

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

In re:

PROSOMNUS, INC., *et al.*,¹

Debtors.

Chapter 11

Case No. 24-10972 (JTD)

(Jointly Administered)

Re: Docket Nos. 6 and 44

**FINAL ORDER (I) PROHIBITING UTILITY PROVIDERS FROM ALTERING,
REFUSING, OR DISCONTINUING SERVICE; (II) APPROVING THE DEBTORS'
PROPOSED ADEQUATE ASSURANCE OF PAYMENT FOR POSTPETITION
SERVICES; AND (III) ESTABLISHING PROCEDURES FOR RESOLVING
REQUESTS FOR ADDITIONAL ADEQUATE ASSURANCE OF PAYMENT**

Upon the motion (the “**Motion**”)² of the Debtors for interim and final orders, pursuant to Bankruptcy Code sections 105(a) and 366; Bankruptcy Rules 6003 and 6004, and Local Rule 9013-1(m): (i) prohibiting Utility Providers from altering, refusing or discontinuing service; (ii) approving the Debtors’ Proposed Adequate Assurance of payment for postpetition services; and (iii) establishing procedures for resolving requests for additional adequate assurance of payment; and the Court having reviewed the Motion and the First Day Declaration, and the Interim Order dated May 9, 2024 [Docket No. 44]; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order of Reference from the United States District Court for the District of Delaware dated as of February 29, 2012; and the Court having found that this is a core proceeding pursuant

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

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Motion or First Day Declaration, as applicable.



to 28 U.S.C. § 157(b)(2) and that this Court may enter a final order consistent with Article III of the United States Constitution; and the Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and upon the record herein; and after due deliberation thereon; and good and sufficient cause appearing therefor, it is hereby

ORDERED, ADJUDGED AND DECREED THAT:

1. The Motion is GRANTED on a final basis, as set forth herein.
2. All objections to the entry of this Final Order, to the extent not withdrawn or settled, are overruled.
3. The Debtors are authorized to pay on a timely basis, in accordance with their prepetition practices, all undisputed invoices for Utility Services rendered by the Utility Providers to the Debtors after the Petition Date.
4. To the extent not otherwise already done, the Debtors shall provide an adequate assurance deposit for all Utility Providers by depositing \$26,847.00, which is equal to approximately 50% of the Debtors' average monthly consumption for Utility Services (the "**Adequate Assurance Deposit**"). The Adequate Assurance Deposit will be deposited into a separate bank account with a bank that has signed a uniform deposit agreement with the United States Trustee's office for the District of Delaware (the "**Adequate Assurance Deposit Account**").
5. Notwithstanding anything to contrary in the Motion, the Debtors may not consider any prepetition security deposit held by a Utility Provider when determining the allocable part of the Adequate Assurance Deposit to be made on behalf of such Utility Provider. Additionally, the

rights of Utility Providers with respect to prepetition security deposits under 11 U.S.C. § 366(c)(4) are not impaired or otherwise affected by this Order.

6. Subject to the Adequate Assurance Procedures set forth below or, alternatively, modification of the amount of the Adequate Assurance Deposit for one/more Utility Providers pursuant to 11 U.S.C. § 366(c)(3), the Proposed Adequate Assurance comprises the Adequate Assurance Deposit and the Debtors' ability to pay for future utility services in the ordinary course of business and constitutes sufficient adequate assurance of future payment to the Utility Providers to satisfy the requirements of Bankruptcy Code section 366.

7. Subject to the Adequate Assurance Procedures set forth below or, alternatively, modification of the amount of the Adequate Assurance Deposit for one/more Utility Providers pursuant to 11 U.S.C. § 366(c)(3), the Utility Providers are prohibited from: (a) altering, refusing, or discontinuing Utility Services to, or discriminating against, the Debtors on the basis of the commencement of the Chapter 11 Cases or on account of any unpaid prepetition charges or (b) requiring additional adequate assurance of payment other than the Proposed Adequate Assurance, as a condition of the Debtors continuing to receive Utility Services.

8. The following Adequate Assurance Procedures are approved:

- a. If a Utility Provider is not satisfied with the Proposed Adequate Assurance and seeks additional assurance of payment in the form of a deposit, letter of credit, prepayment, or otherwise, it must serve an Additional Assurance Request upon: (i) the Debtors, c/o ProSomnus, Inc., 5675 Gibraltar Dr., Pleasanton, California 94588; (ii) proposed counsel to the Debtors, Polsinelli PC, 222 Delaware Avenue, Suite 1101, Wilmington, Delaware 19801, Attn: Shanti M. Katona (skatona@polsinelli.com) and Katherine M. Devanney (kdevanney@polsinelli.com); (iii) counsel to the Sponsoring Noteholders and proposed DIP Lenders, Kilpatrick Townsend & Stockton LLP, 1114 Avenue of the Americas, New York, New York 10036, Attn: David M. Posner (dposner@ktslaw.com) and Gianfranco Finizio (gfinizio@ktslaw.com) and Morris James LLP, 500 Delaware Avenue, Suite 1500, Wilmington, Delaware 19801, Attn: Eric J. Monzo (emonzo@morrisjames.com) and Brya M. Keilson (bkeilson@morrisjames.com), (iv) counsel to the Prepetition Agents, Alston &

Bird LLP, 1120 South Tryon Street, Suite 300, Charlotte, North Carolina 28203-6818, Attn: Adam Smith (adam.smith@alston.com) and Lauren McHale (lauren.mchale@alston.com); (v) counsel to the proposed DIP Agent, Seward & Kissel LLP, One Battery Park Plaza, New York, NY 10004, Attn: Gregg Bateman (bateman@sewkis.com) (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 (together, the “**Notice Parties**”);

- b. Each Additional Assurance Request must (i) be made in writing; (ii) set forth all location(s) for which utility services are provided and the relevant account number(s); (iii) include a summary of the Debtors’ payment history relevant to the affected account(s); (iv) describe any deposits or other security currently held by the requesting Utility Provider; and (v) identify and explain the basis of the Utility Provider’s proposed adequate assurance requirement under Bankruptcy Code section 366(c)(2);
- c. Any Utility Provider who does not file an Additional Assurance Request shall be, subject to the Utility Provider’s rights to seek modification of the amount of the Adequate Assurance Deposit pursuant to 11 U.S.C. § 366(c)(3), (i) deemed to have received adequate assurance of payment “satisfactory” to such Utility Provider in compliance with section 366 of the Bankruptcy Code; and (ii) forbidden to discontinue, alter, or refuse services to, or discriminate against, the Debtors on account of any unpaid prepetition charges, or require additional assurance of payment other than the Proposed Adequate Assurance;
- d. Upon the Notice Parties’ receipt of an Additional Assurance Request at the addresses set forth in subparagraph (b) above, the Debtors shall promptly negotiate with such Utility Provider to resolve such Utility Provider’s Additional Assurance Request;
- e. The Debtors may, in their discretion, resolve an Additional Assurance Request by mutual agreement with the requesting Utility Provider without further notice to the Court or any other party in interest (except that notice shall be provided to (i) counsel to the Sponsoring Noteholders and proposed DIP Lenders and (ii) counsel to the Prepetition Agents, to the extent such agreement involves the use of cash collateral), and may, in connection with any such agreement, provide a Utility Provider with additional adequate assurance of future payment, including, but not limited to, cash deposits, prepayments, letters of credit, and/or other forms of security, without further order of the Court to the extent that the Debtors believe such additional assurance is reasonable in the exercise of its business judgment and the Debtors may, by mutual agreement with the objecting Utility Provider and without further order of the Court, reduce the Adequate Assurance Deposit by an amount not exceeding the requesting Utility Provider’s estimated two-week utility expense;

- f. If the Debtors determine that a timely received Additional Assurance Request is not reasonable and are unable to reach an alternative resolution with the applicable Utility Provider within thirty (30) days of the date the Additional Assurance Request was made, or such later date to which the Debtors and the applicable Utility Provider agree, the Debtors shall, upon reasonable notice, calendar the matter (the “**Adequate Assurance Dispute**”) for the next regularly scheduled omnibus hearing to determine the adequacy of assurance of payment pursuant to Bankruptcy Code section 366(c)(3);
 - g. Pending resolution of any such Adequate Assurance Dispute or, alternatively, modification of the amount of the Adequate Assurance Deposit for one/more Utility Providers pursuant to 11 U.S.C. § 366(c)(3), any such Utility Provider shall be prohibited from altering, refusing, or discontinuing service to the Debtors on account of unpaid charges for prepetition services, the filing of the Chapter 11 Cases, or any objection to the adequacy of the Proposed Adequate Assurance;
 - h. Upon the termination of Utility Services, the Debtors may, in their discretion and upon fourteen (14) days’ notice to the Notice Parties and all affected Utility Providers, reduce the Adequate Assurance Deposit by an amount not exceeding, for each of the Utility Services being discontinued, the lesser of (i) the estimated two-week utility expense for such Utility Services and (ii) the amount of the Adequate Assurance Deposit then attributable to the applicable Utility Provider, provided that there are no outstanding disputes related to postpetition amounts due;
 - i. Each Utility Provider shall be entitled to the funds in the Adequate Assurance Account in the amount set forth for such Utility Provider in the column labeled “Adequate Assurance” on the Utility Providers List;
 - j. The Adequate Assurance Deposit deposited into the Adequate Assurance Account on behalf of any Utility Provider (including any additional amount deposited upon request of any applicable Utility Provider) or any portion thereof, shall be returned to the Debtors, less any amounts owed on account of unpaid, postpetition Utility Services, by no later than five business days following the earlier of the date upon which (i) a chapter 11 plan becomes effective after being confirmed in these chapter 11 cases and the Utility Provider’s final invoice for pre-effective date Utility Services is paid, or (ii) the Debtors provide notice to a Utility Provider that services provided to the Debtors by such Utility Provider will no longer be needed or will be reduced and the Utility Provider’s final invoice for Utility Services provided to the Debtors is paid.
7. The Debtors may supplement the Utility Providers List³ without further order of the Court with Additional Utility Providers by filing with the Court, as soon as practicable, a

³ The Utility Providers List is attached to the Motion as Exhibit C.

supplement to the Utility Providers List that adds the name of any Additional Utility Provider to the Utility Providers List. The Debtors will then serve by email or by facsimile transmission (or, where the Debtors do not have the email address or fax number of an Additional Utility Provider, by First Class Mail) a copy of the Motion and this Interim Order on any Additional Utility Provider. The Debtors will also supplement the Adequate Assurance Deposit in an amount equal to 50% (net of surety bonds and deposits) of the Debtors' average monthly utility consumption for an added Utility Provider.

8. The Debtors may amend the Utility Providers List to delete a Utility Provider, or may seek to terminate a Utility Provider, upon fourteen (14) days' notice to the Notice Parties and all affected Utility Providers and only if the Debtors have not received any objection from such Utility Provider or any other parties in interest. If an objection is received, the Debtors shall request a hearing before this Court at the next omnibus hearing date, or such other date that the Debtors and the Utility Provider may agree. The Debtors shall not deduct from the Adequate Assurance Deposit the amount set aside for any Utility Provider that the Debtors seek to terminate or delete from the Utility Providers List unless and until the two (2) week notice period has passed and the Debtors have not received any objection to termination or deletion from such Utility Provider or any parties in interest, or until any such objection has been resolved consensually or by order of the Court.

9. No money may be withdrawn from the Adequate Assurance Deposit Account except (a) in compliance with the Adequate Assurance Procedures, (b) by mutual agreements of the Debtors and the applicable Utility Provider, or (c) by further order of the Court. If the Debtors fail to pay for any legitimate postpetition Utility Services when due, a Utility Provider may access

only that portion of the Adequate Assurance Deposit attributable to it in the Adequate Assurance Deposit Account.

10. The Debtors shall administer the Adequate Assurance Deposit Account in accordance with the terms of this Final Order.

11. Nothing contained herein constitutes a finding that any entity is or is not a Utility Provider hereunder or under Bankruptcy Code section 366, whether or not such entity is listed on the Utility Providers List.

12. Within three (3) business days after the date of this Final Order, the Debtors shall serve a copy of this Final Order on each Utility Provider identified on the Utility Providers List. Within three (3) business days of filing a supplement to the Utility Providers List, as applicable, the Debtors shall serve a copy of this Final Order and the Motion on any Additional Utility Provider.

13. Nothing in this Final Order authorizes the Debtors to pay prepetition claims without further order of the Court.

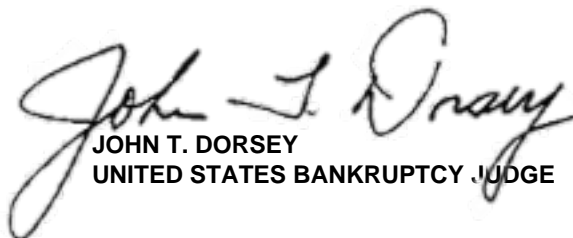
14. Nothing in the Motion or this Final Order, or the Debtors' payment of any claims pursuant to this Final Order, shall be deemed or construed as: (a) an admission as to the validity of any claim or lien against the Debtors or their estates; (b) a waiver of the Debtors' rights to dispute any claim or lien; (c) a waiver of a Utility Provider's rights with regard to assertion of any claim or interest; (d) an approval or assumption of any agreement, contract, or lease pursuant to Bankruptcy Code section 365; (e) an admission of the priority status of any claim, whether under Bankruptcy Code section 503(b)(9); or (f) a modification of the Debtors' rights to seek relief under any section of the Bankruptcy Code on account of any amounts owed or paid to any Utility Provider.

15. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Final Order shall be immediately effective and enforceable upon its entry.

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

17. The Court shall retain jurisdiction with respect to all matters arising from or related to the implementation of this Final Order.

Dated: June 3rd, 2024
Wilmington, Delaware


JOHN T. DORSEY
UNITED STATES BANKRUPTCY JUDGE