind whatsoever released pursuant to the Third-Party Release.

*Section 8.05 Exculpation.*

Effective as of the Effective Date, to the fullest extent permissible under applicable Law and without affecting or limiting either the Debtor Release or the Third-Party Release, and except as otherwise specifically provided in the Plan or the Confirmation Order, no Exculpated Party shall have or incur liability for, and each Exculpated Party shall be released and exculpated from any Cause of Action or any claim arising from the Petition Date through the Effective Date related to any act or omission in connection with, relating to, or arising out of, the Chapter 11 Cases, the formulation, preparation, dissemination, negotiation, entry into, or filing of, as applicable the Chapter 11 Cases, the Restructuring Support Agreement, the Disclosure Statement, the Plan (including the Plan Supplement), the DIP Facility, the DIP Facility Documents, or any Restructuring Transaction, contract, instrument, release, or other agreement or document created or entered into in connection with the Disclosure Statement or the Plan, the filing of the Chapter 11 Cases, the pursuit of Confirmation, the pursuit of Consummation, the administration and implementation of the Plan, including the issuance of Securities pursuant to the Plan, or the distribution of property under the Plan or any other related agreement (excluding, for the avoidance of doubt, providing any legal opinion effective as of the Effective Date requested by any Entity regarding any transaction, contract, instrument, document, or other agreement contemplated by the Plan), except for claims or Causes of Action related to any act or omission constituting actual fraud, willful misconduct, or gross negligence, but in all respects such Entities shall be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities pursuant to the Plan. The Exculpated Parties have, and upon Consummation of the Plan shall be deemed to have, participated in good faith and in compliance with the applicable Laws with regard to the solicitation of votes and distribution of consideration pursuant to the Plan and, therefore, are not, and on account of such distributions shall not be, liable at any time for the violation of any applicable Law, rule, or regulation governing the solicitation of acceptances or rejections of the Plan or such distributions made pursuant to the Plan. Notwithstanding the foregoing, the exculpation shall not release any obligation or liability of any Entity for any post-Effective Date obligation under the Plan or any document, instrument or agreement (including those set forth in the Plan Supplement) executed to implement the Plan.

The Exculpated Parties and other parties set forth above have, and upon confirmation of the Plan shall be deemed to have, participated in good faith and in compliance with the applicable Laws with regard to the solicitation of votes and distribution of consideration pursuant to the Plan and, therefore, are not, and on account of such distributions shall not be, liable at any time for the violation of any applicable Law, rule, or regulation governing the solicitation of acceptances or rejections of the Plan or such distributions made pursuant to the Plan.

Solely with respect to the exculpation provision, notwithstanding anything to the contrary in the Plan or Plan Supplement, each of the 1125(e) Exculpated Parties shall not incur liability for any Cause of Action or Claim related to any act or omission in connection with, relating to, or arising out of, in whole or in part, (a) the solicitation of acceptance or rejection of the Plan in good faith and in compliance with the applicable provisions of the Bankruptcy Code or (b) the participation, in good faith and in compliance with the applicable provisions of the Bankruptcy Code, in the offer, issuance, sale, or purchase of a security, offered or sold under the Plan. No Entity or Person may commence or pursue a Claim or Cause of Action of any kind against any of the Exculpated Parties or the 1125(e) Exculpated Parties that arose or arises from, in whole or in part, a Claim or Cause of Action subject to this paragraph, without this Bankruptcy Court (i) first determining, after notice and a hearing, that such Claim or Cause of Action represents a colorable Claim for actual fraud, gross negligence, or willful misconduct against any such Exculpated Party or 1125(e) Exculpated Party and such party is not exculpated pursuant to this provision; and (ii) specifically authorizing such Entity or Person to bring such Claim or Cause of Action against such Exculpated Party or 1125(e) Exculpation Party. The Bankruptcy Court will have sole and exclusive jurisdiction to adjudicate the underlying colorable Claim or Causes of Action.

*Section 8.06 Injunction*

Except as otherwise expressly provided in the Plan, or for obligations issued or required to be paid pursuant to the Plan or the Confirmation Order, all Entities that have held, hold, or may hold Claims (other than Reinstated Claims), Interests, or Causes of Action that have been released, discharged, or are subject to exculpation are permanently enjoined, from and after the Effective Date, from taking any of the following actions against, as applicable, the Debtors, the Reorganized Debtors, the Exculpated Parties, or the Released Parties: (1) commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to any such Claims, Interests, or Cause of Action; (2) enforcing, attaching, collecting, or recovering by any manner or means any judgment, award, decree, or order against such Entities on account of or in connection with or with respect to any such Claims, Interests, or Causes of Action; (3) creating, perfecting, or enforcing any encumbrance of any kind against such Entities or the property or the estates of such Entities on account of or in connection with or with respect to any such Claims, Interests, or Causes of Action; (4) asserting any right of setoff, subrogation, or recoupment of any kind against any obligation due from such Entities or against the property of such Entities on account of or in connection with or with respect to any such Claims, Interests, or Causes of Action unless such Holder has Filed a motion requesting the right to perform such setoff on or before the Effective Date, and notwithstanding an indication of a Claim or Interest or otherwise that such Holder asserts, has, or intends to preserve any right of setoff pursuant to applicable Law or otherwise; and (5) commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to any such Claims, Interests, or Causes of Action released or settled pursuant to the Plan.

**Item 4. Other Ballots Submitted by Beneficial Holders in the same Class.**

The undersigned certifies that it has transcribed in the following table the information, if any, provided by the Beneficial Holders in Item 4 of the Beneficial Ballot:

<b>YOUR customer account number and/or Customer Name for each Beneficial Holder who completed Item 4 of the Beneficial Ballot</b>	<b>Transcribe from Item 4 of the Beneficial Ballot</b>		
	<b>Account Number of Other Claims Voted</b>	<b>Name of Record Holder or Nominee</b>	<b>Principal Amount of Other Claims Voted</b>
1.			\$
2.			\$
3.			\$
4.			\$
5.			\$

**Item 5. Certifications.**

Upon execution of this Master Ballot, the undersigned certifies the following:

- (a) it has received a copy of (or information regarding where to obtain) the Disclosure Statement, the Plan, the Master Ballots, the Beneficial Ballots, and the remainder of the Solicitation Package and has delivered the same to the Beneficial Holders of the Claims listed in Item 2 above; (ii) it has received a completed and signed Beneficial Ballot (or vote submission in accordance with its customary procedures) from each Beneficial Holder listed in Item 2 of this Master Ballot; (iii) it is the registered holder of all Claims listed in Item 2 above being voted; and (iv) it has been authorized by each Beneficial Holder of the Claims listed in Item 2 above to vote on the Plan;
- (b) no other Master Ballots with respect to the same Claims identified in Item 2 have been cast or, if any other Master Ballots have been cast with respect to such Claims, then any such earlier received Master Ballots are hereby revoked;
- (c) it has properly disclosed: (i) the number of Beneficial Holders of Claims who completed the Beneficial Ballots or otherwise conveyed its or their vote or votes; (ii) the respective amounts of the Claims owned, as the case may be, by each Beneficial Holder of the Claims who completed a Beneficial Ballot; (iii) each such Beneficial Holder of the Claims' respective vote concerning the Plan; (iv) each such Beneficial Holder of Claims' certification as to other Claims voted in the same Class; and (v) the customer account or other identification number for each such Beneficial Holder of Claims; and
- (d) it will maintain the Beneficial Ballots and/or evidence of separate transactions returned by each Beneficial Holder of Claims (whether properly completed or defective) for at

least one (1) year after the Effective Date of the Plan and disclose all such information to the Debtors or the Court, if so requested or ordered.

Name of Nominee and/or DTC Participant:	_____
	(Print or Type)
Participant Number (if applicable):	_____
Name of Proxy Holder or Agent for Nominee and/or DTC Participant (if applicable):	_____
Signature:	_____
Name of Signatory:	_____
Title:	_____
Address:	_____
	_____
	_____
Telephone Number:	_____
Email:	_____
Date Completed:	_____

**PLEASE COMPLETE, SIGN, AND DATE THIS MASTER BALLOT AND RETURN IT PROMPTLY TO THE VOTING AGENT AT THE STREET ADDRESS OR EMAIL ADDRESS LISTED BELOW:**

**Via first class mail, by overnight courier, or by hand delivery to:**

**ProSomnus, Inc., et al., Ballot Processing Center c/o KCC, 222 N. Pacific Coast Highway, Suite 300, El Segundo, California 90245**

**OR**

**Via Email to: ProSomnusBallots@kccllc.com with a reference to**

**“PROSOMNUS - Master Ballot”  
in the subject line**

*Please select only one method for the return of your Master Ballot.*

**If the Voting Agent does not actually receive this Master Ballot on or before July 19, 2024 at 4:00 p.m. (prevailing Eastern Time), and if the Voting Deadline is not extended, the votes will not be counted.**

**INSTRUCTIONS FOR COMPLETING THIS MASTER BALLOT**

**THESE INSTRUCTIONS EXPLAIN HOW TO COMPLETE THE ATTACHED MASTER BALLOT. PLEASE READ AND FOLLOW THESE INSTRUCTIONS CAREFULLY TO ENSURE THAT YOUR MASTER BALLOT WILL BE COUNTED.**

1. The Debtors are soliciting the votes of holders of Claims with respect to the Plan attached as Exhibit A to the Disclosure Statement. Capitalized terms used in the Master Ballot or in these instructions (the “**Ballot Instructions**”) but not otherwise defined therein or herein shall have the meaning set forth in the Plan, a copy of which also accompanies the Master Ballot.

2. The Plan can be confirmed by the Court and thereby made binding upon the Beneficial Holders if it is accepted by the holders of at least two-thirds in amount and more than one-half in number of Claims in at least one class of creditors that votes on the Plan and if the Plan otherwise satisfies the requirements for confirmation provided by Bankruptcy Code section 1129(a). Please review the Disclosure Statement for more information.

3. You should immediately distribute the Solicitation Package and the Beneficial Ballots (or other customary material used to collect votes in lieu of the Beneficial Ballot) to all Beneficial Holders of Claims and take any action required to enable each such Beneficial Holder to vote timely the Claims that it holds. You may distribute the Solicitation Packages to Beneficial Holders, as appropriate, in accordance with your customary practices. You are authorized to collect votes to accept or to reject the Plan from Beneficial Holders in accordance with your customary practices, including without limitation the use of a “voting instruction form” in lieu of (or in addition to) a Beneficial Ballot, and/or collecting votes from Beneficial Holders through online voting, by phone, facsimile, other electronic means. Any Beneficial Ballot returned to you by a Beneficial Holder of a Claim shall not be counted for purposes of accepting or rejecting the Plan until you properly complete and deliver to the Voting Agent a Master Ballot that reflects the vote of such Beneficial Holders by **July 19, 2024 at 4:00 p.m. (prevailing Eastern Time)** or otherwise validate the Master Ballot in a manner acceptable to the Voting Agent.

4. If you are transmitting the votes of any Beneficial Holder of Claims other than yourself, you may either:

- (a) “Pre-validate” the individual Beneficial Ballot contained in the Solicitation Package and then forward the Solicitation Package to the Beneficial Holder of the Claim for voting within five (5) Business Days after the receipt by such Nominee of the Solicitation Package, with the Beneficial Holder then returning the individual Beneficial Ballot directly to the Voting Agent in the return envelope to be provided in the Solicitation Package. A Nominee “pre-validates” a Beneficial Holder’s Ballot by signing the Beneficial Ballot and including their DTC participant number; indicating the account number of the Beneficial Holder and the principal amount of Claims held by the Nominee for such Beneficial Holder; and then forwarding the Beneficial Ballot together with the Solicitation Package to the Beneficial Holder. The Beneficial Holder then completes the remaining information requested on the Beneficial Ballot and returns the Beneficial Ballot directly to the Voting Agent. A list of the Beneficial Holders to whom “pre-validated” Beneficial Ballots were

delivered should be maintained by Nominees for inspection for at least one (1) year from the Effective Date; or

- (b) Within five (5) Business Days after receipt by such Nominee of the Solicitation Package, forward the Solicitation Package to the Beneficial Holder of the Claim for voting along with a return envelope provided by and addressed to the Nominee, with the Beneficial Holder then returning the individual Beneficial Ballot to the Nominee, unless voting takes place pursuant to a meeting of the Beneficial Holders. Nominees may also follow their customary procedures to distribute the Solicitation Package to the Beneficial Holder (including, but not limited to, electronic methods and the use of a “voting instruction form” in lieu of a Ballot). In either such case, the Nominee will tabulate the votes of its respective owners on this Master Ballot, in accordance with the instructions set forth herein, and then return the Master Ballot to the Voting Agent. The Nominee should advise the Beneficial Holders to return their individual Beneficial Ballots (or otherwise transmit their vote) to the Nominee by a date calculated by the Nominee to allow it to prepare and return the Master Ballot to the Voting Agent so that the Master Ballot is actually received by the Voting Agent on or before the Voting Deadline.

5. With regard to any Beneficial Ballots returned to you by a Beneficial Holder, you must: (a) compile and validate the votes and other relevant information of each such Beneficial Holder on the Master Ballot using the customer name or account number assigned by you to each such Beneficial Holder; (b) execute the Master Ballot; (c) transmit such Master Ballot to the Voting Agent by the Voting Deadline; and (d) retain such Beneficial Ballots from Beneficial Holders, if utilized, or other evidence of the vote whether in hard copy or by electronic direction, in your files for a period of one (1) year after the Effective Date of the Plan. You may be requested or ordered to produce the Beneficial Ballots (or evidence of the vote transmitted to you) by the Debtors or the Court.

6. The Master Ballot **must** be returned to the Voting Agent so as to be **actually received** by the Voting Agent on or before the Voting Deadline. **The Voting Deadline is July 19, 2024 at 4:00 p.m. (prevailing Eastern Time).**

7. If a Master Ballot is received **after** the Voting Deadline and if the Voting Deadline is not extended, it will not be counted. Additionally, **the following votes will not be counted:**

- (a) any Master Ballot to the extent it is illegible or contains insufficient information to permit the identification of the holder of the Claim;
- (b) any Master Ballot cast by a Party that does not hold a Claim in a Class that is entitled to vote on the Plan;
- (c) any Master Ballot sent by facsimile or any electronic means other than electronic mail;
- (d) any unsigned Master Ballot;

- (e) any Master Ballot that does not contain an original signature provided however, that any Master Ballot submitted via electronic mail shall be deemed to contain an original signature;
- (f) votes contained on a Master Ballot not marked to accept or reject the Plan or marked both to accept and reject; and
- (g) any Master Ballot submitted by any party not entitled to cast a vote with respect to the Plan.

8. The method of delivery of Master Ballots to the Voting Agent is at the election and risk of each Nominee. Except as otherwise provided herein, such delivery will be considered made only when the Voting Agent **actually receives** the executed Master Ballot. In all cases, Beneficial Holders and Nominees should allow sufficient time to assure timely delivery.

9. If multiple Master Ballots are received from the same Nominee with respect to the same Claim(s) voted on a Beneficial Ballot prior to the Voting Deadline, the latest, timely received, and properly completed Master Ballot will supersede and revoke any earlier received Master Ballots.

10. The Master Ballot does not constitute, and shall not be deemed to be, (a) a Proof of Claim or (b) an assertion or admission of a Claim.

11. **Please be sure to sign and date the Master Ballot.** You should indicate that you are signing the Master Ballot in your capacity as a trustee, common representative, executor, administrator, guardian, attorney in fact, officer of a corporation, or otherwise acting in a fiduciary or representative capacity and, if required or requested by the Voting Agent, the Debtors, or the Court, must submit proper evidence to the requesting party to so act on behalf of such Beneficial Holder.

12. If you are both the Nominee and the Beneficial Holder of any of the Claims in Class 1 under the Plan (Senior Notes Claims) and you wish to vote such Claims, you may return a Beneficial Ballot or Master Ballot for such Claims and you must vote your entire Claims in the same Class to either accept or reject the Plan and may not split your vote. Accordingly, a Beneficial Ballot, other than a Master Ballot with the votes of multiple Beneficial Holders that partially rejects and partially accepts the Plan will not be counted.

13. For purposes of the numerosity requirement of Bankruptcy Code section 1126(c), the Debtors and the Voting Agent shall use reasonable efforts to aggregate separate Claims held by a single creditor in a particular Class and treat such creditor as if such creditor held one Claim in such Class, and all votes related to such Claim will be treated as a single vote to accept or reject the Plan; *provided, however*, that if separate affiliated entities hold Claims in a particular Class, these Claims will not be aggregated and will not be treated as if such creditor held one Claim in such Class, and the vote of each affiliated entity may be counted separately as a vote to accept or reject the Plan.

14. The following additional rules shall apply to Master Ballots:

- (a) Votes cast by Beneficial Holders through a Nominee will be applied against the positions held by such Nominee as of the Voting Record Date, as evidenced by the record and depository listings.
- (b) Votes submitted by a Nominee, whether pursuant to a Master Ballot or pre-validated Beneficial Ballots, will not be counted in excess of the record amount of the Claims held by such Nominee;
- (c) To the extent that conflicting votes or “over-votes” are submitted by a Nominee, whether pursuant to a Master Ballot or pre-validated Beneficial Ballots, the Voting Agent will attempt to reconcile discrepancies with the Nominee;
- (d) To the extent that over-votes on a Master Ballot or pre-validated Beneficial Ballots are not reconcilable prior to the preparation of the vote certification, the Voting Agent will apply the votes to accept and reject the Plan in the same proportion as the votes to accept and reject the Plan submitted on the Master Ballot or pre-validated Beneficial Ballots that contained the over-vote, but only to the extent of the Nominee’s position in the Claims; and
- (e) For purposes of tabulating votes, each holder holding through a particular account will be deemed to have voted the principal amount relating to its holding in that particular account, although the Voting Agent may be asked to adjust such principal amount to reflect the claim amount.

**Please return your Master Ballot promptly**

If you have any questions regarding this Master Ballot, these Master Ballot Instructions or the procedures for voting, please contact the Voting Agent by: (a) calling 877-499-4509 (toll-free U.S. and Canada) or 917-281-4800 (International); (b) writing to ProSomnus, Inc. *et al.*, Ballot Processing Center, c/o Kurtzman Carson Consultants LLC, 222 N. Pacific Coast Highway, Suite 300, El Segundo, CA 90245; or (c) email at ProSomnusBallots@kccllc.com.

**If the Voting Agent does not actually receive this Master Ballot on or before the Voting Deadline, which is on July 19, 2024 at 4:00 p.m. (prevailing Eastern Time), and if the Voting Deadline is not extended, the vote transmitted hereby will not be counted.**

**Exhibit 2-B**

Beneficial Ballot of Class 1 (Senior Notes Claims)

**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)

**BENEFICIAL BALLOT FOR VOTING TO ACCEPT OR REJECT  
THE JOINT CHAPTER 11 PLAN OF REORGANIZATION OF  
PROSOMNUS, INC. AND ITS DEBTOR AFFILIATES**

**CLASS 1 SENIOR NOTES CLAIMS  
CUSIP 50535EAC2**

**PLEASE READ AND FOLLOW THE ENCLOSED INSTRUCTIONS CAREFULLY  
BEFORE COMPLETING THIS BALLOT.**

**PLEASE REVIEW CAREFULLY THE ACCOMPANYING PLAN AND DISCLOSURE  
STATEMENT FOR A DESCRIPTION OF THE SAME AND THEIR EFFECTS ON  
HOLDERS OF CLAIMS AGAINST THE DEBTOR TO DETERMINE WHETHER TO  
VOTE TO ACCEPT OR REJECT THE PLAN.**

**IF YOU RECEIVED A RETURN ENVELOPE ADDRESSED TO YOUR NOMINEE, IN  
ORDER FOR YOUR VOTE TO BE COUNTED, YOU MUST FOLLOW THE  
DIRECTIONS OF YOUR NOMINEE AND ALLOW SUFFICIENT TIME FOR YOUR  
NOMINEE TO RECEIVE YOUR VOTE AND TRANSMIT SUCH VOTE ON A  
MASTER BALLOT, WHICH MASTER BALLOT MUST BE RETURNED TO THE  
CLAIMS AND NOTICING AGENT BY JULY 19, 2024 AT 4:00 P.M., PREVAILING  
EASTERN TIME (THE "VOTING DEADLINE").**

**IF, HOWEVER, YOU RECEIVED A "PRE-VALIDATED" BALLOT FROM YOUR  
NOMINEE WITH INSTRUCTIONS TO SUBMIT SUCH BALLOT DIRECTLY TO  
THE VOTING AGENT IN ORDER FOR YOUR VOTE TO BE COUNTED, YOU MUST  
COMPLETE, EXECUTE, AND RETURN THE "PRE-VALIDATED" BALLOT, SO AS  
TO BE ACTUALLY RECEIVED BY THE VOTING AGENT BY THE VOTING  
DEADLINE.**

<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.

Kurtzman Carson Consultants LLC (“**KCC**” or the “**Voting Agent**”) in its capacity as voting agent for and on behalf of the above-captioned debtors and debtors-in-possession (the “**Debtors**”) in the above-captioned bankruptcy cases (the “**Chapter 11 Cases**”) is soliciting votes with respect to the *Joint Chapter 11 Plan of Reorganization of ProSomnus, Inc. and its Debtor Affiliates*, dated May \_\_, 2024 [Docket No. \_\_] (together with all schedules and exhibits thereto, and as may be modified, amended, or supplemented from time to time, the “**Plan**”)<sup>2</sup> from the holders of certain Claims against the Debtors. The accompanying *Disclosure Statement for Joint Chapter 11 Plan of Reorganization of ProSomnus, Inc. and its Debtor Affiliates* [Docket No. \_\_] (together with all schedules and exhibits thereto, and as may be modified, amended, or supplemented from time to time, the “**Disclosure Statement**”) describes the Plan and contains information to assist you in deciding how to vote on the Plan. The Disclosure Statement also includes a copy of the Plan as Exhibit A. On June \_\_, 2024, the Court entered the *Order (I) Approving Proposed Disclosure Statement and Form and Manner of Notice of Disclosure Statement Hearing, (II) Establishing Solicitation and Voting Procedures, (III) Scheduling Confirmation Hearing, (IV) Establishing Notice and Objection Procedures for Confirmation of Proposed Plan, and (V) Granting Related Relief* [Docket No. \_\_] (the “**Solicitation Procedures Order**”). Thus, the Debtors are soliciting votes in accordance with the Court’s Solicitation Procedures Order.

**Please review the Disclosure Statement, the Plan, the Solicitation Procedures Order, and this ballot carefully before you submit this ballot.**

This ballot (the “**Beneficial Ballot**”) is being sent to all beneficial holders (collectively, the “**Beneficial Holders**”) of the Senior Secured Notes (as defined in the Plan). You are receiving this Beneficial Ballot because records maintained by your broker, bank, common representative or other nominee or intermediary (collectively with their mailing agents, “**Nominee**”) indicate that you are a Beneficial Holder of a Class 1 Senior Notes Claim arising under, related to or in connection with the Senior Secured Notes as of June 24, 2024 (prevailing Eastern Time) (the “**Voting Record Date**”). Accordingly, you have a right to vote to accept or reject the Plan.

The rights and treatment for each Class are described in the Disclosure Statement. Each of the Disclosure Statement, Plan, and the Solicitation Procedures Order are available on the Debtors’ Case Website. The Solicitation Package you are receiving with this Master Ballot provides instructions detailing how to access electronic versions and request hard copies of each of the (a) Solicitation Procedures Order as entered by the Bankruptcy Court and (b) the Disclosure Statement, as approved by the Court. If you need to obtain additional solicitation materials, you may obtain such information from the Voting Agent by: (i) (888) 647-1744 (U.S./Canada) or (310) 751-2628 (International); (b) writing to ProSomnus, Inc., *et al.*, Ballot Processing Center c/o KCC, 222 N. Pacific Coast Highway, Suite 300, El Segundo, California 90245; or (c) or by email at [ProSomnusInfo@kccllc.com](mailto:ProSomnusInfo@kccllc.com). The materials may also be obtained free-of-charge from <https://www.kccllc.net/prosomnus>. You may also obtain such information for a fee via PACER at <https://www.deb.uscourts.gov>.

**PLEASE NOTE THAT THE VOTING AGENT IS NOT AUTHORIZED TO PROVIDE LEGAL ADVICE.**

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<sup>2</sup> Capitalized terms used or not otherwise defined shall have the meanings ascribed to them in the Plan.

Pursuant to the Disclosure Statement and the Solicitation Procedures Order, the Court has approved the Disclosure Statement as containing adequate information under Bankruptcy Code section 1125. Bankruptcy Court approval of the Disclosure Statement does not mean that the Plan has been confirmed by the Court. Rather, Ballots will be counted and the Court will use the tabulation of the Ballots as part of its determination as to whether or not to confirm (approve) the Plan. This Beneficial Ballot may not be used for any purpose other than for voting to accept or reject the Plan and making certain certifications with respect to the Plan. If you believe that you have received this Beneficial Ballot in error, please contact the Voting Agent **immediately** at the address, telephone number, or email address set forth above.

Most Beneficial Holders will submit votes to accept or reject the Plan by completing a Beneficial Ballot and returning it to their Nominee, who will then prepare and submit a master ballot (a “**Master Ballot**”). You may have received specific instructions from your Nominee for use in returning completed Beneficial Ballots. Please follow the instructions provided by your Nominee and return your Beneficial Ballot in sufficient time for your Nominee to complete and submit the Master Ballot so that it is received on or before July 19, 2024 at 4:00 p.m. (prevailing Eastern Time) (the “**Voting Deadline**”). If a Master Ballot is not received by the Voting Agent on or before the Voting Deadline and such Voting Deadline is not extended, the vote will not count as an acceptance or rejection of the Plan.

**YOU SHOULD CAREFULLY REVIEW THE PLAN AND THE ATTACHED INSTRUCTIONS BEFORE COMPLETING AND RETURNING THIS BALLOT. YOU MAY WISH TO SEEK LEGAL ADVICE CONCERNING THE PLAN AND THE CLASSIFICATION AND TREATMENT OF YOUR CLAIM UNDER THE PLAN.**

**If the Voting Agent does not receive the Master Ballot by July 19, 2024 at 4:00 p.m. (prevailing Eastern Time), and if the deadline is not extended, your vote as either acceptance or rejection of the Plan will not count and the Plan, if it is confirmed, will be binding on you whether or not you vote.**

**IMPORTANT NOTICE FOR ALL CREDITORS**

**PLEASE TAKE NOTICE THAT IF THE PLAN IS CONFIRMED BY THE COURT, ALL HOLDERS OF CLAIMS AGAINST, AND INTERESTS IN, THE DEBTORS (INCLUDING THOSE HOLDERS WHO ABSTAIN FROM VOTING ON OR WHO VOTE TO REJECT THE PLAN, AND THOSE HOLDERS WHO ARE NOT ENTITLED TO VOTE ON THE PLAN) WILL BE BOUND BY THE CONFIRMED PLAN AND THE TRANSACTIONS CONTEMPLATED THEREUNDER.**

**Item 1. Amount of Claim.**

As of the Voting Record Date, the undersigned was the Beneficial Holder (or authorized signatory for such Holder) or the Nominee of a Beneficial Holder in the following aggregate unpaid principal amount:

\*(If an amount has not been provided by your bank, broker, nominee, or other intermediary on a label below, please insert the amount in the box below. If your Senior Secured Notes are held by a Nominee on your behalf and you do not know the amount of Senior Secured Notes held or the amount provided on the label is incorrect, please contact your Nominee immediately.)

**Principal Amount:** \$ \_\_\_\_\_

**Item 2. Vote on the Plan.**

The Beneficial Holder of the Claim against the Debtors set forth in Item 1 votes to (please check only one):

<input type="checkbox"/> <b><u>ACCEPT</u></b> (vote FOR) the Plan	<input type="checkbox"/> <b><u>REJECT</u></b> (vote AGAINST) the Plan
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**Item 3. Important information regarding Releases, Exculpation, and Injunctions and Creditors’ Rights to Opt-Out.**

**The Plan contains the following provision(s):**

***Section 1.01 Defines “Releasing Parties”***

*“Releasing Parties” means, collectively, and in each case in its capacity as such: (a) each Debtor; (b) each Reorganized Debtor; (c) each Non-Debtor Subsidiary; (d) the Sponsoring Noteholders; (e) each DIP Lender; (f) the Prepetition Agents; (g) the DIP Agent; (h) each Holder of Senior Notes Claims; (i) each Holder of Subordinated Notes Claims who is party to or has otherwise signed the Restructuring Support Agreement; (j) all Holders of Claims that vote to accept the Plan; (k) all Holders of Claims or Interests that are deemed to accept the Plan and who do not affirmatively opt out of the releases provided by the Plan; (l) all Holders of Claims or Interests that are deemed to reject the Plan and who do not affirmatively opt out of the releases provided by the Plan; (m) all Holders of Claims who abstain from voting on the Plan and who do not affirmatively opt out of the releases provided by the Plan; (n) all Holders of Claims who vote to reject the Plan and who do not affirmatively opt out of the releases provided by the Plan; and (o) each Related Party of each Entity in clause (a) through (n).*

***Section 8.04 Releases by the Releasing Parties***

**Effective as of the Effective Date, to the fullest extent permissible under applicable Law, each Releasing Party, in each case on behalf of itself and its respective successors, assigns, and representatives, and any and all other entities who may purport to assert any Claim, Cause of Action, directly or derivatively, by, through, for, or because of a Releasing Party, is deemed to have conclusively, absolutely, unconditionally, irrevocably, and forever released and discharged each Debtor, Reorganized Debtor, and each other Released Party from any and all Claims (other than Reinstated Claims), interests, obligations, rights, suits, damages, Causes of Action, remedies, and liabilities whatsoever, whether liquidated or unliquidated, fixed or contingent, known or unknown, foreseen or unforeseen, existing or hereafter arising, in Law, equity, contract, tort, or otherwise, whether arising under federal or state statutory or common law, or any other applicable international, foreign, or domestic Law, rule, statute, regulation, treaty, right, duty, requirement, or otherwise, including any derivative claims, asserted or assertable on behalf of any of the Debtors, the Reorganized Debtors, the Estates or their Affiliates, heirs, executors, administrators, successors, assigns, managers, accountants, attorneys, representatives, consultants, agents, and any other Persons claiming under or through them would have been legally entitled to assert (whether individually or collectively), based on or relating to (including the formulation, preparation, dissemination, negotiation, entry into, or filing of, as applicable), or in any manner arising from, in whole or in part, the Debtors (including the management, ownership or operation thereof) or their Estates or the Non-Debtor Subsidiaries, the purchase, sale, or rescission of the purchase or sale of any Security of the Debtors or Non-Debtor Subsidiaries, the Reorganized Debtors, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the business or contractual arrangements between any Debtor or Non-Debtor Subsidiaries and any Released Party, the Debtors' in- or out-of-court restructuring efforts, the decision to file the Chapter 11 Cases, any intercompany transactions, the Chapter 11 Cases, the negotiation, formulation, preparation, or consummation of the Restructuring Support Agreement, the Restructuring Transactions, the Plan (including the Plan Supplement), the solicitation of votes on the Plan, the Disclosure Statement, the New Organizational Documents, the pursuit of Confirmation and Consummation, the DIP Facility, the DIP Facility Documents, the New Money Common Equity Investment Documents, the New Notes Documents, the administration and implementation of the Plan, including the issuance or distribution of Securities pursuant to the Plan, or the distribution of property under the Plan or any other related agreement, or upon any other act, omission, transaction, agreement, event, or other occurrence taking place on or before the Effective Date. Notwithstanding anything to the contrary in the foregoing, the releases set forth above do not release (a) any post-Effective Date obligations of any party or Entity under the Plan or the Confirmation Order, any Restructuring Transaction, or any document, instrument, or agreement (including those set forth in the Plan Supplement) executed to implement the Plan, including the assumption of the indemnification provisions as set forth in the Plan; (b) any Cause of Action included on the Schedule of Retained Causes of Action; (c) the rights of any Holder of an Allowed Claim to receive distributions under the Plan; or (d) the liability of any Released Party that otherwise would result from any act or omission to the extent that act or omission subsequently is determined in a Final Order to have constituted fraud, gross negligence or willful misconduct.**

**Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval, pursuant to Bankruptcy Rule 9019, of the Third-Party Release, which includes by reference**

each of the related provisions and definitions contained in this Plan, and, further, shall constitute the Bankruptcy Court's finding that the Third-Party Release is: (1) consensual; (2) essential to the confirmation of the Plan; (3) given in exchange for the good and valuable consideration provided by the Released Parties, including the Released Parties' contributions to facilitating the Plan Transactions and implementing the Plan; (4) a good faith settlement and compromise of the Claims released by the Third-Party Release; (5) in the best interests of the Debtors and their Estates; (6) fair, equitable, and reasonable; (7) given and made after due notice and opportunity for hearing; and (8) a bar to any of the Releasing Parties asserting any Claim or Cause of Action of any kind whatsoever released pursuant to the Third-Party Release.

*Section 8.05 Exculpation.*

Effective as of the Effective Date, to the fullest extent permissible under applicable Law and without affecting or limiting either the Debtor Release or the Third-Party Release, and except as otherwise specifically provided in the Plan or the Confirmation Order, no Exculpated Party shall have or incur liability for, and each Exculpated Party shall be released and exculpated from any Cause of Action or any claim arising from the Petition Date through the Effective Date related to any act or omission in connection with, relating to, or arising out of, the Chapter 11 Cases, the formulation, preparation, dissemination, negotiation, entry into, or filing of, as applicable the Chapter 11 Cases, the Restructuring Support Agreement, the Disclosure Statement, the Plan (including the Plan Supplement), the DIP Facility, the DIP Facility Documents, or any Restructuring Transaction, contract, instrument, release, or other agreement or document created or entered into in connection with the Disclosure Statement or the Plan, the filing of the Chapter 11 Cases, the pursuit of Confirmation, the pursuit of Consummation, the administration and implementation of the Plan, including the issuance of Securities pursuant to the Plan, or the distribution of property under the Plan or any other related agreement (excluding, for the avoidance of doubt, providing any legal opinion effective as of the Effective Date requested by any Entity regarding any transaction, contract, instrument, document, or other agreement contemplated by the Plan), except for claims or Causes of Action related to any act or omission constituting actual fraud, willful misconduct, or gross negligence, but in all respects such Entities shall be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities pursuant to the Plan. The Exculpated Parties have, and upon Consummation of the Plan shall be deemed to have, participated in good faith and in compliance with the applicable Laws with regard to the solicitation of votes and distribution of consideration pursuant to the Plan and, therefore, are not, and on account of such distributions shall not be, liable at any time for the violation of any applicable Law, rule, or regulation governing the solicitation of acceptances or rejections of the Plan or such distributions made pursuant to the Plan. Notwithstanding the foregoing, the exculpation shall not release any obligation or liability of any Entity for any post-Effective Date obligation under the Plan or any document, instrument or agreement (including those set forth in the Plan Supplement) executed to implement the Plan.

The Exculpated Parties and other parties set forth above have, and upon confirmation of the Plan shall be deemed to have, participated in good faith and in compliance with the applicable Laws with regard to the solicitation of votes and distribution of consideration

pursuant to the Plan and, therefore, are not, and on account of such distributions shall not be, liable at any time for the violation of any applicable Law, rule, or regulation governing the solicitation of acceptances or rejections of the Plan or such distributions made pursuant to the Plan.

Solely with respect to the exculpation provision, notwithstanding anything to the contrary in the Plan or Plan Supplement, each of the 1125(e) Exculpated Parties shall not incur liability for any Cause of Action or Claim related to any act or omission in connection with, relating to, or arising out of, in whole or in part, (a) the solicitation of acceptance or rejection of the Plan in good faith and in compliance with the applicable provisions of the Bankruptcy Code or (b) the participation, in good faith and in compliance with the applicable provisions of the Bankruptcy Code, in the offer, issuance, sale, or purchase of a security, offered or sold under the Plan. No Entity or Person may commence or pursue a Claim or Cause of Action of any kind against any of the Exculpated Parties or the 1125(e) Exculpated Parties that arose or arises from, in whole or in part, a Claim or Cause of Action subject to this paragraph, without this Bankruptcy Court (i) first determining, after notice and a hearing, that such Claim or Cause of Action represents a colorable Claim for actual fraud, gross negligence, or willful misconduct against any such Exculpated Party or 1125(e) Exculpated Party and such party is not exculpated pursuant to this provision; and (ii) specifically authorizing such Entity or Person to bring such Claim or Cause of Action against such Exculpated Party or 1125(e) Exculpation Party. The Bankruptcy Court will have sole and exclusive jurisdiction to adjudicate the underlying colorable Claim or Causes of Action.

#### *Section 8.06 Injunction*

Except as otherwise expressly provided in the Plan, or for obligations issued or required to be paid pursuant to the Plan or the Confirmation Order, all Entities that have held, hold, or may hold Claims (other than Reinstated Claims), Interests, or Causes of Action that have been released, discharged, or are subject to exculpation are permanently enjoined, from and after the Effective Date, from taking any of the following actions against, as applicable, the Debtors, the Reorganized Debtors, the Exculpated Parties, or the Released Parties: (1) commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to any such Claims, Interests, or Cause of Action; (2) enforcing, attaching, collecting, or recovering by any manner or means any judgment, award, decree, or order against such Entities on account of or in connection with or with respect to any such Claims, Interests, or Causes of Action; (3) creating, perfecting, or enforcing any encumbrance of any kind against such Entities or the property or the estates of such Entities on account of or in connection with or with respect to any such Claims, Interests, or Causes of Action; (4) asserting any right of setoff, subrogation, or recoupment of any kind against any obligation due from such Entities or against the property of such Entities on account of or in connection with or with respect to any such Claims, Interests, or Causes of Action unless such Holder has Filed a motion requesting the right to perform such setoff on or before the Effective Date, and notwithstanding an indication of a Claim or Interest or otherwise that such Holder asserts, has, or intends to preserve any right of setoff pursuant to applicable Law or otherwise; and (5) commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with or

**with respect to any such Claims, Interests, or Causes of Action released or settled pursuant to the Plan.**

If you wish to opt-out of being a “Releasing Party” you must check the following box, complete this form, and ensure that it is timely submitted to the Voting Agent. If you do not submit this Ballot to the Voting Agent before the Voting Deadline and check the following opt-out box, you will be deemed to have consented to being a Releasing Party.

I elect to **OPT OUT** of and do not consent to the releases, exculpations, and injunctions contained in Article VIII of the Plan.

**Item 4. Other Beneficial Ballots Submitted.**

By returning this Beneficial Ballot, the holder of the Claims identified in Item 1 certifies that (a) this Beneficial Ballot is the only Beneficial Ballot submitted for Claims identified in Item 1 owned by such holder, except as identified in the following table, and (b) all Beneficial Ballots submitted by the holder in the same Class indicate the same vote to accept or reject the Plan that the holder has indicated in Item 2 of this Beneficial Ballot (please use additional sheets of paper if necessary):

**ONLY COMPLETE THIS TABLE IF YOU HAVE VOTED OTHER CLAIMS IN THIS CLASS ON ANOTHER BENEFICIAL BALLOT**

Account Number of Other Claims Voted	Name of Record Holder or Nominee	Principal Amount of Other Claims Voted
		\$
		\$
		\$
		\$

**Item 5. Acknowledgments and Certification**

By signing this Beneficial Ballot, the undersigned certifies that:

- a. no other Beneficial Ballots have been cast with respect to the Claim identified in Item 1, and that, to the extent such Beneficial Ballots have been cast, such earlier Ballots are hereby revoked;
- b. the undersigned Beneficial Holder has been provided with a copy of the Plan, the Disclosure Statement, and the Solicitation Procedures Order, and acknowledges that the vote set forth on this Beneficial Ballot is subject to all terms and conditions set forth therein; and
- c. the undersigned Beneficial Holder is the Beneficial Holder of the Claim set forth in Item 1, with full power and authority to vote to accept or reject the Plan.

The undersigned also acknowledges that this solicitation is subject to all the terms and conditions set forth in the Plan and that all authority conferred or agreed to be conferred pursuant to this

Beneficial Ballot, and every obligation of the undersigned hereunder, shall be binding upon the transferees, successors, assigns, heirs, executors, administrators, trustees in bankruptcy, and legal representatives of the undersigned and shall not be affected by, and shall survive the death or incapacity, of the undersigned.

Name of Claimant: \_\_\_\_\_

Signature: \_\_\_\_\_

Name of Signatory:  
(if different than Claimant) \_\_\_\_\_

If authorized by Agent, Title of Agent \_\_\_\_\_

Street Address: \_\_\_\_\_

Street Address:  
(continued) \_\_\_\_\_

City, State, Zip Code: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Email Address: \_\_\_\_\_

Date Completed: \_\_\_\_\_

**Please return your Beneficial Ballot promptly in the envelope provided or otherwise in accordance with the instructions provided by your Nominee. If the Voting Agent does not actually receive the Master Ballot reflecting the vote cast on this Beneficial Ballot (or your pre-validated Beneficial Ballot, if applicable) on or before July 19, 2024 at 4:00 p.m. (prevailing Eastern Time), and if the Voting Deadline is not extended, your vote will not be counted.**

**INSTRUCTIONS FOR COMPLETING THE BENEFICIAL BALLOT**

**THESE INSTRUCTIONS EXPLAIN HOW TO COMPLETE THE BENEFICIAL BALLOT. PLEASE READ AND FOLLOW THESE INSTRUCTIONS CAREFULLY TO ENSURE THAT YOUR BENEFICIAL BALLOT WILL BE COUNTED.**

1. The Debtors are soliciting the vote of holders of Senior Notes Claims as of the Voting Record Date to accept or reject the Plan. The Debtors have caused the attached Beneficial Ballot to be sent to you because the Debtors' available records indicate that you are a Beneficial Holder.

2. The Plan can be confirmed by the Court and thereby made binding upon you if it is accepted by the holders of at least two-thirds in amount and more than one-half in number of Claims in at least one class of creditors that votes on the Plan and if the Plan otherwise satisfies the requirements for confirmation provided by Bankruptcy Code section 1129(a). Please review the Disclosure Statement for more information.

3. Unless otherwise instructed by your Nominee or if you have received a pre-validated Ballot, to ensure that your vote is counted, you must submit your Beneficial Ballot (or otherwise convey your vote) to your Nominee in sufficient time to allow your Nominee to process your vote and submit a Master Ballot so that the Master Ballot is **actually received** by the Voting Agent by the Voting Deadline. You may instruct your Nominee to vote on your behalf in the Master Ballot as follows: (a) complete the Beneficial Ballot; (b) indicate your decision either to accept or reject the Plan in the boxes provided in Item 2 of the Beneficial Ballot; and (c) sign and return the Beneficial Ballot to your Nominee in accordance with the instructions provided by your Nominee. The Voting Deadline for the receipt of Master Ballots and pre-validated Ballots by the Voting Agent is **July 19, 2024 at 4:00 p.m. (prevailing Eastern Time)**. Please allow additional time for your vote to be submitted to the Voting Agent on or before the Voting Deadline.

4. If your Beneficial Ballot is not received by your Nominee in sufficient time to be included on a timely submitted Master Ballot, it will not be counted unless the Debtors determine otherwise. In all cases, Beneficial Holders should allow sufficient time to assure timely delivery of your Beneficial Ballot to your Nominee. No Beneficial Ballot should be sent to any of the Debtors, the Debtors' agents (other than the Voting Agent and only with respect to a pre-validated Beneficial Ballot), or the Debtors' financial or legal advisors, and any Beneficial Ballot so sent will not be counted.

5. If a Beneficial Ballot is received by the Voting Agent after the Voting Deadline, it will not be counted, unless the Debtors determine or the Court orders otherwise.

6. This Beneficial Ballot is not, and shall not, constitute or be deemed to be (a) a Proof of Claim or interest, an assertion of a Claim or Interest, or (b) an admission by the Debtor of the nature, validity, or amount of any Claim or Interest and does not signify that your Claim or Interest has been or will be Allowed.

7. This Beneficial Ballot is not a letter of transmittal and may not be used for any purposes other than to vote to accept or reject the Plan.

8. If Multiple Beneficial Ballots are received by the same holder of a Claim with respect to the same Claim(s) prior to the Voting Deadline, the last dated valid Beneficial Ballot timely received will supersede and revoke any earlier Beneficial Ballots.

9. If you believe you have received this Beneficial Ballot in error, or if you need an additional Beneficial Ballot, please contact the Voting Agent immediately at the telephone number or email address set forth below.

**Please return your Beneficial Ballot promptly**

If you have any questions regarding this Beneficial Ballot, these Beneficial Ballot Instructions, or the procedures for voting, please contact the Voting Agent by: (a) calling (888) 647-1744(toll-free U.S. and Canada) or (310) 751-2628 (International); (b) writing to ProSomnus, Inc., et al., Ballot Processing Center, c/o Kurtzman Carson Consultants LLC, 222 N. Pacific Coast Highway, Suite 300, El Segundo, CA 90245; or (c) email at ProSomnusInfo@kccllc.com.

**Please return your Beneficial Ballot promptly in the envelope provided or otherwise in accordance with the instructions provided by your Nominee. If the Voting Agent does not actually receive the Master Ballot reflecting the vote cast on this Beneficial Ballot (or your pre-validated Beneficial Ballot) on or before July 19, 2024 at 4:00 p.m. (prevailing Eastern Time), and if the Voting Deadline is not extended, your vote transmitted by this Beneficial Ballot will not be counted.**

**Exhibit 2-C**

Class 1 Registered Holder Ballot (Senior Notes Claims)

**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)

**REGISTERED HOLDER BALLOT FOR VOTING TO ACCEPT OR REJECT  
THE JOINT CHAPTER 11 PLAN OF REORGANIZATION OF  
PROSOMNUS, INC. AND ITS DEBTOR AFFILIATES**

**CLASS 1 SENIOR NOTES CLAIMS**

**REGISTERED HOLDERS OF CLASS 1 SENIOR NOTES CLAIMS SHOULD READ THIS ENTIRE BALLOT BEFORE COMPLETING. PLEASE COMPLETE, DATE, AND SIGN THE BALLOT AND RETURN IT TO THE VOTING AGENT IN THE ENCLOSED PREAMBITED, POSTAGE-PREPARED ENVELOPE, BY FIRST CLASS MAIL, OVERNIGHT COURIER OR HAND DELIVERY, OR VIA ELECTRONIC BALLOT. YOUR VOTE MUST BE ACTUALLY RECEIVED BY THE VOTING AGENT ON OR BEFORE JULY 19, 2024 AT 4:00 P.M. (PREVAILING EASTERN TIME) (THE “VOTING DEADLINE”).**

**The boxes to accept or reject the Plan and to exercise your rights with respect to the third-party releases are contained on page 4 of this Ballot.**

Kurtzman Carson Consultants LLC (“**KCC**” or the “**Voting Agent**”) in its capacity as voting agent for and on behalf of the above-captioned debtors and debtors-in-possession (the “**Debtors**”) in the above-captioned bankruptcy cases (the “**Chapter 11 Cases**”) is soliciting votes with respect to the *Joint Chapter 11 Plan of Reorganization of ProSomnus, Inc. and its Debtor Affiliates*, dated May \_\_, 2024 [Docket No. \_\_] (together with all schedules and exhibits thereto, and as may be modified, amended, or supplemented from time to time, the “**Plan**”)<sup>2</sup> from the holders of certain Claims against the Debtors. The accompanying *Disclosure Statement for Joint Chapter 11 Plan of Reorganization of ProSomnus, Inc. and its Debtor Affiliates* [Docket No. \_\_] (together with all schedules and exhibits thereto, and as may be modified, amended, or supplemented from time to time, the “**Disclosure Statement**”) describes the Plan and contains information to assist you in deciding how to vote on the Plan. The Disclosure Statement also includes a copy of the Plan as Exhibit A. On June \_\_, 2024, the Court entered the *Order (I)*

<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 or not otherwise defined shall have the meanings ascribed to them in the Plan.

*Approving Disclosure Statement and Form and Manner of Notice of Disclosure Statement Hearing, (II) Establishing Solicitation and Voting Procedures, (III) Scheduling Confirmation Hearing, (IV) Establishing Notice and Objection Procedures for Confirmation of Plan, and (V) Granting Related Relief [Docket No. \_\_\_\_] (the “Solicitation Procedures Order”).* Thus, the Debtors are soliciting votes in accordance with the Court’s Solicitation Procedures Order.

You are receiving this Class 1 Ballot because you are a Registered Holder of a Class 1 Claim as of June 24, 2024 (prevailing Eastern Time) (the “**Voting Record Date**”). Accordingly, you have a right to vote to accept or reject the Plan. The boxes to accept or reject the Plan and to exercise rights on third party releases are contained on page 4 of this Ballot.

Included in Item 3 of this Ballot is a Release Opt-Out related to the Releases by Releasing Parties set forth in Article VIII of the Plan. You are deemed to have consented to the Releases by Releasing Parties unless you (i) check the Release Opt-Out box under Item 3 of this Ballot, complete the Certification in Item 4 of this Ballot, and return this Ballot so that it is actually received by the Voting Agent no later than the Voting Deadline, or (ii) timely File an objection to the Releases by Releasing Parties.

Your rights are further described in the Disclosure Statements, which was included in the package (the “**Solicitation Package**”) you are receiving with this Class 1 Ballot. If you need to obtain additional Solicitation Packages, you may obtain them (at the Debtors’ expense) by (1) calling (877) 499-4509 (U.S./Canada) or (917) 281-4800 (International); (2) visiting the Debtor’s Case Website at <https://www.kccllc.net/prosomnus>; (3) writing to the Voting Agent at ProSomnus, Inc., *et al.*, Ballot Processing Center, c/o KCC 222 N. Pacific Coast Highway, Suite 300, El Segundo, California 90245; or (4) email at [ProSomnusBallots@kccllc.com](mailto:ProSomnusBallots@kccllc.com).

This Ballot may not be used for any purpose other than for voting to accept or reject the Plan and making certain certifications with respect to the Plan. If you believe that you have received this Ballot in error, please contact the Voting Agent **immediately** at the address, telephone number, or email address set forth above.

**YOU SHOULD CAREFULLY REVIEW THE PLAN, DISCLOSURE STATEMENT, AND THE ATTACHED INSTRUCTIONS BEFORE COMPLETING AND RETURNING THIS BALLOT. YOU MAY WISH TO SEEK LEGAL ADVICE CONCERNING THE PLAN AND THE CLASSIFICATION AND TREATMENT OF YOUR CLAIM UNDER THE PLAN.**

**IMPORTANT NOTICE FOR ALL CREDITORS**

**PLEASE TAKE NOTICE THAT IF THE PLAN IS CONFIRMED BY THE COURT, ALL HOLDERS OF CLAIMS AGAINST, AND INTERESTS IN, THE DEBTORS (INCLUDING THOSE HOLDERS WHO ABSTAIN FROM VOTING ON OR WHO VOTE TO REJECT THE PLAN, AND THOSE HOLDERS WHO ARE NOT ENTITLED TO VOTE ON THE PLAN) WILL BE BOUND BY THE CONFIRMED PLAN AND THE TRANSACTIONS CONTEMPLATED THEREUNDER.**

**Item 1. Amount of Claim.**

As of the Voting Record Date, the undersigned was the Holder of a Class 1 Claim in the following aggregate unpaid amount (insert amount in box below):

**Principal Amount:** \$ \_\_\_\_\_

**Item 2. Vote on the Plan.**

The Holder of the Class 1 Claim against the Debtors set forth in Item 1 votes to (please check only one):

**ACCEPT** (vote FOR) the Plan       **REJECT** (vote AGAINST) the Plan

**Item 3. Important information regarding Releases, Exculpation, and Injunctions and Creditors' Rights to Opt-Out.**

**The Plan contains the following provision(s):**

***Section 1.01 Defines "Releasing Parties"***

*"Releasing Parties" means, collectively, and in each case in its capacity as such: (a) each Debtor; (b) each Reorganized Debtor; (c) each Non-Debtor Subsidiary; (d) the Sponsoring Noteholders; (e) each DIP Lender; (f) the Prepetition Agents; (g) the DIP Agent; (h) each Holder of Senior Notes Claims; (i) each Holder of Subordinated Notes Claims who is party to or has otherwise signed the Restructuring Support Agreement; (j) all Holders of Claims that vote to accept the Plan; (k) all Holders of Claims or Interests that are deemed to accept the Plan and who do not affirmatively opt out of the releases provided by the Plan; (l) all Holders of Claims or Interests that are deemed to reject the Plan and who do not affirmatively opt out of the releases provided by the Plan; (m) all Holders of Claims who abstain from voting on the Plan and who do not affirmatively opt out of the releases provided by the Plan; (n) all Holders of Claims who vote to reject the Plan and who do not affirmatively opt out of the releases provided by the Plan; and (o) each Related Party of each Entity in clause (a) through (n).*

***Section 8.04 Releases by the Releasing Parties***

**Effective as of the Effective Date, to the fullest extent permissible under applicable Law, each Releasing Party, in each case on behalf of itself and its respective successors, assigns, and representatives, and any and all other entities who may purport to assert any Claim, Cause of Action, directly or derivatively, by, through, for, or because of a Releasing Party, is deemed to have conclusively, absolutely, unconditionally, irrevocably, and forever released and discharged each Debtor, Reorganized Debtor, and each other Released Party from any and all Claims (other than Reinstated Claims), interests, obligations, rights, suits,**

damages, Causes of Action, remedies, and liabilities whatsoever, whether liquidated or unliquidated, fixed or contingent, known or unknown, foreseen or unforeseen, existing or hereafter arising, in Law, equity, contract, tort, or otherwise, whether arising under federal or state statutory or common law, or any other applicable international, foreign, or domestic Law, rule, statute, regulation, treaty, right, duty, requirement, or otherwise, including any derivative claims, asserted or assertable on behalf of any of the Debtors, the Reorganized Debtors, the Estates or their Affiliates, heirs, executors, administrators, successors, assigns, managers, accountants, attorneys, representatives, consultants, agents, and any other Persons claiming under or through them would have been legally entitled to assert (whether individually or collectively), based on or relating to (including the formulation, preparation, dissemination, negotiation, entry into, or filing of, as applicable), or in any manner arising from, in whole or in part, the Debtors (including the management, ownership or operation thereof) or their Estates or the Non-Debtor Subsidiaries, the purchase, sale, or rescission of the purchase or sale of any Security of the Debtors or Non-Debtor Subsidiaries, the Reorganized Debtors, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the business or contractual arrangements between any Debtor or Non-Debtor Subsidiaries and any Released Party, the Debtors' in- or out-of-court restructuring efforts, the decision to file the Chapter 11 Cases, any intercompany transactions, the Chapter 11 Cases, the negotiation, formulation, preparation, or consummation of the Restructuring Support Agreement, the Restructuring Transactions, the Plan (including the Plan Supplement), the solicitation of votes on the Plan, the Disclosure Statement, the New Organizational Documents, the pursuit of Confirmation and Consummation, the DIP Facility, the DIP Facility Documents, the New Money Common Equity Investment Documents, the New Note Documents, the administration and implementation of the Plan, including the issuance or distribution of Securities pursuant to the Plan, or the distribution of property under the Plan or any other related agreement, or upon any other act, omission, transaction, agreement, event, or other occurrence taking place on or before the Effective Date. Notwithstanding anything to the contrary in the foregoing, the releases set forth above do not release (a) any post-Effective Date obligations of any party or Entity under the Plan or the Confirmation Order, any Restructuring Transaction, or any document, instrument, or agreement (including those set forth in the Plan Supplement) executed to implement the Plan, including the assumption of the indemnification provisions as set forth in the Plan; (b) any Cause of Action included on the Schedule of Retained Causes of Action; (c) the rights of any Holder of an Allowed Claim to receive distributions under the Plan; or (d) the liability of any Released Party that otherwise would result from any act or omission to the extent that act or omission subsequently is determined in a Final Order to have constituted fraud, gross negligence or willful misconduct.

Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval, pursuant to Bankruptcy Rule 9019, of the Third-Party Release, which includes by reference each of the related provisions and definitions contained in this Plan, and, further, shall constitute the Bankruptcy Court's finding that the Third-Party Release is: (1) consensual; (2) essential to the confirmation of the Plan; (3) given in exchange for the good and valuable consideration provided by the Released Parties, including the Released Parties' contributions to facilitating the Plan Transactions and implementing the Plan; (4) a good faith settlement and compromise of the Claims released by the Third-Party Release; (5) in the best interests of the Debtors and their Estates; (6) fair, equitable, and reasonable; (7)

given and made after due notice and opportunity for hearing; and (8) a bar to any of the Releasing Parties asserting any Claim or Cause of Action of any kind whatsoever released pursuant to the Third-Party Release.

*Section 8.05 Exculpation.*

Effective as of the Effective Date, to the fullest extent permissible under applicable Law and without affecting or limiting either the Debtor Release or the Third-Party Release, and except as otherwise specifically provided in the Plan or the Confirmation Order, no Exculpated Party shall have or incur liability for, and each Exculpated Party shall be released and exculpated from any Cause of Action or any claim arising from the Petition Date through the Effective Date related to any act or omission in connection with, relating to, or arising out of, the Chapter 11 Cases, the formulation, preparation, dissemination, negotiation, entry into, or filing of, as applicable the Chapter 11 Cases, the Restructuring Support Agreement, the Disclosure Statement, the Plan (including the Plan Supplement), the DIP Facility, the DIP Facility Documents, or any Restructuring Transaction, contract, instrument, release, or other agreement or document created or entered into in connection with the Disclosure Statement or the Plan, the filing of the Chapter 11 Cases, the pursuit of Confirmation, the pursuit of Consummation, the administration and implementation of the Plan, including the issuance of Securities pursuant to the Plan, or the distribution of property under the Plan or any other related agreement (excluding, for the avoidance of doubt, providing any legal opinion effective as of the Effective Date requested by any Entity regarding any transaction, contract, instrument, document, or other agreement contemplated by the Plan), except for claims or Causes of Action related to any act or omission constituting actual fraud, willful misconduct, or gross negligence, but in all respects such Entities shall be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities pursuant to the Plan. The Exculpated Parties have, and upon Consummation of the Plan shall be deemed to have, participated in good faith and in compliance with the applicable Laws with regard to the solicitation of votes and distribution of consideration pursuant to the Plan and, therefore, are not, and on account of such distributions shall not be, liable at any time for the violation of any applicable Law, rule, or regulation governing the solicitation of acceptances or rejections of the Plan or such distributions made pursuant to the Plan. Notwithstanding the foregoing, the exculpation shall not release any obligation or liability of any Entity for any post-Effective Date obligation under the Plan or any document, instrument or agreement (including those set forth in the Plan Supplement) executed to implement the Plan.

The Exculpated Parties and other parties set forth above have, and upon confirmation of the Plan shall be deemed to have, participated in good faith and in compliance with the applicable Laws with regard to the solicitation of votes and distribution of consideration pursuant to the Plan and, therefore, are not, and on account of such distributions shall not be, liable at any time for the violation of any applicable Law, rule, or regulation governing the solicitation of acceptances or rejections of the Plan or such distributions made pursuant to the Plan.

Solely with respect to the exculpation provision, notwithstanding anything to the contrary in the Plan or Plan Supplement, each of the 1125(e) Exculpated Parties shall not

**incur liability for any Cause of Action or Claim related to any act or omission in connection with, relating to, or arising out of, in whole or in part, (a) the solicitation of acceptance or rejection of the Plan in good faith and in compliance with the applicable provisions of the Bankruptcy Code or (b) the participation, in good faith and in compliance with the applicable provisions of the Bankruptcy Code, in the offer, issuance, sale, or purchase of a security, offered or sold under the Plan. No Entity or Person may commence or pursue a Claim or Cause of Action of any kind against any of the Exculpated Parties or the 1125(e) Exculpated Parties that arose or arises from, in whole or in part, a Claim or Cause of Action subject to this paragraph, without this Bankruptcy Court (i) first determining, after notice and a hearing, that such Claim or Cause of Action represents a colorable Claim for actual fraud, gross negligence, or willful misconduct against any such Exculpated Party or 1125(e) Exculpated Party and such party is not exculpated pursuant to this provision; and (ii) specifically authorizing such Entity or Person to bring such Claim or Cause of Action against such Exculpated Party or 1125(e) Exculpation Party. The Bankruptcy Court will have sole and exclusive jurisdiction to adjudicate the underlying colorable Claim or Causes of Action.**

*Section 8.06 Injunction*

**Except as otherwise expressly provided in the Plan, or for obligations issued or required to be paid pursuant to the Plan or the Confirmation Order, all Entities that have held, hold, or may hold Claims (other than Reinstated Claims), Interests, or Causes of Action that have been released, discharged, or are subject to exculpation are permanently enjoined, from and after the Effective Date, from taking any of the following actions against, as applicable, the Debtors, the Reorganized Debtors, the Exculpated Parties, or the Released Parties: (1) commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to any such Claims, Interests, or Cause of Action; (2) enforcing, attaching, collecting, or recovering by any manner or means any judgment, award, decree, or order against such Entities on account of or in connection with or with respect to any such Claims, Interests, or Causes of Action; (3) creating, perfecting, or enforcing any encumbrance of any kind against such Entities or the property or the estates of such Entities on account of or in connection with or with respect to any such Claims, Interests, or Causes of Action; (4) asserting any right of setoff, subrogation, or recoupment of any kind against any obligation due from such Entities or against the property of such Entities on account of or in connection with or with respect to any such Claims, Interests, or Causes of Action unless such Holder has Filed a motion requesting the right to perform such setoff on or before the Effective Date, and notwithstanding an indication of a Claim or Interest or otherwise that such Holder asserts, has, or intends to preserve any right of setoff pursuant to applicable Law or otherwise; and (5) commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to any such Claims, Interests, or Causes of Action released or settled pursuant to the Plan.**

If you wish to opt-out of being a “Releasing Party” you must check the following box, complete this form, and ensure that it is timely submitted to the Voting Agent. If you do not submit this Ballot to the Voting Agent before the Voting Deadline and check the following opt-out box, you will be deemed to have consented to being a Releasing Party.

I elect to **OPT OUT** of and do not consent to the releases, exculpations, and injunctions contained in Article VIII of the Plan.

**Item 4. Acknowledgments and Certification**

By signing this Ballot, the undersigned certifies that:

- a. as of the Voting Record Date, the undersigned is either: (a) the Holder of the Class 1 Claim(s) being voted or (b) an authorized signatory for the Holder of the Class 1 Claim(s) being voted;
- b. no other Ballots have been cast with respect to the Claim identified in Item 1, and that, to the extent such Ballots have been cast, such earlier Ballots are hereby revoked; and
- b. the undersigned Holder has been provided with a copy of the Plan, the Disclosure Statement, and the Solicitation Procedures Order, and acknowledges that the vote set forth on this Ballot is subject to all terms and conditions set forth therein.

The undersigned also acknowledges that this solicitation is subject to all the terms and conditions set forth in the Plan and that all authority conferred or agreed to be conferred pursuant to this Ballot, and every obligation of the undersigned hereunder, shall be binding upon the transferees, successors, assigns, heirs, executors, administrators, trustees in bankruptcy, and legal representatives of the undersigned and shall not be affected by, and shall survive the death or incapacity, of the undersigned.

Name of Claimant: \_\_\_\_\_

Signature: \_\_\_\_\_

Name of Signatory:  
(if different than Claimant) \_\_\_\_\_

If authorized by Agent, Title of Agent \_\_\_\_\_

Street Address: \_\_\_\_\_

Street Address:  
(continued) \_\_\_\_\_

City, State, Zip Code: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Email Address: \_\_\_\_\_

Date Completed: \_\_\_\_\_

--

**INSTRUCTIONS FOR COMPLETING THE BALLOT**

**THESE INSTRUCTIONS EXPLAIN HOW TO COMPLETE THE BALLOT.  
PLEASE READ AND FOLLOW THESE INSTRUCTIONS CAREFULLY TO  
ENSURE THAT YOUR BALLOT WILL BE COUNTED.**

1. The Debtors are soliciting the vote of holders of Senior Notes Claims as of the Voting Record Date to accept or reject the Plan. The Debtors have caused the attached Ballot to be sent to you because the Debtors' available records indicate that you are a Holder of a Claim in Class 1 (Senior Notes Claims).

2. The Plan can be confirmed by the Court and thereby made binding upon you if it is accepted by the holders of at least two-thirds in amount and more than one-half in number of Claims in at least one class of creditors that votes on the Plan and if the Plan otherwise satisfies the requirements for confirmation provided by Bankruptcy Code section 1129(a). Please review the Disclosure Statement for more information.

3. You must submit your Ballot so that it is **actually received** by the Voting Agent by the Voting Deadline. The Voting Deadline for the receipt of Ballots by the Voting Agent is **July 19, 2024 at 4:00 p.m. (prevailing Eastern Time)**. Please allow additional time for your vote to be submitted to the Voting Agent on or before the Voting Deadline.

4. If a Ballot is received by the Voting Agent after the Voting Deadline, it will not be counted, unless the Debtors determine or the Court orders otherwise.

5. This Ballot is not, and shall not, constitute or be deemed to be (a) a Proof of Claim or interest, an assertion of a Claim or Interest, or (b) an admission by the Debtor of the nature, validity, or amount of any Claim or Interest and does not signify that your Claim or Interest has been or will be Allowed.

6. This Ballot is not a letter of transmittal and may not be used for any purposes other than to vote to accept or reject the Plan.

7. If multiple Ballots are received by the same holder of a Claim with respect to the same Claim(s) prior to the Voting Deadline, the last dated valid Ballot timely received will supersede and revoke any earlier Ballots.

8. If you believe you have received this Ballot in error, or if you need an additional Ballot, please contact the Voting Agent immediately at the telephone number or email address set forth below.

**Please return your Ballot promptly**

If you have any questions regarding this Ballot, these Ballot Instructions, or the procedures for voting, please contact the Voting Agent by: (a) calling (877) 499-4509 (toll-free U.S. and Canada) or (917) 281-4800 (International); (b) writing to ProSomnus, Inc., *et al.*, Ballot Processing Center, c/o Kurtzman Carson Consultants LLC, 222 N. Pacific Coast

Highway, Suite 300, El Segundo, CA 90245; or (c) email at ProSomnusBallots@kccllc.com.

**Please return your Ballot promptly in the envelope provided or otherwise in accordance with one of the approved submission methods described above. If the Voting Agent does not actually receive your Ballot on or before July 19, 2024 at 4:00 p.m. (prevailing Eastern Time), and if the Voting Deadline is not extended, your vote will not be counted.**

**Exhibit 3**

Class 2 Registered Holder Ballot (Subordinated Notes Claims)

**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)

**REGISTERED HOLDER BALLOT FOR VOTING TO ACCEPT OR REJECT  
THE JOINT CHAPTER 11 PLAN OF REORGANIZATION OF  
PROSOMNUS, INC. AND ITS DEBTOR AFFILIATES**

**CLASS 2 SUBORDINATED NOTES CLAIMS**

**REGISTERED HOLDERS OF CLASS 2 SUBORDINATED NOTES CLAIMS SHOULD READ THIS ENTIRE BALLOT BEFORE COMPLETING. PLEASE COMPLETE, DATE, AND SIGN THE BALLOT AND RETURN IT TO THE VOTING AGENT IN THE ENCLOSED PREAMBITTERED, POSTAGE-PREPARED ENVELOPE, BY FIRST CLASS MAIL, OVERNIGHT COURIER OR HAND DELIVERY, OR VIA ELECTRONIC BALLOT. YOUR VOTE MUST BE ACTUALLY RECEIVED BY THE VOTING AGENT ON OR BEFORE JULY 19, 2024 AT 4:00 P.M. (PREVAILING EASTERN TIME) (THE “VOTING DEADLINE”).**

**The boxes to accept or reject the Plan and to exercise your rights with respect to the third-party releases are contained on page 4 of this Ballot.**

Kurtzman Carson Consultants LLC (“**KCC**” or the “**Voting Agent**”) in its capacity as voting agent for and on behalf of the above-captioned debtors and debtors-in-possession (the “**Debtors**”) in the above-captioned bankruptcy cases (the “**Chapter 11 Cases**”) is soliciting votes with respect to the *Joint Chapter 11 Plan of Reorganization of ProSomnus, Inc. and its Debtor Affiliates*, dated May \_\_, 2024 [Docket No. \_\_] (together with all schedules and exhibits thereto, and as may be modified, amended, or supplemented from time to time, the “**Plan**”)<sup>2</sup> from the holders of certain Claims against the Debtors. The accompanying *Disclosure Statement for Joint Chapter 11 Plan of Reorganization of ProSomnus, Inc. and its Debtor Affiliates* [Docket No. \_\_] (together with all schedules and exhibits thereto, and as may be modified, amended, or supplemented from time to time, the “**Disclosure Statement**”) describes the Plan and contains information to assist you in deciding how to vote on the Plan. The Disclosure Statement also includes a copy of the Plan as Exhibit A. On June \_\_, 2024, the Court entered the *Order (I)*

<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 or not otherwise defined shall have the meanings ascribed to them in the Plan.

*Approving Disclosure Statement and Form and Manner of Notice of Disclosure Statement Hearing, (II) Establishing Solicitation and Voting Procedures, (III) Scheduling Confirmation Hearing, (IV) Establishing Notice and Objection Procedures for Confirmation of Plan, and (V) Granting Related Relief* [Docket No. \_\_\_\_] (the “**Solicitation Procedures Order**”). Thus, the Debtors are soliciting votes in accordance with the Court’s Solicitation Procedures Order.

You are receiving this Class 2 Ballot because you are a Registered Holder of a Class 2 Claim as of June 24, 2024 (prevailing Eastern Time) (the “**Voting Record Date**”). Accordingly, you have a right to vote to accept or reject the Plan. The boxes to accept or reject the Plan and to exercise rights on third party releases are contained on page 4 of this Ballot.

Included in Item 3 of this Ballot is a Release Opt-Out related to the Releases by Releasing Parties set forth in Article VIII of the Plan. You are deemed to have consented to the Releases by Releasing Parties unless you (i) check the Release Opt-Out box under Item 3 of this Ballot, complete the Certification in Item 4 of this Ballot, and return this Ballot so that it is actually received by the Voting Agent no later than the Voting Deadline, or (ii) timely File an objection to the Releases by Releasing Parties.

Your rights are further described in the Disclosure Statements, which was included in the package (the “**Solicitation Package**”) you are receiving with this Class 2 Ballot. If you need to obtain additional Solicitation Packages, you may obtain them (at the Debtors’ expense) by (1) calling (877) 499-4509 (U.S./Canada) or (917) 281-4800 (International); (2) visiting the Debtor’s Case Website at <https://www.kccllc.net/prosomnus>; (3) writing to the Voting Agent at ProSomnus, Inc., *et al.*, Ballot Processing Center, c/o KCC 222 N. Pacific Coast Highway, Suite 300, El Segundo, California 90245; or (4) email at [ProSomnusBallots@kccllc.com](mailto:ProSomnusBallots@kccllc.com).

This Ballot may not be used for any purpose other than for voting to accept or reject the Plan and making certain certifications with respect to the Plan. If you believe that you have received this Ballot in error, please contact the Voting Agent **immediately** at the address, telephone number, or email address set forth above.

**YOU SHOULD CAREFULLY REVIEW THE PLAN, DISCLOSURE STATEMENT, AND THE ATTACHED INSTRUCTIONS BEFORE COMPLETING AND RETURNING THIS BALLOT. YOU MAY WISH TO SEEK LEGAL ADVICE CONCERNING THE PLAN AND THE CLASSIFICATION AND TREATMENT OF YOUR CLAIM UNDER THE PLAN.**

**IMPORTANT NOTICE FOR ALL CREDITORS**

**PLEASE TAKE NOTICE THAT IF THE PLAN IS CONFIRMED BY THE COURT, ALL HOLDERS OF CLAIMS AGAINST, AND INTERESTS IN, THE DEBTORS (INCLUDING THOSE HOLDERS WHO ABSTAIN FROM VOTING ON OR WHO VOTE TO REJECT THE PLAN, AND THOSE HOLDERS WHO ARE NOT ENTITLED TO VOTE ON THE PLAN) WILL BE BOUND BY THE CONFIRMED PLAN AND THE TRANSACTIONS CONTEMPLATED THEREUNDER.**

**Item 1. Amount of Claim.**

As of the Voting Record Date, the undersigned was the Holder of a Class 2 Claim in the following aggregate unpaid amount (insert amount in box below):

<b>Principal Amount:</b> \$ _____
-----------------------------------

**Item 2. Vote on the Plan.**

The Holder of the Class 2 Claim against the Debtors set forth in Item 1 votes to (please check only one):

<input type="checkbox"/> <b><u>ACCEPT</u></b> (vote FOR) the Plan	<input type="checkbox"/> <b><u>REJECT</u></b> (vote AGAINST) the Plan
---	---

**Item 3. Important information regarding Releases, Exculpation, and Injunctions and Creditors' Rights to Opt-Out.**

**The Plan contains the following provision(s):**

***Section 1.01 Defines "Releasing Parties"***

*"Releasing Parties" means, collectively, and in each case in its capacity as such: (a) each Debtor; (b) each Reorganized Debtor; (c) each Non-Debtor Subsidiary; (d) the Sponsoring Noteholders; (e) each DIP Lender; (f) the Prepetition Agents; (g) the DIP Agent; (h) each Holder of Senior Notes Claims; (i) each Holder of Subordinated Notes Claims who is party to or has otherwise signed the Restructuring Support Agreement; (j) all Holders of Claims that vote to accept the Plan; (k) all Holders of Claims or Interests that are deemed to accept the Plan and who do not affirmatively opt out of the releases provided by the Plan; (l) all Holders of Claims or Interests that are deemed to reject the Plan and who do not affirmatively opt out of the releases provided by the Plan; (m) all Holders of Claims who abstain from voting on the Plan and who do not affirmatively opt out of the releases provided by the Plan; (n) all Holders of Claims who vote to reject the Plan and who do not affirmatively opt out of the releases provided by the Plan; and (o) each Related Party of each Entity in clause (a) through (n).*

***Section 8.04 Releases by the Releasing Parties***

**Effective as of the Effective Date, to the fullest extent permissible under applicable Law, each Releasing Party, in each case on behalf of itself and its respective successors, assigns, and representatives, and any and all other entities who may purport to assert any Claim, Cause of Action, directly or derivatively, by, through, for, or because of a Releasing Party, is deemed to have conclusively, absolutely, unconditionally, irrevocably, and forever released and discharged each Debtor, Reorganized Debtor, and each other Released Party from any and all Claims (other than Reinstated Claims), interests, obligations, rights, suits, damages, Causes of Action, remedies, and liabilities whatsoever, whether liquidated or**

unliquidated, fixed or contingent, known or unknown, foreseen or unforeseen, existing or hereafter arising, in Law, equity, contract, tort, or otherwise, whether arising under federal or state statutory or common law, or any other applicable international, foreign, or domestic Law, rule, statute, regulation, treaty, right, duty, requirement, or otherwise, including any derivative claims, asserted or assertable on behalf of any of the Debtors, the Reorganized Debtors, the Estates or their Affiliates, heirs, executors, administrators, successors, assigns, managers, accountants, attorneys, representatives, consultants, agents, and any other Persons claiming under or through them would have been legally entitled to assert (whether individually or collectively), based on or relating to (including the formulation, preparation, dissemination, negotiation, entry into, or filing of, as applicable), or in any manner arising from, in whole or in part, the Debtors (including the management, ownership or operation thereof) or their Estates or the Non-Debtor Subsidiaries, the purchase, sale, or rescission of the purchase or sale of any Security of the Debtors or Non-Debtor Subsidiaries, the Reorganized Debtors, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the business or contractual arrangements between any Debtor or Non-Debtor Subsidiaries and any Released Party, the Debtors' in- or out-of-court restructuring efforts, the decision to file the Chapter 11 Cases, any intercompany transactions, the Chapter 11 Cases, the negotiation, formulation, preparation, or consummation of the Restructuring Support Agreement, the Restructuring Transactions, the Plan (including the Plan Supplement), the solicitation of votes on the Plan, the Disclosure Statement, the New Organizational Documents, the pursuit of Confirmation and Consummation, the DIP Facility, the DIP Facility Documents, the New Money Common Equity Investment Documents, the New Note Documents, the administration and implementation of the Plan, including the issuance or distribution of Securities pursuant to the Plan, or the distribution of property under the Plan or any other related agreement, or upon any other act, omission, transaction, agreement, event, or other occurrence taking place on or before the Effective Date. Notwithstanding anything to the contrary in the foregoing, the releases set forth above do not release (a) any post-Effective Date obligations of any party or Entity under the Plan or the Confirmation Order, any Restructuring Transaction, or any document, instrument, or agreement (including those set forth in the Plan Supplement) executed to implement the Plan, including the assumption of the indemnification provisions as set forth in the Plan; (b) any Cause of Action included on the Schedule of Retained Causes of Action; (c) the rights of any Holder of an Allowed Claim to receive distributions under the Plan; or (d) the liability of any Released Party that otherwise would result from any act or omission to the extent that act or omission subsequently is determined in a Final Order to have constituted fraud, gross negligence or willful misconduct.

Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval, pursuant to Bankruptcy Rule 9019, of the Third-Party Release, which includes by reference each of the related provisions and definitions contained in this Plan, and, further, shall constitute the Bankruptcy Court's finding that the Third-Party Release is: (1) consensual; (2) essential to the confirmation of the Plan; (3) given in exchange for the good and valuable consideration provided by the Released Parties, including the Released Parties' contributions to facilitating the Plan Transactions and implementing the Plan; (4) a good faith settlement and compromise of the Claims released by the Third-Party Release; (5) in the best interests of the Debtors and their Estates; (6) fair, equitable, and reasonable; (7) given and made after due notice and opportunity for hearing; and (8) a bar to any of the

**Releasing Parties asserting any Claim or Cause of Action of any kind whatsoever released pursuant to the Third-Party Release.**

***Section 8.05 Exculpation.***

**Effective as of the Effective Date, to the fullest extent permissible under applicable Law and without affecting or limiting either the Debtor Release or the Third-Party Release, and except as otherwise specifically provided in the Plan or the Confirmation Order, no Exculpated Party shall have or incur liability for, and each Exculpated Party shall be released and exculpated from any Cause of Action or any claim arising from the Petition Date through the Effective Date related to any act or omission in connection with, relating to, or arising out of, the Chapter 11 Cases, the formulation, preparation, dissemination, negotiation, entry into, or filing of, as applicable the Chapter 11 Cases, the Restructuring Support Agreement, the Disclosure Statement, the Plan (including the Plan Supplement), the DIP Facility, the DIP Facility Documents, or any Restructuring Transaction, contract, instrument, release, or other agreement or document created or entered into in connection with the Disclosure Statement or the Plan, the filing of the Chapter 11 Cases, the pursuit of Confirmation, the pursuit of Consummation, the administration and implementation of the Plan, including the issuance of Securities pursuant to the Plan, or the distribution of property under the Plan or any other related agreement (excluding, for the avoidance of doubt, providing any legal opinion effective as of the Effective Date requested by any Entity regarding any transaction, contract, instrument, document, or other agreement contemplated by the Plan), except for claims or Causes of Action related to any act or omission constituting actual fraud, willful misconduct, or gross negligence, but in all respects such Entities shall be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities pursuant to the Plan. The Exculpated Parties have, and upon Consummation of the Plan shall be deemed to have, participated in good faith and in compliance with the applicable Laws with regard to the solicitation of votes and distribution of consideration pursuant to the Plan and, therefore, are not, and on account of such distributions shall not be, liable at any time for the violation of any applicable Law, rule, or regulation governing the solicitation of acceptances or rejections of the Plan or such distributions made pursuant to the Plan. Notwithstanding the foregoing, the exculpation shall not release any obligation or liability of any Entity for any post-Effective Date obligation under the Plan or any document, instrument or agreement (including those set forth in the Plan Supplement) executed to implement the Plan.**

**The Exculpated Parties and other parties set forth above have, and upon confirmation of the Plan shall be deemed to have, participated in good faith and in compliance with the applicable Laws with regard to the solicitation of votes and distribution of consideration pursuant to the Plan and, therefore, are not, and on account of such distributions shall not be, liable at any time for the violation of any applicable Law, rule, or regulation governing the solicitation of acceptances or rejections of the Plan or such distributions made pursuant to the Plan.**

**Solely with respect to the exculpation provision, notwithstanding anything to the contrary in the Plan or Plan Supplement, each of the 1125(e) Exculpated Parties shall not incur liability for any Cause of Action or Claim related to any act or omission in connection**

with, relating to, or arising out of, in whole or in part, (a) the solicitation of acceptance or rejection of the Plan in good faith and in compliance with the applicable provisions of the Bankruptcy Code or (b) the participation, in good faith and in compliance with the applicable provisions of the Bankruptcy Code, in the offer, issuance, sale, or purchase of a security, offered or sold under the Plan. No Entity or Person may commence or pursue a Claim or Cause of Action of any kind against any of the Exculpated Parties or the 1125(e) Exculpated Parties that arose or arises from, in whole or in part, a Claim or Cause of Action subject to this paragraph, without this Bankruptcy Court (i) first determining, after notice and a hearing, that such Claim or Cause of Action represents a colorable Claim for actual fraud, gross negligence, or willful misconduct against any such Exculpated Party or 1125(e) Exculpated Party and such party is not exculpated pursuant to this provision; and (ii) specifically authorizing such Entity or Person to bring such Claim or Cause of Action against such Exculpated Party or 1125(e) Exculpated Party. The Bankruptcy Court will have sole and exclusive jurisdiction to adjudicate the underlying colorable Claim or Causes of Action.

*Section 8.06 Injunction*

Except as otherwise expressly provided in the Plan, or for obligations issued or required to be paid pursuant to the Plan or the Confirmation Order, all Entities that have held, hold, or may hold Claims (other than Reinstated Claims), Interests, or Causes of Action that have been released, discharged, or are subject to exculpation are permanently enjoined, from and after the Effective Date, from taking any of the following actions against, as applicable, the Debtors, the Reorganized Debtors, the Exculpated Parties, or the Released Parties: (1) commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to any such Claims, Interests, or Cause of Action; (2) enforcing, attaching, collecting, or recovering by any manner or means any judgment, award, decree, or order against such Entities on account of or in connection with or with respect to any such Claims, Interests, or Causes of Action; (3) creating, perfecting, or enforcing any encumbrance of any kind against such Entities or the property or the estates of such Entities on account of or in connection with or with respect to any such Claims, Interests, or Causes of Action; (4) asserting any right of setoff, subrogation, or recoupment of any kind against any obligation due from such Entities or against the property of such Entities on account of or in connection with or with respect to any such Claims, Interests, or Causes of Action unless such Holder has Filed a motion requesting the right to perform such setoff on or before the Effective Date, and notwithstanding an indication of a Claim or Interest or otherwise that such Holder asserts, has, or intends to preserve any right of setoff pursuant to applicable Law or otherwise; and (5) commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to any such Claims, Interests, or Causes of Action released or settled pursuant to the Plan.

If you wish to opt-out of being a “Releasing Party” you must check the following box, complete this form, and ensure that it is timely submitted to the Voting Agent. If you do not submit this Ballot to the Voting Agent before the Voting Deadline and check the following opt-out box, you will be deemed to have consented to being a Releasing Party.

I elect to **OPT OUT** of and do not consent to the releases, exculpations, and injunctions contained in Article VIII of the Plan.

**Item 4. Acknowledgments and Certification**

By signing this Ballot, the undersigned certifies that:

- a. as of the Voting Record Date, the undersigned is either: (a) the Holder of the Class 2 Claim(s) being voted or (b) an authorized signatory for the Holder of the Class 2 Claim(s) being voted;
- b. no other Ballots have been cast with respect to the Claim identified in Item 1, and that, to the extent such Ballots have been cast, such earlier Ballots are hereby revoked; and
- b. the undersigned Holder has been provided with a copy of the Plan, the Disclosure Statement, and the Solicitation Procedures Order, and acknowledges that the vote set forth on this Ballot is subject to all terms and conditions set forth therein.

The undersigned also acknowledges that this solicitation is subject to all the terms and conditions set forth in the Plan and that all authority conferred or agreed to be conferred pursuant to this Ballot, and every obligation of the undersigned hereunder, shall be binding upon the transferees, successors, assigns, heirs, executors, administrators, trustees in bankruptcy, and legal representatives of the undersigned and shall not be affected by, and shall survive the death or incapacity, of the undersigned.

Name of Claimant: \_\_\_\_\_

Signature: \_\_\_\_\_

Name of Signatory:  
(if different than Claimant) \_\_\_\_\_

If authorized by Agent, Title of Agent \_\_\_\_\_

Street Address: \_\_\_\_\_

Street Address:  
(continued) \_\_\_\_\_

City, State, Zip Code: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Email Address: \_\_\_\_\_

Date Completed: \_\_\_\_\_

--

**INSTRUCTIONS FOR COMPLETING THE BALLOT**

**THESE INSTRUCTIONS EXPLAIN HOW TO COMPLETE THE BALLOT. PLEASE READ AND FOLLOW THESE INSTRUCTIONS CAREFULLY TO ENSURE THAT YOUR BALLOT WILL BE COUNTED.**

1. The Debtors are soliciting the vote of holders of Subordinated Notes Claims as of the Voting Record Date to accept or reject the Plan. The Debtors have caused the attached Ballot to be sent to you because the Debtors' available records indicate that you are a Holder of a Claim in Class 2 (Subordinated Notes Claims).

2. The Plan can be confirmed by the Court and thereby made binding upon you if it is accepted by the holders of at least two-thirds in amount and more than one-half in number of Claims in at least one class of creditors that votes on the Plan and if the Plan otherwise satisfies the requirements for confirmation provided by Bankruptcy Code section 1129(a). Please review the Disclosure Statement for more information.

3. You must submit your Ballot so that it is **actually received** by the Voting Agent by the Voting Deadline. The Voting Deadline for the receipt of Ballots by the Voting Agent is **July 19, 2024 at 4:00 p.m. (prevailing Eastern Time)**. Please allow additional time for your vote to be submitted to the Voting Agent on or before the Voting Deadline.

4. If a Ballot is received by the Voting Agent after the Voting Deadline, it will not be counted, unless the Debtors determine or the Court orders otherwise.

5. This Ballot is not, and shall not, constitute or be deemed to be (a) a Proof of Claim or interest, an assertion of a Claim or Interest, or (b) an admission by the Debtor of the nature, validity, or amount of any Claim or Interest and does not signify that your Claim or Interest has been or will be Allowed.

6. This Ballot is not a letter of transmittal and may not be used for any purposes other than to vote to accept or reject the Plan.

7. If multiple Ballots are received by the same holder of a Claim with respect to the same Claim(s) prior to the Voting Deadline, the last dated valid Ballot timely received will supersede and revoke any earlier Ballots.

8. If you believe you have received this Ballot in error, or if you need an additional Ballot, please contact the Voting Agent immediately at the telephone number or email address set forth below.

**Please return your Ballot promptly**

If you have any questions regarding this Ballot, these Ballot Instructions, or the procedures for voting, please contact the Voting Agent by: (a) calling 877-499-4509 (toll-free U.S. and Canada) or 917-281-4800 (International); (b) writing to ProSomnus, Inc., *et al.*, Ballot

Processing Center, c/o Kurtzman Carson Consultants LLC, 222 N. Pacific Coast Highway, Suite 300, El Segundo, CA 90245; or (c) email at ProSomnusBallots@kccllc.com.

**Please return your Ballot promptly in the envelope provided or otherwise in accordance with one of the approved submission methods described above. If the Voting Agent does not actually receive your Ballot on or before July 19, 2024 at 4:00 p.m. (prevailing Eastern Time), and if the Voting Deadline is not extended, your vote will not be counted.**

**Exhibit 4**

Notice of Non-Voting Status – Unimpaired Classes

**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)

**NOTICE OF NON-VOTING STATUS TO UNIMPAIRED CLASSES<sup>2</sup>**

PLEASE TAKE NOTICE THAT on June \_\_, 2024, the United States Bankruptcy Court for the District of Delaware (the “**Bankruptcy Court**”) entered an order (the “**Order**”) approving the *Disclosure Statement for proposed Joint Chapter 11 Plan of Reorganization of ProSomnus, Inc. and its Debtor Affiliates*, dated as of May \_\_, 2024 [Docket No. \_\_] (as may be amended, supplemented, or otherwise modified, the “**Disclosure Statement**”). The Order authorizes the Debtors to solicit votes to accept or reject the *Joint Chapter 11 Plan of Reorganization of ProSomnus, Inc. and its Debtor Affiliates*, dated as of May \_\_, 2024 [Docket No. \_\_] (as may be amended, supplemented, or otherwise modified, the “**Plan**”), a copy of which is attached as Exhibit A to the Disclosure Statement. You can find information about the Debtors’ confirmation hearing in the enclosed Confirmation Hearing Notice.

**UNDER THE TERMS OF THE PLAN, YOUR CLAIM(S) AGAINST THE DEBTORS IS/ARE NOT IMPAIRED, AND THEREFORE, PURSUANT TO SECTION 1126(f) OF TITLE 11 OF THE UNITED STATES CODE, YOU ARE (I) DEEMED TO HAVE ACCEPTED THE PLAN AND (II) NOT ENTITLED TO VOTE ON THE PLAN. IF YOU HAVE ANY QUESTIONS ABOUT THE STATUS OF YOUR CLAIM(S), OR YOU WANT TO REQUEST A COPY OF THE ORDER, THE PLAN AND THE DISCLOSURE STATEMENT, YOU SHOULD CONTACT THE DEBTORS’ VOTING AGENT, KURTZMAN CARSON CONSULTANTS LLC, BY TELEPHONE AT (888) 647-1744 (U.S./CANADA) OR (310) 751-2628 (INTERNATIONAL). COPIES OF THE PLAN AND DISCLOSURE STATEMENT CAN BE ACCESSED ONLINE AT [HTTPS://WWW.KCCLLC.NET/PROSOMNUS](https://www.kccllc.net/prosomnus). PLEASE BE ADVISED THAT KURTZMAN CARSON CONSULTANTS LLC CANNOT PROVIDE LEGAL ADVICE.**

Holders of Claims in Class 3 (Other Secured Claims), Class 4 (Other Priority

<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> Unimpaired classes consist of Class 3 (Other Secured Claims), Class 4 (Other Priority Claims), and Class 5 (General Unsecured Claims).

Claims), and Class 5 (General Unsecured Claims), as defined in the Plan, are deemed to consent to the release, exculpation, and injunction provisions under Article VIII of the Plan, which, for the avoidance of doubt, includes third-party releases. These provisions are included the opt out election form annexed hereto as Annex A (“the **Opt Out Form**”), for your ease of reference. If the Plan is confirmed, the release, exculpation, and injunction provisions will become effective against all holders of Claims that do not elect to opt out by completing and submitting the attached Opt Out Form to Kurtzman Carson Consultants, LLC (the “**Voting Agent**”). **If you do not agree to the release, exculpation, and injunction provisions contained in Article VIII of the Plan and do not wish to be a “Releasing Party” as defined in the Plan, you MUST affirmatively elect to opt out by filling out and submitting the Opt Out Form on or before July 19, 2024 at 4:00 p.m. (prevailing Eastern Time) (the “Voting Deadline”).**

Dated: June \_\_, 2024  
Wilmington, Delaware

Respectfully submitted,

**POLSINELLI PC**

/s/ Draft

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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mdipietro@polsinelli.com

-and-

Mark B. Joachim (Admitted Pro Hac Vice)  
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Facsimile: (202) 783-3535  
mjoachim@polsinelli.com

*Proposed Counsel to the Debtors and  
Debtors in Possession*

**Annex A**

Opt-Out Form

**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)

**OPT OUT FORM FOR UNIMPAIRED CLASSES**

You have received this opt out election form (the “**Opt Out Form**”) because you are or may be a holder of a Claim or Interest that is not entitled to vote on the *Joint Chapter 11 Plan of Reorganization of ProSomnus, Inc. and its Debtor Affiliates*, dated as of May \_\_, 2024 [Docket No. \_\_] (as may be amended, supplemented, or otherwise modified, the “**Plan**”).<sup>2</sup> Holders of Claims are deemed to grant the third-party releases set forth in Article VIII of the Plan, which are included herein for ease of reference. If the Plan is confirmed, these provisions will become effective against such holders of Claims. If you do not agree to such provisions and do not wish to be a Releasing Party (as defined in the Plan) you **MUST** affirmatively elect to opt out by filling out and submitting this form on or before **July 19, 2024 at 4:00 p.m. (prevailing Eastern Time)** (the “**Voting Deadline**”).

**PLEASE READ** the following important information regarding **Releases, Exculpation, and Injunctions and Creditors’ Rights to Opt Out.**

**The Plan contains the following provision(s):**

***Section 1.01 Defines “Releasing Parties”***

*“Releasing Parties” means, collectively, and in each case in its capacity as such: (a) each Debtor; (b) each Reorganized Debtor; (c) each Non-Debtor Subsidiary; (d) the Sponsoring Noteholders; (e) each DIP Lender; (f) the Prepetition Agents; (g) the DIP Agent; (h) each Holder of Senior Notes Claims; (i) each Holder of Subordinated Notes Claims who is party to or has otherwise signed the Restructuring Support Agreement; (j) all Holders of Claims that vote to accept the Plan; (k) all Holders of Claims or Interests that are deemed to accept the Plan and who do not affirmatively opt out of the releases provided by the Plan; (l) all Holders of Claims or Interests that are deemed to reject the Plan and who do not affirmatively opt out of the releases*

<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 or not otherwise defined shall have the meanings ascribed to them in the Edgemere Plan.

*provided by the Plan; (m) all Holders of Claims who abstain from voting on the Plan and who do not affirmatively opt out of the releases provided by the Plan; (n) all Holders of Claims who vote to reject the Plan and who do not affirmatively opt out of the releases provided by the Plan; and (o) each Related Party of each Entity in clause (a) through (n).*

#### ***Section 8.04 Releases by the Releasing Parties***

**Effective as of the Effective Date, to the fullest extent permissible under applicable Law, each Releasing Party, in each case on behalf of itself and its respective successors, assigns, and representatives, and any and all other entities who may purport to assert any Claim, Cause of Action, directly or derivatively, by, through, for, or because of a Releasing Party, is deemed to have conclusively, absolutely, unconditionally, irrevocably, and forever released and discharged each Debtor, Reorganized Debtor, and each other Released Party from any and all Claims (other than Reinstated Claims), interests, obligations, rights, suits, damages, Causes of Action, remedies, and liabilities whatsoever, whether liquidated or unliquidated, fixed or contingent, known or unknown, foreseen or unforeseen, existing or hereafter arising, in Law, equity, contract, tort, or otherwise, whether arising under federal or state statutory or common law, or any other applicable international, foreign, or domestic Law, rule, statute, regulation, treaty, right, duty, requirement, or otherwise, including any derivative claims, asserted or assertable on behalf of any of the Debtors, the Reorganized Debtors, the Estates or their Affiliates, heirs, executors, administrators, successors, assigns, managers, accountants, attorneys, representatives, consultants, agents, and any other Persons claiming under or through them would have been legally entitled to assert (whether individually or collectively), based on or relating to (including the formulation, preparation, dissemination, negotiation, entry into, or filing of, as applicable), or in any manner arising from, in whole or in part, the Debtors (including the management, ownership or operation thereof) or their Estates or the Non-Debtor Subsidiaries, the purchase, sale, or rescission of the purchase or sale of any Security of the Debtors or Non-Debtor Subsidiaries, the Reorganized Debtors, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the business or contractual arrangements between any Debtor or Non-Debtor Subsidiaries and any Released Party, the Debtors' in- or out-of-court restructuring efforts, the decision to file the Chapter 11 Cases, any intercompany transactions, the Chapter 11 Cases, the negotiation, formulation, preparation, or consummation of the Restructuring Support Agreement, the Restructuring Transactions, the Plan (including the Plan Supplement), the solicitation of votes on the Plan, the Disclosure Statement, the New Organizational Documents, the pursuit of Confirmation and Consummation, the DIP Facility, the DIP Facility Documents, the New Money Common Equity Investment Documents, the New Note Documents, the administration and implementation of the Plan, including the issuance or distribution of Securities pursuant to the Plan, or the distribution of property under the Plan or any other related agreement, or upon any other act, omission, transaction, agreement, event, or other occurrence taking place on or before the Effective Date. Notwithstanding anything to the contrary in the foregoing, the releases set forth above do not release (a) any post-Effective Date obligations of any party or Entity under the Plan or the Confirmation Order, any Restructuring Transaction, or any document, instrument, or agreement (including those set forth in the Plan Supplement) executed to implement the Plan, including the assumption of the indemnification provisions as set forth in the Plan; (b) any Cause of Action included on the Schedule of Retained Causes**

of Action; (c) the rights of any Holder of an Allowed Claim to receive distributions under the Plan; or (d) the liability of any Released Party that otherwise would result from any act or omission to the extent that act or omission subsequently is determined in a Final Order to have constituted fraud, gross negligence or willful misconduct.

Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval, pursuant to Bankruptcy Rule 9019, of the Third-Party Release, which includes by reference each of the related provisions and definitions contained in this Plan, and, further, shall constitute the Bankruptcy Court's finding that the Third-Party Release is: (1) consensual; (2) essential to the confirmation of the Plan; (3) given in exchange for the good and valuable consideration provided by the Released Parties, including the Released Parties' contributions to facilitating the Plan Transactions and implementing the Plan; (4) a good faith settlement and compromise of the Claims released by the Third-Party Release; (5) in the best interests of the Debtors and their Estates; (6) fair, equitable, and reasonable; (7) given and made after due notice and opportunity for hearing; and (8) a bar to any of the Releasing Parties asserting any Claim or Cause of Action of any kind whatsoever released pursuant to the Third-Party Release.

*Section 8.05 Exculpation.*

Effective as of the Effective Date, to the fullest extent permissible under applicable Law and without affecting or limiting either the Debtor Release or the Third-Party Release, and except as otherwise specifically provided in the Plan or the Confirmation Order, no Exculpated Party shall have or incur liability for, and each Exculpated Party shall be released and exculpated from any Cause of Action or any claim arising from the Petition Date through the Effective Date related to any act or omission in connection with, relating to, or arising out of, the Chapter 11 Cases, the formulation, preparation, dissemination, negotiation, entry into, or filing of, as applicable the Chapter 11 Cases, the Restructuring Support Agreement, the Disclosure Statement, the Plan (including the Plan Supplement), the DIP Facility, the DIP Facility Documents, or any Restructuring Transaction, contract, instrument, release, or other agreement or document created or entered into in connection with the Disclosure Statement or the Plan, the filing of the Chapter 11 Cases, the pursuit of Confirmation, the pursuit of Consummation, the administration and implementation of the Plan, including the issuance of Securities pursuant to the Plan, or the distribution of property under the Plan or any other related agreement (excluding, for the avoidance of doubt, providing any legal opinion effective as of the Effective Date requested by any Entity regarding any transaction, contract, instrument, document, or other agreement contemplated by the Plan), except for claims or Causes of Action related to any act or omission constituting actual fraud, willful misconduct, or gross negligence, but in all respects such Entities shall be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities pursuant to the Plan. The Exculpated Parties have, and upon Consummation of the Plan shall be deemed to have, participated in good faith and in compliance with the applicable Laws with regard to the solicitation of votes and distribution of consideration pursuant to the Plan and, therefore, are not, and on account of such distributions shall not be, liable at any time for the violation of any applicable Law, rule, or regulation governing the solicitation of acceptances or rejections of the Plan or such distributions made pursuant to the Plan. Notwithstanding the foregoing, the exculpation

shall not release any obligation or liability of any Entity for any post-Effective Date obligation under the Plan or any document, instrument or agreement (including those set forth in the Plan Supplement) executed to implement the Plan.

The Exculpated Parties and other parties set forth above have, and upon confirmation of the Plan shall be deemed to have, participated in good faith and in compliance with the applicable Laws with regard to the solicitation of votes and distribution of consideration pursuant to the Plan and, therefore, are not, and on account of such distributions shall not be, liable at any time for the violation of any applicable Law, rule, or regulation governing the solicitation of acceptances or rejections of the Plan or such distributions made pursuant to the Plan.

Solely with respect to the exculpation provision, notwithstanding anything to the contrary in the Plan or Plan Supplement, each of the 1125(e) Exculpated Parties shall not incur liability for any Cause of Action or Claim related to any act or omission in connection with, relating to, or arising out of, in whole or in part, (a) the solicitation of acceptance or rejection of the Plan in good faith and in compliance with the applicable provisions of the Bankruptcy Code or (b) the participation, in good faith and in compliance with the applicable provisions of the Bankruptcy Code, in the offer, issuance, sale, or purchase of a security, offered or sold under the Plan. No Entity or Person may commence or pursue a Claim or Cause of Action of any kind against any of the Exculpated Parties or the 1125(e) Exculpated Parties that arose or arises from, in whole or in part, a Claim or Cause of Action subject to this paragraph, without this Bankruptcy Court (i) first determining, after notice and a hearing, that such Claim or Cause of Action represents a colorable Claim for actual fraud, gross negligence, or willful misconduct against any such Exculpated Party or 1125(e) Exculpated Party and such party is not exculpated pursuant to this provision; and (ii) specifically authorizing such Entity or Person to bring such Claim or Cause of Action against such Exculpated Party or 1125(e) Exculpation Party. The Bankruptcy Court will have sole and exclusive jurisdiction to adjudicate the underlying colorable Claim or Causes of Action.

#### *Section 8.06 Injunction*

Except as otherwise expressly provided in the Plan, or for obligations issued or required to be paid pursuant to the Plan or the Confirmation Order, all Entities that have held, hold, or may hold Claims (other than Reinstated Claims), Interests, or Causes of Action that have been released, discharged, or are subject to exculpation are permanently enjoined, from and after the Effective Date, from taking any of the following actions against, as applicable, the Debtors, the Reorganized Debtors, the Exculpated Parties, or the Released Parties: (1) commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to any such Claims, Interests, or Cause of Action; (2) enforcing, attaching, collecting, or recovering by any manner or means any judgment, award, decree, or order against such Entities on account of or in connection with or with respect to any such Claims, Interests, or Causes of Action; (3) creating, perfecting, or enforcing any encumbrance of any kind against such Entities or the property or the estates of such Entities on account of or in connection with or with respect to any such Claims, Interests, or Causes of Action; (4) asserting any right of setoff, subrogation, or recoupment of any kind against any obligation due from such Entities or against the property

of such Entities on account of or in connection with or with respect to any such Claims, Interests, or Causes of Action unless such Holder has Filed a motion requesting the right to perform such setoff on or before the Effective Date, and notwithstanding an indication of a Claim or Interest or otherwise that such Holder asserts, has, or intends to preserve any right of setoff pursuant to applicable Law or otherwise; and (5) commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to any such Claims, Interests, or Causes of Action released or settled pursuant to the Plan.

If you wish to opt out of being a “Releasing Party” you must check the following box, complete this form, and ensure that it is timely submitted to the Voting Agent. If you do not submit this Opt Out Form to the Voting Agent before the Voting Deadline and check the following opt out box, you will be deemed to have consented to being a Releasing Party.

<input type="checkbox"/> I elect to <b>OPT OUT</b> of and do not consent to the releases, exculpations, and injunctions contained in Article VIII of the Plan.
--

Name of Claimant: \_\_\_\_\_

Signature: \_\_\_\_\_

Name of Signatory: \_\_\_\_\_  
(if different than Claimant)

If authorized by Agent, Title of Agent \_\_\_\_\_

Street Address: \_\_\_\_\_

Street Address: \_\_\_\_\_  
(continued)

City, State, Zip Code: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Email Address: \_\_\_\_\_

Date Completed: \_\_\_\_\_

If you wish to opt out of being a “Releasing Party”, please complete this form and return it so as to be **actually received** by July 19, 2024 at 4:00 p.m., (prevailing Eastern Time) through one of the following ways:

<b>VIA REGULAR MAIL, OVERNIGHT, OR HAND DELIVERY:</b>	<b>VIA ELECTRONIC BALLOT BY VISITING THE WEBSITE BELOW:</b>
ProSomnus, Inc., <i>et al.</i> , Ballot Processing Center c/o KCC 222 N. Pacific Coast Highway, Suite 300 El Segundo, California 90245	<a href="https://www.kccllc.net/prosomnus">https://www.kccllc.net/prosomnus</a>

**E-Ballot Voting Instructions**

To properly submit your Opt Out Form electronically, you must electronically complete, sign, and return this customized electronic Opt Out Form by utilizing the “E-Ballot” portal on the website maintained by Kurtzman Carson Consultants, LLC (the “**Voting Agent**”) website by visiting <https://www.kccllc.net/prosomnus>, clicking on the Electronic Balloting link and following the instructions set forth on the website. Opt Out Forms will not be accepted by facsimile, email, or electronic means other than the above-referenced E-Ballot portal.

IMPORTANT NOTE: You will need the following information to retrieve and submit your customized electronic Opt Out Form:

Unique E-Ballot ID#: \_\_\_\_\_

PIN#: \_\_\_\_\_

If you are unable to use the E-Ballot portal or need assistance in completing and submitting your Opt Out Form, please contact the Voting Agent by: (a) calling (888) 647-1744 (U.S./Canada) or (310) 751-2628 (International); (b) writing to ProSomnus, Inc. Ballot Processing Center, c/o Kurtzman Carson Consultants LLC, 222 N. Pacific Coast Highway, Suite 300, El Segundo, CA 90245; or (c) email at [ProSomnusInfo@kccllc.com](mailto:ProSomnusInfo@kccllc.com). Holders who submit an Opt Out Form using the Voting Agent’s E-Ballot portal should NOT also submit a paper Opt Out Form.

**Exhibit 5**

Notice of Non-Voting Status – Impaired Classes

**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)

**NOTICE OF NON-VOTING STATUS TO IMPAIRED CLASSES<sup>2</sup>**

PLEASE TAKE NOTICE THAT on June \_\_, 2024, the United States Bankruptcy Court for the District of Delaware (the “**Bankruptcy Court**”) entered an order (the “**Order**”) approving the *Disclosure Statement for Joint Chapter 11 Plan of Reorganization of ProSomnus, Inc. and its Debtor Affiliates*, dated as of May \_\_, 2024 [Docket No. \_\_] (as may be amended, supplemented, or otherwise modified, the “**Disclosure Statement**”). The Order authorizes the Debtors to solicit votes to accept or reject the *Joint Chapter 11 Plan of Reorganization of ProSomnus, Inc. and its Debtor Affiliates*, dated as of May \_\_, 2024 [Docket No. \_\_] (as may be amended, supplemented, or otherwise modified, the “**Plan**”), a copy of which is annexed as Exhibit A to the Disclosure Statement. You can find information about the Debtors’ confirmation hearing in the enclosed Confirmation Hearing Notice.

You are receiving this notice because, according to the Debtors’ books and records, you are a Holder of either:

- (i) **Class 6 (Section 510(b) Claims)** under the Plan, which provides that you are not entitled to receive or retain any property on account of your Claims against the Debtors. **Pursuant to section 1126(g) of title 11 of the United States Code, you are (a) deemed to have rejected the Plan and (b) not entitled to vote on the Plan.**
- (ii) **Class 7 (Interests)** under the Plan, which provides that you are not entitled to receive or retain any property on account of your equity Interest(s) in the Debtors. **Pursuant to section 1126(g) of title 11 of the United States Code, you are (a) deemed to have rejected the Plan and (b) not entitled to vote on the Plan.**

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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> Impaired classes not entitled to vote consist of Class 6 (510(b) Claims) and Class 7 (Interests).

**IF YOU HAVE ANY QUESTIONS ABOUT THE STATUS OF YOUR CLAIM(S) OR INTEREST(S), OR YOU WANT TO REQUEST A COPY OF THE ORDER, THE PLAN AND THE DISCLOSURE STATEMENT, YOU SHOULD CONTACT THE DEBTORS' VOTING AGENT, KURTZMAN CARSON CONSULTANTS LLC, BY TELEPHONE AT (888) 647-1744 (U.S./CANADA) OR (310) 751-2628 (INTERNATIONAL). COPIES OF THE PLAN AND DISCLOSURE STATEMENT CAN BE ACCESSED ONLINE AT [HTTPS://WWW.KCCLLC.NET/PROSOMNUS](https://www.kccllc.net/prosomnus). PLEASE BE ADVISED THAT KURTZMAN CARSON CONSULTANTS LLC CANNOT PROVIDE LEGAL ADVICE.**

Dated: June \_\_, 2024  
Wilmington, Delaware

Respectfully submitted,

**POLSINELLI PC**

/s/ Draft  
Shanti M. Katona (Del. Bar No. 5352)  
Katherine M. Devanney (Del. Bar No. 6356)  
Michael V. DiPietro (Del. Bar No. 6781)  
222 Delaware Avenue, Suite 1101  
Wilmington, Delaware 19801  
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-and-

Mark B. Joachim (Admitted Pro Hac Vice)  
1401 Eye Street, N.W., Suite 800  
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Telephone: (202) 783-3300  
Facsimile: (202) 783-3535  
mjoachim@polsinelli.com

*Proposed Counsel to the Debtors and  
Debtors in Possession*

**Exhibit B**

Disclosure Statement Notice

**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:**

**Hearing Date:**

**NOTICE OF HEARING TO CONSIDER APPROVAL OF DISCLOSURE STATEMENT  
AND SOLICITATION PROCEDURES FOR JOINT CHAPTER 11 PLAN OF  
REORGANIZATION OF PROSOMNUS, INC. AND ITS DEBTOR AFFILIATES**

**TO ALL PARTIES IN INTEREST IN THE DEBTORS' CHAPTER 11 CASES:**

**PLEASE TAKE NOTICE THAT** ProSomnus, Inc. and its affiliated debtors in the above-captioned chapter 11 cases (collectively, the “**Debtors**”) have filed the (i) *Joint Chapter 11 Plan of Reorganization of ProSomnus, Inc. and its Debtor Affiliates* [Docket No. \_\_] (together with all the schedules and exhibits thereto, and each as amended, modified or supplemented from time to time, the “**Plan**”) <sup>2</sup> and (ii) *Disclosure Statement for Joint Chapter 11 Plan of Reorganization of ProSomnus, Inc. and its Debtor Affiliates* [Docket No. \_\_] (together with all the schedules and exhibits thereto, and each as may be amended, modified, or supplemented from time to time, the “**Disclosure Statement**”).

**PLEASE TAKE FURTHER NOTICE THAT** the Debtors have also filed a motion seeking entry of an order (i) approving the Disclosure Statement as containing “adequate information” pursuant to section 1125 of the Bankruptcy Code, (ii) establishing solicitation and voting procedures in connection with the Plan, (iii) establishing certain deadlines in connection with confirmation of the Plan, (iv) approving the manner and forms of ballots and certain notices, and (v) granting related relief (the “**Solicitation Procedures Motion**”).

**The Plan contains releases of the Debtors and certain third parties and related injunction and exculpation provisions, which will become effective if the Plan is confirmed. You should carefully review the Plan and the applicable release, injunction, and related provisions at <https://www.kcellc.net/prosomnus>.**

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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 meanings ascribed to them in the Disclosure Statement or the Plan, as applicable, or as the context otherwise requires.

**PLEASE TAKE FURTHER NOTICE THAT:**

1. A hearing (the “**Disclosure Statement Hearing**”) will be held before the Honorable John T. Dorsey, in the United States Bankruptcy Court for the District of Delaware (the “**Bankruptcy Court**”), located at 824 N. Market Street, 5<sup>th</sup> Floor, Courtroom #5, Wilmington, Delaware 19801, on [ ] at [ ]:[ ] 10 a/p.m. (prevailing Eastern Time), to consider entry of an order, determining, among other things, that the Disclosure Statement contains “adequate information” within the meaning ascribed to such term in section 1125 of the Bankruptcy Code and approving the Disclosure Statement. Please be advised that the Disclosure Statement Hearing may be adjourned or continued from time to time by the Bankruptcy Court or the Debtors without further notice other than as indicated in any notice or agenda of matters scheduled that is filed with the Bankruptcy Court or by being announced in open court. If the Disclosure Statement Hearing is continued, the Debtors will post the new date and time of the Disclosure Statement Hearing at <https://www.kccllc.net/prosomnus>. The Disclosure Statement and Plan may be modified, if necessary, in accordance with the Bankruptcy Code, the Bankruptcy Rules, and other applicable law, before, during, or as a result of the Disclosure Statement Hearing, without further notice to creditors or other parties in interest.

2. Any party in interest wishing to obtain a copy of the Disclosure Statement and the Plan should contact Kurtzman Carson Consultants, LLC (the “**Voting Agent**”), in writing at, ProSomnus, Inc., *et al.*, Ballot Processing Center c/o KCC, 222 N. Pacific Coast Highway, Suite 300, El Segundo, California 90245, by telephone at (888) 647-1744 (U.S./Canada) or (310) 751-2628 (International), or electronic mail at [ProSomnusInfo@kccllc.com](mailto:ProSomnusInfo@kccllc.com). Interested parties may also review the Disclosure Statement and the Plan free of charge at <https://www.kccllc.net/prosomnus>.

3. In addition, the Disclosure Statement and Plan are on file with the Bankruptcy Court and may be reviewed by accessing the Bankruptcy Court’s website:[www.deb.uscourts.gov](http://www.deb.uscourts.gov). Note that a PACER password and login are needed to access documents on the Bankruptcy Court’s website. A PACER password can be obtained at: [www.pacer.psc.uscourts.gov](http://www.pacer.psc.uscourts.gov).

4. Objections, if any, to approval of the Disclosure Statement must: (i) be in writing; (ii) conform to the applicable Bankruptcy Rules and the Local Rules; (iii) set forth the name of the objecting party and the nature and amount of Claims or Interests held or asserted by such party against the Debtors’ estates or property; (iv) provide the basis for the objection and the specific grounds therefor, and provide proposed language that, if accepted and incorporated by the Debtors, would obviate such objection; and (v) be filed, together with proof of service, with the Bankruptcy Court, and served so that they are **actually received** by the following parties no later than [ ], 2024 at 4:00 p.m. (prevailing Eastern Time):

- 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](mailto:skatona@polsinelli.com)) and Katherine M. Devanney ([kdevanney@polsinelli.com](mailto: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).

**5. IF AN OBJECTION TO THE DISCLOSURE STATEMENT IS NOT FILED AND SERVED STRICTLY AS PRESCRIBED HEREIN, THE OBJECTING PARTY MAY BE BARRED FROM OBJECTING TO THE DISCLOSURE STATEMENT OR THE ADEQUACY THEREOF AND MAY NOT BE HEARD AT THE DISCLOSURE STATEMENT HEARING.**

6. Following approval of the Disclosure Statement by the Bankruptcy Court, Holders of Impaired Claims against the Debtors that are entitled to vote will receive Solicitation Packages in accordance with the order approving the Motion, including instructions to obtain, free of charge, the Plan, the Disclosure Statement, and various other documents related thereto, unless otherwise ordered by the Bankruptcy Court. Holders of Claims that are unimpaired under the Plan shall receive (i) the Confirmation Hearing Notice and (ii) a Notice of Non-Voting Status – Unimpaired Classes. Holders of Impaired Claims and Interests that are deemed to reject the Plan shall receive (i) the Confirmation Hearing Notice and (ii) the Notice of Non-Voting Status – Impaired Classes.

*[Remainder of page intentionally blank]*

**7. THIS NOTICE IS NOT A SOLICITATION OF VOTES TO ACCEPT OR REJECT THE PLAN. VOTES ON THE PLAN MAY NOT BE SOLICITED UNLESS AND UNTIL THE DISCLOSURE STATEMENT IS APPROVED BY AN ORDER OF THE BANKRUPTCY COURT.**

Dated: May \_\_, 2024  
Wilmington, Delaware

Respectfully submitted,

**POLSINELLI PC**

*/s/ Draft*

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-and-

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*Proposed Counsel to the Debtors and  
Debtors in Possession*