

**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)

**DECLARATION OF JAMES LEE WITH RESPECT TO THE TABULATION OF VOTES  
ON THE AMENDED JOINT CHAPTER 11 PLAN OF REORGANIZATION OF  
PROSOMNUS, INC. AND ITS DEBTOR AFFILIATES**

I, James Lee, depose and say under the penalty of perjury:

1. I am a Vice President of Public Securities Services employed by Kurtzman Carson Consultants, LLC dba Verita Global (“**Verita**”), whose main business address is 222 N. Pacific Coast Highway, 3<sup>rd</sup> Floor, El Segundo, California 90245.

2. I submit this declaration (this “**Declaration**”) regarding the solicitation and tabulation of Ballots cast on the *Amended Joint Chapter 11 Plan of Reorganization of ProSomnus, Inc. and its Debtor Affiliates* [Docket No. 192] (the “**Plan**”),<sup>2</sup> except as otherwise noted, all facts set forth herein are based on my personal knowledge, knowledge that I acquired from individuals under my supervision, and my review of relevant documents. I am authorized to submit this Declaration on behalf of Verita. If I were called to testify, I could and would testify competently as to the facts set forth herein.

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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.

<sup>2</sup> Terms not otherwise defined herein shall have the same meanings ascribed to them in the Solicitation Procedures Order or the *Certificate of Service of Leanne V. Rehder Scott re: Solicitation Materials Served on June 28, 2024* [Docket No. 205].

3. The Court authorized Verita's retention (a) as claims and noticing agent to the Debtors on May 9, 2024 pursuant to the *Order Authorizing the Debtors to Employ and Retain Kurtzman Carson Consultants LLC as Claims and Noticing Agent Effective as of Petition Date* [Docket No. 51], and (b) as administrative advisor to the Debtors on June 4, 2024 pursuant to the *Order Authorizing the Debtors to Employ and Retain Kurtzman Carson Consultants as Administrative Advisor, Effective as of the Petition Date* [Docket No. 118] (together, the "**Retention Orders**"). The Retention Orders authorize Verita to assist the Debtors with, among other things, the service of solicitation materials and tabulation of votes cast to accept or reject the Plan. Verita and its employees have considerable experience in soliciting and tabulating votes to accept or reject chapter 11 plans.

4. On June 26, 2024, the Court entered the *Order (I) Approving Disclosure Statement and Form and Manner of Notice of Disclosure Statement Hearing, (II) Establishing Solicitation and Voting Procedures, (III) Scheduling Confirmation Hearing, (IV) Establishing Notice and Objection Procedures for Confirmation of Plan, and (V) Granting Related Relief* [Docket No. 195] (the "**Solicitation Procedures Order**"), establishing, among other things, the solicitation procedures. Verita adhered to the procedures outlined in the Solicitation Procedures Order and the Ballots distributed to parties entitled to vote on the Plan. I supervised the solicitation and tabulation performed by Verita's employees.

#### **A. Service and Transmittal of Solicitation Packages and Related Information**

5. Pursuant to the Solicitation Procedures Order, on June 28, 2024, Verita caused the Solicitation Packages to be served on all known holders of Claims in Class 1 (Senior Notes Claims) and Class 2 (Subordinated Notes Claims) (together, the "**Voting Classes**"). All known holders of Claims in Class 3 (Other Secured Claims), Class 4 (Other Priority Claims), Class 5 (General Unsecured Claims), and unclassified Claims received the Unimpaired Non-Voting Package, and all

known holders of Claims in Class 6 (Section 510(b) Claims) and Interests in Class 7 (Interests) received the Impaired Non-Voting Package. Furthermore, Verita caused the Confirmation Hearing Notice to be served on the creditor matrix and all other parties required to receive such notice pursuant to the Solicitation Procedures Order. A certificate of service evidencing the foregoing was filed with the Court on July 9, 2024 [Docket No. 205].

6. On June 26, 2024, Verita posted links to the electronic versions of the Plan, Disclosure Statement, Solicitation Procedures Order, and Confirmation Hearing Notice on the public access website at <https://www.veritaglobal.net/prosomnus>.

7. On July 1, 2024, the Confirmation Hearing Notice was published in *The New York Times*. An affidavit evidencing the publication of the Confirmation Hearing Notice was filed with the Court on July 3, 2024 [Docket No. 202].

8. Verita also forwarded Solicitation Packages, Unimpaired Non-Voting Packages, Impaired Non-Voting Packages, and Confirmation Hearing Notices to voting, non-voting, and creditor matrix parties, as applicable, whose packages were returned with a forwarding address or if an alternate address was available. Certificates of service evidencing the foregoing were filed with the Court on July 18, 2024 [Docket Nos. 209 & 211] and July 25, 2024 [Docket No. 223] (together with Docket No. 205, the “**Solicitation Certificates**”).

## **B. The Tabulation Process**

9. The Solicitation Procedures Order established June 24, 2024 as the Voting Record Date to determine which holders of Claims and Interests were entitled to receive the Solicitation Package, Unimpaired Non-Voting Package, Impaired Non-Voting Package, or the Confirmation Notice, as applicable. Pursuant to the Solicitation Procedures Order, holders of Claims in Class 1 (Senior Notes

Claims) and Class 2 (Subordinated Notes Claims) were entitled to vote to accept or reject the Plan. No other Classes were entitled to vote on the Plan.

10. In accordance with the solicitation procedures, Verita worked closely with the Debtors' advisors to identify the holders of Claims in the Voting Classes entitled to vote as of the Voting Record Date, and to coordinate the distribution of Solicitation Packages to such holders. A detailed description of Verita's distribution of Solicitation Packages is set forth in the Solicitation Certificates.

11. Verita relied on a security position report provided by the Depository Trust Company ("DTC") as of the Voting Record Date to identify the banks and brokerage firms (the "Nominees") of Class 1 (Senior Notes Claims) whose Beneficial Holders are entitled to vote to accept or reject the Plan.

12. In accordance with the solicitation procedures, Verita received, reviewed, determined the validity of, and tabulated the Ballots submitted to vote on the Plan. Each Ballot submitted to Verita was date-stamped, scanned, assigned a Ballot number, entered into Verita's voting database, and processed. To be included in the tabulation results as valid, a Ballot must have been (a) properly completed pursuant to the solicitation procedures, (b) executed by the relevant holder entitled to vote on the Plan (or such holder's representative), (c) returned to Verita via an approved method of delivery set forth in the solicitation procedures unless the delivery method requirement was waived by the Debtors, and (d) received by Verita on or before the Voting Deadline (*i.e.*, 4:00 p.m. (prevailing Eastern Time) on July 19, 2024), which was established by the Solicitation Procedures Order.

13. The final tabulation of votes cast by timely and properly completed Ballots received by Verita is attached hereto as **Exhibit A**.

**D. Opt-Out Election**

14. Verita also reviewed and documented which parties submitted a Ballot or Opt-Out Form rejecting the Plan and checked the box on such Ballot or Opt-Out Form to opt out of the Third-Party Release. A report of all parties who opted out of the Third-Party Release by checking the opt-out box is attached hereto as **Exhibit B**. For the avoidance of doubt, this Declaration does not certify the validity or enforceability of any opt-out elections received, including those reported on **Exhibit B**, but rather is providing these opt-out election results for reporting and informational purposes only.

To the best of my knowledge, information and belief, the foregoing information concerning the distribution, submission, and tabulation of Ballots in connection with the Solicited Plan is true.

Dated: July 25, 2024

/s/ James Lee

James Lee  
Vice President  
Verita

## **Exhibit A**

## Exhibit A

## Ballot Tabulation Summary

| Class | Class Description         | Not<br>Tabulated | Members<br>Voted | Members<br>Accepted | Members<br>Rejected | % Members<br>Accepted | % Members<br>Rejected | Total \$ Voted  | \$ Accepted     | \$ Rejected | % \$<br>Accepted | % \$<br>Rejected | Class Accepted<br>or Rejected |
|-------|---------------------------|------------------|------------------|---------------------|---------------------|-----------------------|-----------------------|-----------------|-----------------|-------------|------------------|------------------|-------------------------------|
| 1     | Senior Notes Claims       | 0                | 3                | 3                   | 0                   | 100.00%               | 0.00%                 | \$16,954,807.00 | \$16,954,807.00 | \$0.00      | 100.00%          | 0.00%            | Accepted                      |
| 2     | Subordinated Notes Claims | 0                | 8                | 8                   | 0                   | 100.00%               | 0.00%                 | \$20,709,422.00 | \$20,709,422.00 | \$0.00      | 100.00%          | 0.00%            | Accepted                      |

**Exhibit A-1****Class 1 - Senior Notes Claims**

| <b>Creditor Name</b>                                     | <b>Date Received</b> | <b>Ballot No.</b> | <b>Voting Amount</b> | <b>Date Signed</b> | <b>Vote</b> |
|----------------------------------------------------------|----------------------|-------------------|----------------------|--------------------|-------------|
| CrossingBridge Low Duration High Yield Fund              | 7/17/2024            | 8                 | \$7,387,240.00       | 07/17/2024         | Accept      |
| Destinations Low Duration Fixed Income Fund              | 7/17/2024            | 7                 | \$6,180,606.00       | 07/17/2024         | Accept      |
| DTC No. 2803 US Bank NA; Account No.<br>6027016893926289 | 7/19/2024            | N/A               | \$3,386,961.00       | 07/19/2024         | Accept      |

**Exhibit A-2****Class 2 - Subordinated Notes Claims**

| <b>Creditor Name</b>                                | <b>Date Received</b> | <b>Ballot No.</b> | <b>Voting Amount</b> | <b>Vote</b> |
|-----------------------------------------------------|----------------------|-------------------|----------------------|-------------|
| Cedarview Opportunities Master Fund, L.P.           | 07/15/2024           | 4                 | \$2,185,052.00       | Accept      |
| Cetus Capital VI, L.P.                              | 07/16/2024           | 5                 | \$7,283,506.00       | Accept      |
| Cohanzick Absolute Return Master Fund, Ltd.         | 07/17/2024           | 11                | \$316,223.00         | Accept      |
| Destinations Global Fixed Income Opportunities Fund | 07/17/2024           | 12                | \$3,874,107.00       | Accept      |
| Leaffilter North Holdings, Inc.                     | 07/17/2024           | 9                 | \$400,519.00         | Accept      |
| Nautilus Master Fund, L.P.                          | 07/19/2024           | 15                | \$1,045,156.00       | Accept      |
| RiverPark Strategic Income Fund                     | 07/17/2024           | 10                | \$1,893,359.00       | Accept      |
| SMC Holdings II, LP                                 | 07/15/2024           | 3                 | \$3,711,500.00       | Accept      |

## **Exhibit B**

**Exhibit B**  
**Opt Out Summary**

| Creditor Name                   | Date       |            | Class                                                               | Opt Out of Release |
|---------------------------------|------------|------------|---------------------------------------------------------------------|--------------------|
|                                 | Received   | Ballot No. |                                                                     |                    |
| Nautilus Master Fund, L.P.      | 07/19/2024 | 15         | 2 Subordinated Notes Claims (Registered Holders)                    | Yes                |
| Alliance Funding                | 07/18/2024 | 13         | Unimpaired Non-Voting Classes 3, 4, 5 & Unclassified (Opt Out Only) | Yes                |
| Angie Lopez Hayward             | 07/16/2024 | 6          | Unimpaired Non-Voting Classes 3, 4, 5 & Unclassified (Opt Out Only) | Yes                |
| Great Lakes Dental Technologies | 07/02/2024 | 1          | Unimpaired Non-Voting Classes 3, 4, 5 & Unclassified (Opt Out Only) | Yes                |
| The Huntington National Bank    | 07/18/2024 | 14         | Unimpaired Non-Voting Classes 3, 4, 5 & Unclassified (Opt Out Only) | Yes                |
| Uline                           | 07/09/2024 | 2          | Unimpaired Non-Voting Classes 3, 4, 5 & Unclassified (Opt Out Only) | Yes                |