

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

In re:

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

Debtors.

Chapter 11

Case No. 24-10972 (JTD)

(Jointly Administered)

**Re: Docket Nos. 8, 46 and 110**

**CERTIFICATION OF COUNSEL REGARDING FINAL ORDER AUTHORIZING  
PAYMENT OF PREPETITION TAXES AND FEES**

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

1. On May 7, 2024, the Debtors filed the *Motion of Debtors for Entry of Interim and Final Orders Authorizing Payment of Prepetition Taxes and Fees* [Docket No. 8] (the “**Motion**”)<sup>2</sup> with the United States Bankruptcy Court for the District of Delaware (the “**Court**”).

2. On May 8, 2024, the Debtors filed the *Declaration of Brian Dow, Chief Financial Officer of the Debtors, in Support of Chapter 11 Petitions and First Day Pleadings* [Docket No. 14] with the Court.

3. On May 9, 2024, following a hearing on the Motion, the Court entered an order approving the Motion on an interim basis [Docket No. 46] (the “**Interim Order**”). Pursuant to the Interim Order, objections, if any, to final approval of the Motion were to be filed by May

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

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



29, 2024 at 4:00 p.m. (ET). The Office of the United States Trustee (the “**US Trustee**”) received an extension to respond to the Motion.

4. The Debtors received comments to the proposed form of final order approving the Motion (the “**Proposed Final Order**”) from the US Trustee.

5. On June 3, 2024, the Debtors filed the *Declaration of Brian Dow, Chief Financial Officer of the Debtors, in Further Support of Second Day Relief* [Docket No. 110] (the “**Supplemental Declaration**”).

6. In addition to filing the Supplemental Declaration, the Debtors also revised the proposed form of final order approving the Motion (the “**Revised Final Order**”) in accordance with the comments received from the US Trustee, a copy of which is attached hereto as Exhibit A. For the convenience of the Court and other interested parties, a blackline comparison of the Revised Final Order against the Proposed Final Order filed with the Motion is attached hereto as Exhibit B.

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

*[Remainder of Page Intentionally Left Blank]*

Dated: June 3, 2024  
Wilmington, Delaware

POLSINELLI PC

/s/ Shanti M. Katona

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*Proposed Counsel to the Debtors and  
Debtors in Possession*

**EXHIBIT A**

**(Revised Final Order)**

**IN THE UNITED STATES BANKRUPTCY COURT  
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Chapter 11

Case No. 24-10972 (JTD)

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**Re: Docket Nos. 8, 46, and 110**

**FINAL ORDER AUTHORIZING PAYMENT OF PREPETITION TAXES AND FEES**

Upon the motion (the “**Motion**”)<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the “**Debtors**”), for entry of a final order (this “**Final Order**”), under Bankruptcy Code sections 105(a), 363(b), 506(a), 507(a)(8), and 541 and Bankruptcy Rule 6003, authorizing the Debtors, in their discretion, to pay any prepetition Taxes and Fees owing to the Taxing Authorities; the Court having reviewed the Motion and the First Day Declaration; and this Court having found that it has jurisdiction to consider the Motion pursuant to 28 U.S.C. § 1334; and this Court having found that the Motion is a core proceeding pursuant to 28 U.S.C. § 157(b), and that the Debtors consent to entry of a final order under Article III of the United States Constitution; and this Court having found that venue of these Chapter 11 Cases 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 this Court having reviewed the Motion and having heard statements in support of the Motion at a hearing held before

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this Court (the “**Hearing**”); and this Court having determined that the legal and factual bases set forth in the Motion and the First Day Declaration and at the Hearing establish just cause for the relief granted herein; and any objections to the relief requested in the Motion having been withdrawn or overruled on the merits; 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 hereby authorized to pay, in the ordinary course of their businesses either directly or indirectly through Avalara, Taxes and Fees, including those relating to the period prior to the Petition Date or subsequently determined to be owed for periods prior to the Petition Date in the amount of \$25,000; provided, however, that the Debtors may, with the support of Avalara and other applicable Taxing Authorities, continue to identify, reconcile, and remit Taxes and Fees owed for periods prior to the Petition without further order of this Court.
4. The Debtors’ banks and financial institutions shall be, and are hereby authorized, when requested by the Debtors, to process, honor, and pay any and all checks or electronic fund transfers drawn on the Debtors’ bank accounts to pay all prepetition Taxes and Fees owed to the Taxing Authorities, whether those checks were presented prior to or after the Petition Date, provided that sufficient funds are available in the applicable accounts to make the payments.
5. The Debtors’ banks and financial institutions may rely on the representations of the Debtors with respect to whether any check or other transfer drawn or issued by the Debtors prior to the Petition Date should be honored pursuant to this Final Order, and any such bank or financial

institution shall not have any liability to any party for relying on such representations by the Debtors as provided for in this Final Order.

6. Notwithstanding the relief granted herein or any actions taken hereunder, nothing contained in this Final Order shall create any rights in favor of, or enhance the status of any claim held by, any Taxing Authority.

7. The Debtors are hereby authorized to take such actions and to execute such documents as may be necessary to implement the relief granted by this Final Order.

8. Notwithstanding Bankruptcy Rule 6004(h), to the extent applicable, this Final Order shall be effective and enforceable immediately upon entry hereof.

9. 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: (i) an admission as to the validity of any claim or lien against the Debtors or their estates, (ii) a waiver of the Debtors' rights to dispute any claim or lien, (iii) an approval or assumption of any agreement, contract, or lease pursuant to Bankruptcy Code section 365, (iv) an admission of the priority status of any claim, whether under Bankruptcy Code section 503(b)(9) or otherwise, or (v) 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 Taxing Authority.

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

**EXHIBIT B**

**(Blackline Comparison)**



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FOR THE DISTRICT OF DELAWARE**

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**FINAL ORDER AUTHORIZING PAYMENT OF PREPETITION TAXES AND FEES**

Upon the motion (the “**Motion**”)<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the “**Debtors**”), for entry of a final order (this “**Final Order**”), under Bankruptcy Code sections 105(a), 363(b), 506(a), 507(a)(8), and 541 and Bankruptcy Rule 6003, authorizing the Debtors, in their discretion, to pay any prepetition Taxes and Fees owing to the Taxing Authorities; the Court having reviewed the Motion and the First Day Declaration; and this Court having found that it has jurisdiction to consider the Motion pursuant to 28 U.S.C. § 1334; and this Court having found that the Motion is a core proceeding pursuant to 28 U.S.C. § 157(b), and that the Debtors consent to entry of a final order under Article III of the United States Constitution; and this Court having found that venue of these Chapter 11 Cases 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 this Court having reviewed the Motion and having heard statements in support of the Motion at a

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hearing held before this Court (the “**Hearing**”); and this Court having determined that the legal and factual bases set forth in the Motion and the First Day Declaration and at the Hearing establish just cause for the relief granted herein; and any objections to the relief requested in the Motion having been withdrawn or overruled on the merits; and after due deliberation thereon and good and sufficient cause appearing therefor, it is hereby

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3. The Debtors are hereby authorized to pay, in the ordinary course of their businesses either directly or indirectly through Avalara, ~~all~~ Taxes and Fees, including those relating to the period prior to the Petition Date or subsequently determined to be owed for periods prior to the Petition Date in the amount of \$25,000; provided, however, that the Debtors may, with the support of Avalara and other applicable Taxing Authorities, continue to identify, reconcile, and remit Taxes and Fees owed for periods prior to the Petition without further order of this Court.
4. The Debtors’ banks and financial institutions shall be, and are hereby authorized, when requested by the Debtors, to process, honor, and pay any and all checks or electronic fund transfers drawn on the Debtors’ bank accounts to pay all prepetition Taxes and Fees owed to the Taxing Authorities, whether those checks were presented prior to or after the Petition Date, provided that sufficient funds are available in the applicable accounts to make the payments.
5. The Debtors’ banks and financial institutions may rely on the representations of the Debtors with respect to whether any check or other transfer drawn or issued by the Debtors

prior to the Petition Date should be honored pursuant to this Final Order, and any such bank or financial institution shall not have any liability to any party for relying on such representations by the Debtors as provided for in this Final Order.

6. Notwithstanding the relief granted herein or any actions taken hereunder, nothing contained in this Final Order shall create any rights in favor of, or enhance the status of any claim held by, any Taxing Authority.

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