

**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, 11, 14, 130**

**SUPPLEMENTAL DECLARATION OF BRIAN DOW, CHIEF  
FINANCIAL OFFICER OF THE DEBTORS,  
IN FURTHER SUPPORT OF SECOND DAY RELIEF**

I, Brian Dow, hereby declare under penalty of perjury:

1. I am the Chief Financial Officer of ProSomnus, Inc., and its subsidiaries that are debtors and debtors in possession (collectively, the “**Debtors**”, or the “**Company**”). I have served as the Debtors’ Chief Financial Officer since March 2023. In addition to my role with the Debtors, I have over 29 years of experience advancing privately held and publicly traded life science companies with equity and debt financing, accounting, and financial operations expertise.

2. In my capacity as Chief Financial Officer, working with the Debtors’ other advisors, I have provided long-term strategic planning, financial modeling, debt restructuring, asset disposition, and forecasting guidance. I have personal knowledge of, and am familiar with, the business affairs, day-to-day operations, books and records, and financial condition of the Debtors, and I am authorized to submit this supplemental declaration (the “**Supplement**”) in (i) further support of the Debtors’ motion for authorization to pay prepetition obligations owed to

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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.



critical vendors [Docket No. 11] (the “**Critical Vendor Motion**”)<sup>2</sup> and (ii) response to the objection [Docket No. 130] filed by the Office of the United States Trustee. My original declaration in further support of the Critical Vendor Motion [Docket No. 110] is incorporated herein by reference.

**I. The Debtors’ Need for the SEC Compliance Providers**

3. As a publicly-traded company, the Debtors, in the ordinary course of business, require the services of certain securities compliance professionals to assist them with the drafting and filing of certain routine filings that all publicly-traded companies are required to make with the United States Securities and Exchange Commission (“**SEC**”).

4. More specifically, the Debtors must file with the SEC a Form 10-Q before the conclusion of these Chapter 11 Cases. A Form 10-Q is a quarterly report that includes certain disclosures that all publicly-traded companies are required to make on a periodic basis.

5. Historically, and in the ordinary course of business, the Debtors have prepared their 10-Qs with the assistance of Moss Adams and LLP (“**Moss Adams**”) and Marcum LLP (“**Marcum**” and together with Moss Adams, the “**SEC Compliance Providers**”).

6. Moss Adams currently serves in a consulting capacity supporting the Company’s technical compliance assessments, compilation and XBRL tagging of annual and periodic reports filed with the SEC. I understand that Moss Adams cannot continue providing services to the Debtors absent payment of its pre-petition claim.

7. Marcum is an independent registered public account firm serving as the Company’s auditor. Marcum has been appointed and engaged by the Company’s audit committee, and also confirmed by the Company’s shareholders. The terms of Marcum’s engagement agreement allow

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

Marcum to stop providing services essentially at any time. Marcum has indicated that without assurances involving the payment of its outstanding prepetition balances, under firm policy, they will not be able to continue rendering services to the Company.

8. The Debtors cannot comply with SEC regulations and file their 10-Q without the services provided by the SEC Compliance Providers.

9. Based on my experience, I do not believe that the Company will be able, at this stage of the Chapter 11 Cases, to find other vendors to complete the work started by the SEC Compliance Providers for a variety of reasons. Many firms qualified to provide the services the Company needs refuse to accept De-SPAC clients as a matter of policy. Moreover, based on my experience and knowledge of this industry, companies in bankruptcy are generally viewed as high audit risks. I believe that many qualified firms already view bankruptcy-related risks as unacceptably large, but recent monitoring and enforcement efforts by PCAOB have, in my opinion, made it even less likely that another firm would be willing to accept the Company as a client.

## **II. The Role of the SEC Compliance Providers in these Chapter 11 Cases**

10. The SEC Compliance Providers will not be assisting the Debtors in carrying out their duties under the Bankruptcy Code. Instead, the Debtors will be relying on me, as Chief Financial Officer, the Debtors' controller, other members of the Debtors' management team, and the Debtors' retained legal and financial advisors to ensure that the Debtors are properly executing their duties as debtors-in-possession. I understand that the Court has entered orders approving the retention of Polsinelli PC as counsel to the Debtors [Docket No. 129] and Gavin/Solmonese, LLC as financial advisor to the Debtors [Docket No. 115], in each case pursuant to Section 327 of the Bankruptcy Code.

11. The SEC Compliance Providers do not control, manage, administer, invest, purchase, or sell assets that are significant to the Debtors' reorganization.

12. The SEC Compliance Providers have not (and will not) participate in the negotiation of the Debtors' proposed disclosure statement or plan of reorganization.

13. The securities work required of the SEC Compliance Providers is directly related to the routine maintenance of the Debtors' business operations (i.e., maintaining their SEC compliance).

I declare under penalty of perjury that the foregoing is true and correct:

Dated: June 10, 2024

/s/ Brian Dow

Brian Dow

Chief Financial Officer of Debtor ProSomnus, Inc.