IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	:	Chapter 11
	:	
PROSOMNUS, INC., *et al.*,[1]	:	Case No. 24-10972 (JTD)
	:	
	:	Jointly Administered
	:	
Debtors.	:	**Ref. D.I. 89**
	:	

UNITED STATES TRUSTEE'S OBJECTION TO DEBTORS' MOTION FOR AN ORDER (I) SHORTENING NOTICE OF HEARING ON DISCLOSURE STATEMENT AND (II) GRANTING RELATED RELIEF

In support of his objection (the "Objection") to the *Debtors' Motion For Entry of an Order (I) Shortening Notice of Hearing on Disclosure Statement and (II) Granting Related Relief* (D.I. 89) (the "Motion to Shorten"),[2] Andrew R. Vara, the United States Trustee for Region 3 ("U.S. Trustee"), by and through his counsel, respectfully states as follows:

PRELIMINARY STATEMENT

1. The U.S. Trustee objects to the approval of the Motion to Shorten because the Debtors have failed to demonstrate proper "cause" under Bankruptcy Rule 9006(c) to shorten the time parameters set forth in Bankruptcy Rules 2002(b) and 3017. The reasons cited by the Debtors are simply artificial deadlines which could be extended by the Debtors and the creditors supporting the plan. Further, if there is any emergency, the Debtors created the emergency by

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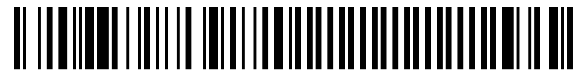
[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number are: ProSomnus, Inc. (8216), ProSomnus Holdings, Inc. (3855), and ProSomnus Sleep Technologies, Inc. (0766). The location of the Debtors' principal place of business and the Debtors'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

[2] Unless otherwise defined herein, capitalized terms shall have the same meaning and context as those capitalized terms included in the Motion to Shorten.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failing to adhere to the deadlines set forth in its agreements with the RSA parties and its DIP lender. These are not adequate reasons to deprive stakeholders of their due process rights protected in the Bankruptcy Rules. As a result, the Motion to Shorten should be denied.

JURISDICTION, VENUE AND STANDING

2. This Court has jurisdiction to hear and determine this Objection pursuant to: (i) 28 U.S.C. § 1334; (ii) applicable order(s) of the United States District Court of the District of Delaware issued pursuant to 28 U.S.C. § 157(a); and (iii) 28 U.S.C. § 157(b)(2).

3. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1408 and 1409.

4. Pursuant to 28 U.S.C. § 586, the U.S. Trustee is charged with overseeing the administration of chapter 11 cases filed in this judicial district. The duty is part of the U.S. Trustee's overarching responsibility to enforce the bankruptcy laws as written by Congress and interpreted by the Courts. *See Morgenstern v. Revco D.S., Inc. (In re Revco D.S., Inc.)*, 898 F.2d 498, 500 (6th Cir. 1990) (describing the U.S. Trustee as a "watchdog").

5. The U.S. Trustee has standing to be heard on this Objection pursuant to 11 U.S.C. § 307. *See United States Trustee v. Columbia Gas Sys., Inc. (In re Columbia Gas Sys., Inc.)*, 33 F.3d 294, 295-96 (3d Cir. 1994) (noting that U.S. Trustee has "public interest standing" under 11 U.S.C. § 307, which goes beyond mere pecuniary interest).

BACKGROUND AND FACTS

6. On May 7, 2024, the above-captioned Debtors commenced these cases by filing voluntary petitions for relief under chapter 11 of the Bankruptcy Code.

7. The Debtors have continued in possession of their properties and are operating and managing their businesses as debtors-in-possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code. There has been no trustee or Official Unsecured Creditors Committee

appointed in these cases.

OBJECTION

8. In *Folger Adam Security, Inc. v. DeMatteis/MacGregor*, 209 F.3d 252 (3d Cir. 2000), the Third Circuit Court of Appeals restated a basic principle of due process in ruling that a bankruptcy sale could not be effectuated "free and clear" of affirmative defenses without proper notice: "Due process requires notice reasonably calculated, under all the circumstances, to apprize interested parties of the pendency of the action and afford them an opportunity to present their objections." 209 F.3d at 265 (citations omitted). *See Mullane v. Central Hanover Bank and Trust Co.*, 339 U.S. 306, 314 (1950); *DePippo v. Kmart Corp*., 335 B.R. 290, 295 (Bankr. S.D.N.Y. 2005) (confirmed chapter 11 plan binds creditors, but only so long as they have received notice sufficient to satisfy due process).

9. Debtors must give "reasonable notice" to creditors of the commencement of a bankruptcy case. *See In re Motors Liquidation Company, et al.*, 2017 WL 4685010, at *7 (S.D.N.Y. Oct, 18,2017). In the context of a disclosure statement, Bankruptcy Rule 3017 provides that a movant must provide at least 28 days' notice to all holders of claims and interests of the hearing on approval of the disclosure statement. Fed. R. Bankr. P. 3017. Likewise, Bankruptcy Rule 2002 requires 28 days' notice to all creditors of the deadline for "filing objections and the hearing to consider approval of a disclosure statement…." Fed. R. Bankr. P. 2002(b).

10. Bankruptcy Rule 9006 (c)(1) provides: "Except as provided in paragraph (2) of this subdivision, when an act is required or allowed to be done at or within a specified time by these rules or by a notice given thereunder or by order of court, the court for cause shown may in its discretion with or without motion or notice order the period reduced." Fed. R. Bankr. P. 9006(c).

Additionally, Local Rule 9006-1(e) provides that the movant "must specify exigencies justifying shortened notice." Del. Local Bankr. L. R. 9006-1(e).

11. The Motion to Shorten fails to articulate any "cause" or exigent circumstances which would justify a shortened notice period. Any emergency is completely self-created by the Debtors, the RSA parties, and the DIP lender. The Debtors point to three impending events which require this court to reduce the time periods set forth in the Bankruptcy Rules. *See* Motion to Shorten, ¶¶16-18. Debtors have known about these three deadlines for weeks, if not longer. The RSA milestone that the plan be confirmed by August 5, 2024 is a self-imposed, artificial deadline which can be extended by the RSA parties and the Debtors. Similarly, Debtors allege that the DIP funding will run dry at some unspecified date in "early August." There is nothing prohibiting the DIP lender and the Debtors from extending the financing for an additional week to provide for adequate notice. Finally, Debtors contend that it is imperative that the plan be confirmed prior to the "2024 ProSleep" conference starting on August 1, 2024. The Debtors fail to demonstrate any harm if they attend the conference before confirmation of the plan. Simply stated, there are no exigent circumstances present which would justify reducing the applicable notice period to stakeholders. To hold otherwise would deprive parties of their statutory due process rights.

12. In exercising its discretion, this court should carefully review the Motion to Shorten. *In re Gledhill*, 76 F. 3d 1070, 1084 (10th Cir. 1996) (bankruptcy courts should "review ex parte motions to reduce the notice period carefully to be certain that there is, indeed, good cause for the handicap to the respondents and to the court for information-gathering capacity that is likely to result"). Courts have consistently refused to reduce the time periods under B.R. 9006(c) when debtors have created the emergency by failing to plan ahead and meet deadlines. As one court stated: "Rather than being the product of something that could not properly be prepared for, the

current emergency seems to be prompted by nothing more than the approach of an impending deadline, which has been known for some time. This failure to plan ahead does not rise to the level of a genuine emergency justifying shortened notice or expedited relief. Any emergency is one of debtor's own making." *In re Fort Wayne Assoc.*, 1998 WL928419, at *1 (Bankr. N.D. Ind. 1998); *see In re Schindler*, 2011 WL1258531 (Bankr. E.D.N.Y. 2011) (expedited relief denied pursuant to B.R. 9006(c) because debtor created emergency for herself and had knowledge of impending deadline*); In re Villareal*, 160 B.R. 786, 787-88 (Bankr. W.D. Tex. 1993) (emergency created by the debtor is not a basis for reducing notice period). As set forth above, any emergency was created by the Debtors' failure to adhere to their own, self-imposed deadlines. This is not proper cause for reducing the time for creditors to review and analyze the disclosure statement and to prepare appropriate objections. Accordingly, in exercising its discretion, the Court should deny the Motion and compel the Debtors to provide the notice required by Bankruptcy Rules 2002(b) and 3017.

WHEREFORE, the U.S. Trustee respectfully requests that the Court deny the Motion to Shorten for the reasons set forth above and grant such other relief as may be appropriate and just.

Respectfully submitted,

ANDREW R. VARA
UNITED STATES TRUSTEE

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Dated: May 25, 2024

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on May 25, 2024, a copy of the **United States Trustee's Objection to Debtors' Motion for an Order (I) Shortening Notice of Hearing on Disclosure Statement and (II) Granting Related Relief** was served via e-mail to the persons indicated below:

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