

**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)

(Joint Administration Requested)

**DECLARATION OF EDWARD T. GAVIN, CTP, NCPM IN SUPPORT OF MOTION OF
DEBTORS FOR ENTRY OF INTERIM AND FINAL ORDERS (I) AUTHORIZING THE
DEBTORS TO (A) OBTAIN SENIOR SUBORDINATE SECURED POSTPETITION
FINANCING AND (B) UTILIZE CASH COLLATERAL, (II) GRANTING LIENS AND
SUPERPRIORITY ADMINISTRATIVE EXPENSE CLAIMS, (III) MODIFYING THE
AUTOMATIC STAY, (IV) SCHEDULING A FINAL HEARING,
AND (V) GRANTING RELATED RELIEF**

I, Edward T. Gavin, CTP, NCPM declare under penalty of perjury as follows:

1. I am a Managing Director of the firm Gavin/Solmonese LLC (“**Gavin/Solmonese**”), with offices 1007 N. Orange Street, Suite 461, Wilmington, DE 19801 and other locations. Gavin/Solmonese is the proposed financial advisor for the Debtors.

2. I submit this declaration (the “**Declaration**”) in support of the *Motion of Debtors for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Obtain Senior Subordinate Secured Postpetition Financing and (B) Utilize Cash Collateral, (II) Granting Liens and Superpriority Administrative Expense Claims, (III) Modifying the Automatic Stay, (IV) Scheduling a Final Hearing, and (V) Granting Related Relief* (the “**Motion**”).² I am familiar with the contents of the Motion and, except as otherwise indicated, all statements set forth in this Declaration are based upon (a) my personal knowledge; (b) information supplied to me by other members of

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 defined herein shall have the meaning ascribed to such terms in the Motion.

Gavin/Solmonese or from the Debtors' management or other advisors that I believe in good faith to be reliable; (c) my review of relevant documents; and/or (d) my opinion based upon my experience and knowledge of the Debtors' operations and financial condition.

3. I am over the age of eighteen and authorized to submit this Declaration on behalf of the Debtors. If called upon to testify, I could and would testify competently to the facts set forth in this Declaration.

Qualifications and Background

4. Gavin/Solmonese is a nationally recognized restructuring and turnaround management firm whose professionals have extensive experience providing strategic and financial advisory services to companies and their investors, including restructurings, mergers and acquisitions, and capital-raising.

5. I am well qualified to provide financial advisory services to the Debtors in these Chapter 11 Cases considering my broad-based experience and respected reputation as a financial advisor in bankruptcy reorganization proceedings here in the District of Delaware and nationally.

Need for DIP Facility

6. As described in the Motion, the DIP Facility, including the use of Cash Collateral (defined below), is being offered by certain of the Debtors' pre-petition secured lenders on a fully-consensual basis as part of a negotiated restructuring. Based on my discussions with management and the Debtors' other advisors, my experience in restructuring matters, and my familiarity with the Debtors, I believe the Debtors need immediate access to the proceeds from the DIP Facility and the ability to use Cash Collateral on an interim basis to continue operations for the benefit of their estates and their creditors, including to meet obligations to employees and manage their supply chain. Such relief will avoid immediate and irreparable harm to the Debtors, their estates,

their creditors, and other parties-in-interest and will enable the Debtors to administer and preserve the value of their estates. Based on my knowledge of the Debtors and discussions with the Debtors' management, I understand that the Debtors' ability to maintain business relationships with their vendors, pay their employees, and otherwise finance their continued operations during the Chapter 11 Cases is dependent on the availability of capital from the DIP Facility and the use of Cash Collateral. Without access to the proceeds from the DIP Facility and the ability to use Cash Collateral, the Debtors' going concern value will be jeopardized, to the material detriment of their creditors and all parties-in-interest, and the value-maximizing restructuring contemplated by the Plan will not be possible.

7. The Debtors' continued viability and ability to successfully reorganize as a going concern depend on the timely approval of the use of Cash Collateral and the DIP Facility. The Debtors do not have sufficient Cash Collateral to support their businesses without immediate access to the DIP Facility. I understand that the Senior Secured Parties have consented to the use of Cash Collateral, and that the Subordinated Secured Parties are deemed to consent to such use pursuant to the Intercreditor Agreement.

8. In addition, it is imperative that the Debtors have sufficient exit financing in order to ensure that the Debtors will be well-positioned (and, in fact, to well-position them) for long-term growth and success upon emergence from these chapter 11 cases. The DIP Facility, described below and in the Motion, provides for the conversion of the DIP Obligations into equity in the reorganized Debtors upon emergence. Additionally, as part of the RSA, the Sponsoring Noteholders (who are also DIP Lenders) and new third-party equity investors will purchase additional equity in the Reorganized Debtors. This post-emergence investment is vital to effectuating the restructuring contemplated through the RSA and will help ensure that the Debtors

have the ability to continue their operations uninterrupted, which is imperative to preserve market share, reputation, and the loyalty and goodwill of the Debtors' customers, suppliers, and employees and the value of the Debtors' estates.

The Material Terms of the DIP Facility

9. With the assistance of various other professionals, the Debtors were extensively marketed for financial as well as strategic opportunities. In 2023, after extensive marketing to over 70 institutional investors, the Debtors were unable to any find interested parties due to the structure and magnitude of the Company's indebtedness. Later in the year, the Company ran a second robust strategic evaluation process seeking to restructure its balance sheet, and while initial interest was strong and several parties scheduled multiple, in-depth meetings with management, including business overviews, financial modeling, and new product development meetings, and pre-term sheet due diligence requests were submitted and fulfilled, ultimately no offer was received that supported short-term feasibility or the ability to provide the necessary liquidity to consummate a transaction.

10. Thus, after exploring a substantial number of strategic alternatives and engaging in extensive arms-length, good faith negotiations, the Debtors and holders of approximately 100% of the issued and outstanding 2022 Senior Convertible Notes, 100% of the issued and outstanding 2023 Senior Convertible Exchange Notes, 94.95% of the issued and outstanding 2022 Subordinated Convertible Notes, 100% of the issued and outstanding 2023 Subordinated Convertible Exchange Notes, and 100% of the issued and outstanding 2024 Senior Bridge Notes (the "**Sponsoring Noteholders**") entered into that certain Restructuring Structuring Support Agreement dated as of May 7, 2024 and attached to *Declaration of Brian Dow, Chief Financial Officer of the Debtors in Support of Chapter 11 Petitions and First Day Pleadings* (as may be

amended, modified, or supplemented, the “**RSA**”). All of the DIP Lenders are Sponsoring Noteholders.

11. The DIP Facility provides for (i)(a) \$7,000,000.00 of “new money” term loans and (b) a roll-in of obligations under (i) the Bridge Notes in the aggregate principal amount of \$4,000,000.00, and (ii) the Senior Notes in the aggregate principal amount of \$2,000,000 million; (ii) the continued use of the Prepetition Secured Parties’ cash collateral (the “**Cash Collateral**”) on a fully-consensual basis, and; (iii) the elimination of approximately \$27 million in Prepetition Secured Obligations. The DIP Facility is a senior subordinate term loan facility that is senior to the Subordinate Secured Obligations, but junior to the Senior Secured Obligations.

12. The “rolled-in” obligations consist of obligations under Bridge Notes issued on April 17, 2024 by the Sponsoring Noteholders on a senior secured basis. The \$4,000,000.00 in proceeds received by the Debtors from the Bridge Notes were critical to maintaining the Debtors’ liquidity to allow them to finalize the RSA on the terms most beneficial to the Company and commence the Chapter 11 Cases. Without receiving those proceeds, I do not believe that the Debtors would have been able to meet their operational obligations.

13. While the Bridge Notes were issued on a senior secured basis, the Sponsoring Noteholders have agreed, through the RSA, to roll the obligations thereunder into the relatively subordinate DIP Facility. This fully-consensual structure was the result of extensive negotiation among the Debtors and their professionals, on the one hand, and the Sponsoring Noteholders, on the other hand.

The Proposed DIP Facility is the Best Financing Option Available to the Debtors

14. I understand that, before Gavin/Solmonese was engaged by the Debtors, the Company and their advisors thoroughly explored the relevant market to identify potential lenders,

investors, and/or purchasers. I am aware that, in May 2023, the Debtors engaged Oppenheimer and Co., Inc. (“**Oppenheimer**”) to assist with raising capital but were unable to find any interested parties due to the structure and magnitude of the Company’s indebtedness. The Debtors subsequently went to extensive lengths to consummate a \$10.4 million PIPE financing in September and October 2023 through the issuance of the Series A Convertible Preferred Stock, warrants to purchase common stock and, as applicable, the issuance of the Senior Exchange Notes and Subordinated Exchange Notes. Following such financing, the Debtors engaged Piper Sandler & Co. (“**Piper Sandler**”) to advise the Company on further strategic and financing options. Piper ran a robust strategic evaluation process and, by April 2024, presented the Debtors with a potential third-party purchaser seeking to buy the Company’s assets. However, by this point, the Company was in a dire financial position, and the potential purchaser was not willing to provide the bridge and post-petition financing that would be necessary to consummate a sale transaction. I understand that, other than this potential purchaser, the Debtors had no other viable strategic or transaction partners.

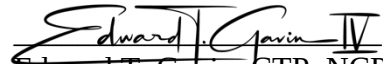
15. With dwindling liquidity and no alternatives, the Debtors turned to their prepetition lenders to negotiate a comprehensive restructuring of the Company that culminated in the provision of the Bridge Notes and entry into the RSA. The DIP Facility, including the Roll-In, is a central feature of the RSA, and I do not believe that the Supporting Noteholders would have provided the Bridge Notes except as rolled-in obligations under the DIP Facility.

16. In light of the significant efforts already expounded by Oppenheimer and Piper, I do not believe that additional efforts to locate alternative post-petition funding would be successful, particularly as the company would face a looming liquidity crisis that would rob the Debtors of all negotiating power and options. Accordingly, I believe that the DIP Facility, which

was negotiated through the RSA, (i) constitutes a reasonable exercise of the Debtors' business judgment, and (ii) constitutes the best financing offer available to the Debtors given their dire financial position and existing indebtedness.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

Dated: May 7, 2024


Edward T. Gavin, CTP, NCPM