

**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 No. 76

**ORDER AUTHORIZING THE RETENTION AND PAYMENT OF
CERTAIN PROFESSIONALS UTILIZED BY THE DEBTORS IN THE
ORDINARY COURSE OF BUSINESS**

Upon the motion (the “**Motion**”)² of the above-captioned debtors and debtors in possession (the “**Debtors**”), for entry of an order (the “**Order**”) pursuant to sections 105(A), 328, 330, and 331 of title 11 of the United States Code (the “**Bankruptcy Code**”), Rules 2014 and 2016 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”); and Rule 2014-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “**Local Rules**”); authorizing the retention and payment of professionals utilized by the Debtors in the ordinary course of business; all as more fully set forth in the Motion; and the Court having found that it has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and the Court having found that venue of this case and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and the Court having found that the relief requested in the Motion is

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 not defined in this Order have the meaning ascribed to them in the Motion.



in the best interests of the Debtors' estates, their creditors, and other parties in interest; and the Court having found that the Debtors provided appropriate notice of the Motion and the opportunity for a hearing on the Motion under the circumstances; and the Court having reviewed the Motion and having heard the statements and evidence in support of and arguments against the relief requested therein at a hearing before the Court (the "**Hearing**"); and the Court having determined that the legal and factual bases set forth in the Motion and considering the narrow facts and circumstances presented at the Hearing, as detailed in the Court's discussion on the record, establish just cause for the relief granted herein; and upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefor, it is hereby

ORDERED, ADJUDGED, AND DECREED THAT:

1. The Motion is granted as set forth herein.
2. Subject to the Procedures (as defined below), the Debtors are authorized to employ and retain the Ordinary Course Professionals listed on the attached Exhibit 1, without the need to file individual retention applications and obtain retention orders for each.
3. The following procedures shall govern the retention and payment of Ordinary Course Professionals (the "**Procedures**"):
 - a) Each Ordinary Course Professional shall complete an affidavit, substantially in the form attached hereto as Exhibit 2 (each, an "**Affidavit**"), and provide such Affidavit to counsel for the Debtors. Upon receipt of such Affidavit, counsel for the Debtors shall file the same with the Court and have it served on the following parties: (i) the Debtors, c/o ProSomnus, Inc., 5675 Gibraltar Dr., Pleasanton, California 94588; (ii) 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) (collectively, the “**Reviewing Parties**”).

b) The Reviewing Parties shall have fourteen (14) days after the filing and service of an Affidavit to object to the retention of the Ordinary Course Professional filing such Affidavit (the “**Objection Deadline**”). An objecting party shall serve its objection upon the Reviewing Parties and the relevant Ordinary Course Professional so that any such objection is actually received on or before the Objection Deadline.

c) If any such objection cannot be resolved within five (5) days of service, the matter will be set for hearing before the Court on a date scheduled by the Court and agreeable to the Ordinary Course Professional, the Debtors, and the objecting party. If no objection is received by the Objection Deadline with respect to an Ordinary Course Professional, the Debtors shall be authorized to retain and pay that Ordinary Course Professional in accordance with these Procedures.

d) Once the Debtors retain an Ordinary Course Professional in accordance with these Procedures, they may pay such Ordinary Course Professional 100% of the fees and 100% of the expenses incurred, upon the submission to, and approval by, the Debtors of an appropriate invoice setting forth in reasonable detail the nature of the services rendered and expenses actually incurred; provided, however, that the Ordinary Course Professional’s total compensation and reimbursement will not exceed \$50,000 per month on average over any three-month period on a rolling basis (the “**Monthly Fee Limit**”).

e) If an Ordinary Course Professional’s fees and expenses exceed the Monthly Fee Limit, such Ordinary Course Professional shall file a fee application (a “**Fee Application**”) on account of the excess amount over the applicable limit and apply for compensation and reimbursement of such amount in compliance with Sections 330 and 331 of the Bankruptcy Code and the applicable provisions of the Bankruptcy Rules, the Local Rules, and any other procedures and orders of the Court. The U.S. Trustee reserves the right to request that any Ordinary Course Professional who is regularly exceeding the Monthly Fee Limit be the subject of a retention application pursuant to Bankruptcy Code section 327.

f) Each Fee Application shall be served upon: (i) the Debtors, c/o ProSomnus, Inc., 5675 Gibraltar Dr., Pleasanton, California 94588; (ii) 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) (individually, a “**Notice Party**” and collectively, the “**Notice Parties**”). The Notice Parties shall then have fourteen (14) days to object to the Fee Application. If, after fourteen (14) days, no objection is filed, the fees requested in the Fee Application shall be deemed approved, and the Ordinary Course Professional may be paid one-hundred percent (100%) of its fees and one-hundred percent (100%) of its expenses without the need for further action from such Ordinary Course Professional.

g) At three-month intervals (each, a “**Quarter**”) during the pendency of these Chapter 11 Cases, the Debtors shall file with the Court and serve on the Reviewing Parties no later than thirty (30) days after the end of such Quarter a statement that shall include the following information for each Ordinary Course Professional: (i) the name of the Ordinary Course Professional; (ii) the amounts paid as compensation for services rendered and reimbursement of expenses incurred by that Ordinary Course Professional during the reported Quarter broken down by month; (iii) all postpetition payments made to that Ordinary Course Professional to such date; and (iv) a general description of the services rendered by that Ordinary Course Professional.

h) The Debtors may retain additional Ordinary Course Professionals from time to time during the Chapter 11 Cases by (i) including each additional Ordinary Course Professional on an amended version of Exhibit 1 hereto that shall be filed with the Court and served on the Reviewing Parties and (ii) having such additional Ordinary Course Professional comply with the Procedures.

4. Any payment made pursuant to this Order is not intended and should not be construed as an admission as to the validity or priority of any claim or a waiver of the Debtors’ rights to dispute such claim subsequently, and any such payment is not intended and should not be construed as an assumption or any executory contract or obligation of the Debtors.

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

6. The terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

7. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation and/or interpretation of this Order.

Dated: June 13th, 2024
Wilmington, Delaware

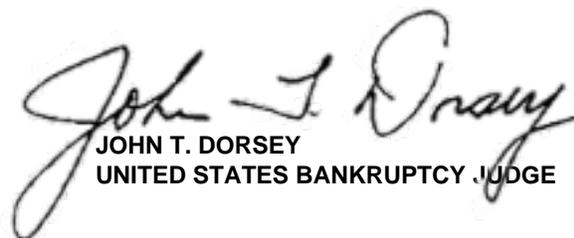

JOHN T. DORSEY
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT 1

Ordinary Course Professionals

Individual / Firm	Type of Professional
Procopio, Cory, Hargreaves & Savitch LLP	Legal Services - Patent
Marcum LLP	SEC Compliance
Moss Adams LLP	Audit
Andersen Tax LLC	Tax Advisor

EXHIBIT 2

Affidavit of Proposed Professional

**IN THE UNITED STATES BANKRUPTCY COURT
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In re:

PROSOMNUS, INC., *et al.*,¹

Debtors.

Chapter 11

Case No. 24-10972 (JTD)

(Jointly Administered)

Re: Docket No. 76

AFFIDAVIT OF [INSERT FULL NAME OF PROFESSIONAL]

I, [AFFIANT], being duly sworn, state the following:

1. I am the [Title] of [Insert Full Name of Professional] (the “Firm”), which maintains offices at [Insert Address of Professional].

2. Neither I, the Firm, nor any professional thereof, insofar as I have been able to ascertain, has any connection with the above-captioned debtors and debtors in possession (the “Debtors”), their creditors, any other party-in-interest, their respective attorneys and accountants, the United States Trustee or any person employed in the office of the United States Trustee, or any judge in the Bankruptcy Court or District Court for the District of Delaware or any person employed in the offices of the same, except as set forth in this affidavit.

3. The Firm, through myself and other professionals and paraprofessionals of the Firm, has provided certain [Insert General Description of Services] to the Debtors with respect to [Fill in Description of Aspects] of the Debtors’ business.

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4. The Debtors have requested, and the Firm has agreed, to continue to provide services to the Debtors pursuant to section 327 of Title 11 of the United States Code (the “**Bankruptcy Code**”) with respect to such matters. Additionally, the Debtors have requested, and the Firm proposes, to render the following services to the Debtors:

5. **[INSERT DESCRIPTION OF SPECIFIC SERVICES RENDERED]**

6. The Firm's current customary rates are **[Insert Fee/Rate Scale]**. In the normal course of business, the Firm revises its regular rates on **[Insert Date]** of each year and requests that, effective **[Insert Date]** of each year, the aforementioned rates be revised to the regular rates which will be in effect at that time.

7. In the past year, the Firm has rendered services to the Debtors for which the Debtors have been invoiced in the amount of **[\$Insert Amount]**. Additionally, since May 7, 2024 (the “**Petition Date**”), the Firm has provided services to the Debtors that have not yet been billed or that have been billed but for which payment has not been received. The value of such services does not exceed **[\$Insert Amount]**.

8. Except as set forth herein, no promises have been received by the Firm as to compensation in connection with the Chapter 11 Cases other than in accordance with the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware and any orders of this Court.

9. As of the Petition Date, the Firm **[was/was not]** party to an agreement that provides for indemnification. **[A copy of such agreement, if any, is attached as an exhibit to this Affidavit].**

10. Except for its affiliated entities, the Firm has no agreement with any entity to share any compensation received from the Debtors.

11. The Firm and its professionals may have in the past, currently, and may in the future provide services to entities that are creditors of the Debtors in matters totally unrelated to the matters with respect to which the Firm is to be engaged by the Debtors. However, neither I, the Firm, nor any professional thereof, insofar as I have been able to ascertain, holds or represents any interest adverse to the Debtors or their estates in the matters upon which the Firm is to be engaged.

12. The foregoing constitutes the statement of the Firm pursuant to Bankruptcy Code sections 329 and 504 and Bankruptcy Rule 2014.

13. I declare under penalty of perjury under the laws of the United States of America that, to the best of my knowledge and belief, and after reasonable inquiry, the foregoing is true and correct.

By: _____
[Name of Affiant]
[Address of Affiant]