

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**  
Washington, D.C. 20549

**FORM 8-K**

**CURRENT REPORT  
Pursuant to Section 13 or 15(d) of the  
Securities Exchange Act of 1934**

Date of Report (Date of earliest event reported): **February 12, 2024**

**PROSOMNUS, INC.**

(Exact name of registrant as specified in its charter)

**Delaware**

(State or other jurisdiction of  
incorporation)

**001-41567**

(Commission file number)

**88-2978216**

(IRS Employer Identification No.)

**5675 Gibraltar Dr.  
Pleasanton, CA**

(Address of principal executive offices)

**94588**

(Zip Code)

**(844) 537-5337**

(Registrant's telephone number, including area code)

**Not Applicable**

(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communication pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbol	Name of each exchange on which registered
Common Stock, par value \$0.0001 per share	OSA	The Nasdaq Stock Market LLC
Warrants, each whole warrant exercisable for one share of Common Stock for \$11.50 per share	OSAAW	The Nasdaq Stock Market LLC

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

### **Item 3.01. Notice of Delisting or Failure to Satisfy a Continued Listing Rule or Standard; Transfer of Listing.**

As previously disclosed on a Current Report on Form 8-K filed with the Securities and Exchange Commission (the “SEC”) on August 18, 2023, on August 14, 2023, (the “Company”) received a notification letter (the “Notice”) from the Listing Qualifications Department (the “Staff”) of The Nasdaq Stock Market, LLC (“Nasdaq”) notifying the Company that it was no longer in compliance with the minimum Market Value of Listed Securities (“MVLS”) of \$50,000,000 required for continued listing on the Nasdaq Global Market, as set forth in Nasdaq Listing Rule 5450(b)(2)(A) (the “MVLS Requirement”). In accordance with Nasdaq Listing Rule 5810(c)(3)(C), Nasdaq afforded the Company an initial compliance period of 180 calendar days for the MVLS Requirement, which expired on February 12, 2024 (the “Compliance Date”).

On February 13, 2024, the Company received a determination letter from the Staff that it had failed to regain compliance with the MVLS Requirement by the Compliance Date because the Company’s MLVS did not close at or above \$50,000,000 for the previous 30 consecutive trading days and is not eligible for a second 180 calendar day period to regain compliance. Accordingly, unless the Company timely requests a hearing before an independent Nasdaq Hearings Panel (the “Panel”), the trading of the Company’s common stock and warrants on the Nasdaq Global Market and the Nasdaq Capital Market, respectively, will be suspended at the open of business on February 22, 2024, and a Form 25-NSE will be filed with the SEC to remove the Company’s common stock and warrants from listing and registration on the Nasdaq Global Market and the Nasdaq Capital Market, respectively. A hearing request will stay any delisting or suspension action by the Staff pending the issuance of the Panel’s decision.

The Company submitted a hearing request to the Panel on February 16, 2024 to appeal the Staff’s delisting determination. A hearing request will stay any delisting or suspension of the Company’s common stock and warrants and the filing of a Form 25-NSE pending the Panel’s decision. At the hearing, the Company will present a plan to regain compliance with the MVLS Requirement. There can be no assurance that the Panel will grant the Company’s request for continued listing.

Additionally, as previously disclosed, the Company received separate written notices from Nasdaq, indicating that the Company was no longer in compliance with the minimum bid price requirement for continued listing on the Nasdaq Global Market, as set forth in Nasdaq Listing Rule 5450(a)(1) (the “Minimum Bid Price Requirement”), and that the Company was no longer in compliance with the minimum Market Value of Publicly Held Shares of \$15,000,000 for continued listing on the Nasdaq Global Market, as set forth in Nasdaq Listing Rule 5450(b)(2)(C) (the “MVPHS Requirement”). The Company was afforded an initial compliance period of 180 calendar days for the MVPHS Requirement and the Minimum Bid Price Requirement, which are set to expire on March 18, 2024 and April 30, 2024, respectively.

The Company is pursuing resolution of the deficiencies noted; however, there can be no assurance that the Company’s plan as presented to the Panel will be accepted by the Panel or that, if it is, the Company will be able to regain compliance with the applicable Nasdaq listing requirements, or that a Panel will stay the suspension of the Company’s securities. If the Company’s securities are delisted from the Nasdaq Global Market and Nasdaq Capital Market, it could be more difficult to buy or sell the Company’s securities or to obtain accurate quotations, and the price of the Company’s securities could suffer a material decline. Delisting could also impair the Company’s ability to raise capital and/or trigger defaults and penalties under outstanding agreements or securities of the Company.

#### **Forward-Looking Statements**

This Current Report on Form 8-K contains forward-looking statements within the meaning of Section 27A of the Securities Act and Section 21E of the Securities Exchange Act of 1934, as amended. Forward-looking statements generally relate to future events. In some cases, you can identify forward-looking statements because they contain words such as “may,” “will,” “should,” “expects,” “plans,” “anticipates,” “could,” “intends,” “target,” “projects,” “contemplates,” “believes,” “estimates,” “predicts,” “potential” or “continue” or the negative of these words or other similar terms or expressions that concern the proposed transaction and the Company’s expectations, strategy, plans or intentions regarding it. Forward-looking statements in this Current Report on Form 8-K include, but are not limited to, the Company’s intention to present a compliance plan to regain compliance with the MVLS Requirement to the Panel.

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All forward-looking statements included in this Current Report on Form 8-K are made as of the date of this report, based on information currently available to the Company, deal with future events, and are subject to various risks and uncertainties, including the risk that the Company may not meet the MVPHS Requirement, Minimum Bid Price Requirement or the MLVS Requirement by the required compliance date or in the future, the risk that the Company may not otherwise meet the requirements for continued listing under the Nasdaq Listing Rules, the risk that Nasdaq may not grant the Company relief from delisting if necessary, and the risk that the Company may not ultimately meet applicable Nasdaq requirements if any such relief is necessary, among other risks and uncertainties, and actual results could differ materially from those anticipated in those forward-looking statements. The risks and uncertainties that may cause actual results to differ materially from the Company's current expectations are more fully described in the Company's Annual Report on Form 10-K filed with the SEC on April 14, 2023, any subsequently filed Quarterly Reports on Form 10-Q, and its other reports, each as filed with the SEC. Except as required by law, the Company assumes no obligation to update any such forward-looking statement after the date of this report or to conform these forward-looking statements to actual results.

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**SIGNATURE**

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

Date: February 16, 2024

**PROSOMNUS, INC.**

By: /s/ Brian B. Dow

Name: Brian B. Dow

Title: Chief Financial Officer

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