

**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): **April 17, 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 1.01. Entry into a Material Definitive Agreement

On April 17, 2024, ProSomnus, Inc. (the “Company”) issued and sold to certain existing ProSomnus investors \$2,000,000 aggregate principal amount of the Company’s Senior Secured Convertible Notes due December 6, 2025 (the “Additional Notes”) related to that certain Indenture, dated December 6, 2022, as supplemented by the First Supplemental Indenture entered into on June 29, 2023 (the “First Supplemental Indenture”) and the Second Supplemental Indenture entered into on September 20, 2023 (the “Second Supplemental Indenture”), by and among the Company, ProSomnus Holdings, Inc. and ProSomnus Sleep Technologies, Inc., as guarantors (the “Subsidiary Guarantors”), and Wilmington Trust, National Association, as trustee and collateral agent (as so supplemented, the “Indenture”). In connection with the issuance of the Additional Notes, the Company entered into agreements with certain of the holders of its other series of existing convertible notes, including the holders of the Existing Notes (as defined below) to, among other things, consent to the issuance of such Additional Notes.

Subject to certain modifications, the terms of the Additional Notes are substantially identical to the Company’s Senior Secured Convertible Notes due December 6, 2025 previously issued under the Indenture (the “Existing Notes”). The Additional Notes bear interest at a rate of 9% per annum and interest on the Additional Notes is payable in cash quarterly in arrears on January 1, April 1, July 1 and October 1 of each year, commencing on October 1, 2024. Consistent with the terms of the Existing Notes, the Additional Notes will mature on December 6, 2025, subject to earlier conversion, redemption or repurchase, are guaranteed by the Subsidiary Guarantors and are secured, on a pari passu first lien basis with the Existing Notes and the Company’s Senior Secured Convertible Exchange Notes due December 6, 2025 issued on October 11, 2023, by substantially all of the tangible and intangible assets (other than certain excluded assets) of the Company and the Subsidiary Guarantors, as set forth in the Senior Security Agreement, dated December 6, 2022, by and among the Company, the Subsidiary Guarantors and Wilmington Trust, National Association, as collateral agent.

The description of the Additional Notes is qualified in its entirety by reference to the text of the Indenture, the First Supplemental Indenture, the Second Supplemental Indenture, and the Additional Notes, which are filed as Exhibits 4.1, 4.2, 4.3 and 4.4 hereto, respectively, and are incorporated by reference.

Item 2.03. Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant.

The information contained in Item 1.01 of this Current Report on Form 8-K is incorporated by reference into this Item 2.03.

Item 3.02. Unregistered Sales of Equity Securities.

The information contained in Item 1.01 of this Current Report on Form 8-K is incorporated by reference into this Item 3.02.

The offering of the Additional Notes was not registered under the Securities Act of 1933, as amended (the “Securities Act”). The offer and sale of the Additional Notes was made in reliance on an exemption from registration under the Securities Act pursuant to Section 4(a)(2) promulgated thereunder.

Item 9.01. Financial Statements and Exhibits.

d) Exhibits.

<u>Exhibit No.</u>	<u>Description</u>
4.1	Indenture, dated as of December 6, 2022, by and among ProSomnus, Inc., ProSomnus Holdings, Inc. and ProSomnus Sleep Technologies, Inc., as guarantors, and Wilmington Trust, National Association (previously filed as Exhibit 10.9 to the Company’s Current Report on Form 8-K dated December 13, 2022 and incorporated herein by reference)
4.2	First Supplemental Indenture, dated as of June 29, 2023, by and among ProSomnus, Inc., ProSomnus Holdings, Inc. and ProSomnus Sleep Technologies, Inc., as guarantors, and Wilmington Trust, National Association (previously filed as Exhibit 4.1 to the Company’s Current Report on Form 8-K dated June 30, 2023 and incorporated herein by reference)
4.3	Second Supplemental Indenture, dated as of September 20, 2023, by and among ProSomnus, Inc., ProSomnus Holdings, Inc. and ProSomnus Sleep Technologies, Inc., as guarantors, and Wilmington Trust, National Association (previously filed as Exhibit 4.2 to the Company’s Current Report on Form 8-K dated September 21, 2023 and incorporated herein by reference)
4.4	Form of Senior Secured Convertible Note Due December 6, 2025
104	Cover Page Interactive Data File (embedded within the Inline XBRL document)

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: April 19, 2024

PROSOMNUS, INC.

By: /s/ Brian B. Dow

Name: Brian B. Dow

Title: Chief Financial Officer

[FORM OF FACE OF NOTE]

[For all Notes other than New Notes, include the following legend (the “**Non-Affiliate Legend**”):]

NO AFFILIATE (AS DEFINED IN RULE 144 UNDER THE SECURITIES ACT) OF THE COMPANY OR PERSON THAT HAS BEEN AN AFFILIATE (AS DEFINED IN RULE 144 UNDER THE SECURITIES ACT) OF THE COMPANY DURING THE IMMEDIATELY PRECEDING THREE MONTHS MAY PURCHASE, OTHERWISE ACQUIRE OR HOLD THIS NOTE OR A BENEFICIAL INTEREST HEREIN.

[For Global Notes, include the following legend (the “**Global Notes Legend**”):]

THIS SECURITY IS A GLOBAL NOTE WITHIN THE MEANING OF THE INDENTURE HEREINAFTER REFERRED TO AND IS REGISTERED IN THE NAME OF A DEPOSITARY OR A NOMINEE THEREOF. THIS SECURITY MAY NOT BE EXCHANGED IN WHOLE OR IN PART FOR A SECURITY REGISTERED, AND NO TRANSFER OF THIS SECURITY IN WHOLE OR IN PART MAY BE REGISTERED, IN THE NAME OF ANY PERSON OTHER THAN SUCH DEPOSITARY OR A NOMINEE THEREOF, EXCEPT IN THE LIMITED CIRCUMSTANCES DESCRIBED IN THE INDENTURE.

[THIS SECURITY AND THE SHARES OF COMMON STOCK, IF ANY, ISSUABLE UPON CONVERSION OF THIS SECURITY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “SECURITIES ACT”), AND MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT IN ACCORDANCE WITH THE FOLLOWING SENTENCE. BY ITS ACQUISITION HEREOF OR OF A BENEFICIAL INTEREST HEREIN, THE ACQUIRER:

- (1) REPRESENTS THAT IT AND ANY ACCOUNT FOR WHICH IT IS ACTING IS A “QUALIFIED INSTITUTIONAL BUYER” (WITHIN THE MEANING OF RULE 144A UNDER THE SECURITIES ACT) AND THAT IT EXERCISES SOLE INVESTMENT DISCRETION WITH RESPECT TO EACH SUCH ACCOUNT, AND**
- (2) AGREES FOR THE BENEFIT OF PROSOMNUS, INC. (THE “COMPANY”) THAT IT WILL NOT OFFER, SELL, PLEDGE OR OTHERWISE TRANSFER THIS SECURITY OR ANY BENEFICIAL INTEREST HEREIN PRIOR TO THE DATE THAT IS THE LATER OF (X) ONE YEAR AFTER THE LAST ORIGINAL ISSUE DATE HEREOF OR SUCH SHORTER PERIOD OF TIME AS PERMITTED BY RULE 144 UNDER THE SECURITIES ACT OR ANY SUCCESSOR PROVISION THERETO AND (Y) SUCH LATER DATE, IF ANY, AS MAY BE REQUIRED BY APPLICABLE LAW, EXCEPT:**
 - (A) TO THE COMPANY OR ANY SUBSIDIARY THEREOF, OR**
 - (B) PURSUANT TO A REGISTRATION STATEMENT WHICH HAS BECOME EFFECTIVE UNDER THE SECURITIES ACT, OR**
 - (C) TO A QUALIFIED INSTITUTIONAL BUYER IN COMPLIANCE WITH RULE 144A UNDER THE SECURITIES ACT, OR**
 - (D) PURSUANT TO AN EXEMPTION FROM REGISTRATION PROVIDED BY RULE 144 UNDER THE SECURITIES ACT OR ANY OTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.**

PRIOR TO THE REGISTRATION OF ANY TRANSFER IN ACCORDANCE WITH CLAUSE (2)(D) ABOVE, THE COMPANY AND THE TRUSTEE RESERVE THE RIGHT TO REQUIRE THE DELIVERY OF SUCH LEGAL OPINIONS, CERTIFICATIONS OR OTHER EVIDENCE AS MAY REASONABLY BE REQUIRED IN ORDER TO DETERMINE THAT THE PROPOSED TRANSFER IS BEING MADE IN COMPLIANCE WITH THE SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS. NO REPRESENTATION IS MADE AS TO THE AVAILABILITY OF ANY EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.]¹

[For all Notes, include the following legend:]

[ANYTHING HEREIN TO THE CONTRARY NOTWITHSTANDING, THE LIENS AND SECURITY INTERESTS SECURING THE OBLIGATIONS EVIDENCED BY THIS NOTE, THE EXERCISE OF ANY RIGHT OR REMEDY WITH RESPECT THERETO, AND CERTAIN OF THE RIGHTS OF THE HOLDER HEREOF ARE SUBJECT TO THE PROVISIONS OF THE AMENDED AND RESTATED INTERCREDITOR AGREEMENT DATED AS OF OCTOBER 11, 2023 (AS AMENDED, AMENDED AND RESTATED, SUPPLEMENTED, OR OTHERWISE MODIFIED FROM TIME TO TIME, THE "INTERCREDITOR AGREEMENT"), BY AND AMONG THE COMPANY, THE SUBSIDIARY GUARANTORS, WILMINGTON TRUST, NATIONAL ASSOCIATION, AS SECOND LIEN COLLATERAL AGENT FOR THE SUBORDINATED DEBT AND WILMINGTON TRUST, NATIONAL ASSOCIATION, AS FIRST LIEN COLLATERAL AGENT FOR THE SENIOR DEBT. IN THE EVENT OF ANY CONFLICT BETWEEN THE TERMS OF THE INTERCREDITOR AGREEMENT AND THIS NOTE, THE TERMS OF THE INTERCREDITOR AGREEMENT SHALL GOVERN AND CONTROL.

¹ This Restricted Notes Legend shall be deemed removed from the Note when (i) the Company delivers, pursuant to Section 2.08(b) of the within-mentioned Indenture, the Free Transferability Certificate and (ii) this Note is identified by such CUSIP number in accordance with the applicable procedures of the Depository.

ProSomnus, Inc.
Senior Secured Convertible Notes due 2025

No.: []
CUSIP: []²

Principal Amount \$ []

[For Global Notes, include the following: as revised by the Schedule of Increases and Decreases in the Global Note attached hereto]

ProSomnus, Inc., a Delaware corporation (the “**Company**”), promises to pay to [] [include “Cede & Co.” for Global Note] or registered assigns, the principal amount of [add principal amount in words] \$[] [For Global Notes, include the following: as revised by the Schedule of Increases and Decreases in the Global Note attached hereto,] as follows: [include 5.00% of the principal amount] on January 1, April 1, July 1 and October 1, commencing with October 1, 2024, until the earlier of December 6, 2025 (the “**Maturity Date**”) or the Notes no longer being outstanding because earlier repaid, purchased or converted in accordance with this Indenture. The outstanding principal amount of the Notes shall be payable on the Maturity Date.

Interest Payment Dates: January 1, April 1, July 1 and October 1 of each year, beginning on [], on each Conversion Date (as to that principal amount then being converted), on each Optional Redemption Date (as to that principal amount then being redeemed) and on the Maturity Date; *provided, however,* that the interest otherwise payable on April 1, 2024 and July 1, 2024 may instead be paid on October 1, 2024. Interest will accrue from [].

Regular Record Dates: December 15, March 15, June 15 and September 15.

Additional provisions of this Security are set forth on the other side of this Note.

IN WITNESS WHEREOF, ProSomnus, Inc. has caused this instrument to be signed manually or by facsimile or by another electronic method by one of its duly authorized Officers.

ProSomnus, Inc.

By: _____
Name:
Title:

This is one of the Notes referred to in the within-mentioned Indenture.

Dated:

Wilmington Trust, National Association, as Trustee

By: _____
Authorized Signatory
Title:

² This Note will be deemed to be identified by CUSIP No. [] from and after such time when (i) the Company delivers, pursuant to Section 2.08(b) of the within-mentioned Indenture, the Free Transferability Certificate and (ii) this Note is identified by such CUSIP number in accordance with the applicable procedures of the Depositary.

[FORM OF REVERSE OF NOTE]

ProSomnus, Inc.

Senior Secured Convertible Notes due 2025

This Note is one of a duly authorized issue of securities of the Company (herein called the “Notes”), issued under the Indenture dated as of December 6, 2022 by and among the Company, the Subsidiary Guarantors, Wilmington Trust, National Association, as trustee, herein called the “Trustee,” and as Collateral Agent herein referred to as the “Collateral Agent”, reference is hereby made to the Indenture for a statement of the respective rights, limitations of rights, duties and immunities thereunder of the Company, the Trustee, the Collateral Agent and the Holders of the Notes and of the terms upon which the Notes are, and are to be, authenticated and delivered.

[For New Notes: The Company shall use the net proceeds of the sale of this Note to *[describe use of proceeds]*.

Promptly upon request of the purchaser of this Note and without payment of additional consideration by the purchaser, the Company shall enter into a registration rights agreement with the purchaser of this Note substantially in the form of the Registration Rights Agreement.]

The Company shall pay all interest due on this Note as set forth in the Indenture on the then outstanding principal amount of this Note.

This Note does not benefit from a sinking fund. This Note is subject to redemption.

The Notes are secured, on a senior secured basis, by the Collateral pursuant to the Security Documents referred to in the Indenture.

As provided in and subject to the provisions of the Indenture, the Holder hereof has the right, prior to the Close of Business on the second Business Day immediately preceding the Maturity Date, to convert this Note or a portion of this Note such that the principal amount of this Note converted equals \$1.00 or an integral multiple of \$1.00 into cash, a number of shares of Common Stock or a combination thereof determined in accordance with Article 4 of the Indenture and subject to adjustment as set forth therein.

The Indenture permits, with certain exceptions as therein provided, the amendment thereof and the modification of the rights and obligations of the Company and the rights of the Holders of the Notes to be effected under the Indenture at any time by the Company, the Trustee and the Collateral Agent with the consent of the Holders of a majority in principal amount of the Notes at the time Outstanding. The Indenture also contains provisions permitting the Holders of specified percentages in principal amount of the Notes at the time Outstanding, on behalf of the Holders of all Notes, to waive compliance by the Company with certain provisions of the Indenture and certain past Defaults under the Indenture and their consequences. Any such consent or waiver by the Holder of this Note shall be conclusive and binding upon such Holder and upon all future Holders of this Note and of any Note issued upon the registration of transfer hereof or in exchange herefor or in lieu hereof, whether or not notation of such consent or waiver is made upon this Note.

As provided in and subject to the provisions of the Indenture, the Holder of this Note shall not have the right to institute any proceeding with respect to the Indenture, or for the appointment of a receiver or trustee, or for any other remedy thereunder, unless such Holder shall have previously given the Trustee written notice of a continuing Event of Default with respect to the Note, the Holders of not less than 25% in principal amount of the Notes at the time Outstanding shall have made written request to the Trustee to institute proceedings in respect of such Event of Default as Trustee and offered (and if requested, provided) the Trustee indemnity satisfactory to the Trustee, and the Trustee shall have failed to institute any such proceeding, for 60 days after receipt of such notice, request and offer of indemnity, and shall not have received from the Holders of a majority in principal amount of Notes at the time Outstanding a direction inconsistent with such request. The foregoing shall not apply to any suit instituted by the Holder of this Note for the enforcement of any payment of the principal hereof, premium, if any, or interest hereon, with respect to and the amount of cash, the number of shares of Common Stock or the combination thereof, as the case may be, due upon conversion of this Note or after the respective due dates expressed in the Indenture.

No reference herein to the Indenture and no provision of this Note or of the Indenture shall alter or impair the obligation of the Company, which is absolute and unconditional, to pay or deliver, as the case may be, the principal of, premium, interest on and the amount of cash, a number of shares of Common Stock or a combination of cash and shares of Common Stock, if any, as the case may be, due upon conversion of, this Note at the time, place and rate, and in the coin and currency, herein prescribed.

As provided in the Indenture and subject to certain limitations therein set forth, the transfer of this Note is registrable in the Register, upon surrender of this Note for registration of transfer to the Trustee, duly endorsed by, or accompanied by a written instrument of transfer in form satisfactory to the Company and the Registrar duly executed by, the Holder hereof or its attorney duly authorized in writing, and thereupon a new Note of this series and of like tenor for the same aggregate principal amount will be issued to the designated transferee.

The Notes are issuable only in registered form without coupons in minimum denominations of \$1.00 and integral multiples of \$1.00. As provided in the Indenture and subject to certain limitations therein set forth, the Notes are exchangeable for a like aggregate principal amount of Notes and of like tenor of a different authorized denomination, as requested by the Holder surrendering the same.

Subject to the rights of the Holders as of the Regular Record Date to receive interest on the related Interest Payment Date, prior to due presentment of this Note for registration of transfer, the Company, the Trustee, the Agents and any of their respective agents may treat the Person in whose name the Note is registered as the owner hereof for all purposes, whether or not this Note be overdue, and neither the Company, the Trustee, the Agents nor any agents shall be affected by notice to the contrary.

Customary abbreviations may be used in the name of a Holder or an assignee, such as TEN COM (= tenants in common), TEN ENT (= tenants by the entirety), JT TEN (= joint tenants with rights of survivorship and not as tenants in common), CUST (= custodian) and U/G/M/A (= Uniform Gift to Minors Act).

Upon the issuance of any new Note, the Company may require payment by the Holder of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses (including fees and expenses of the Trustee) connected therewith.

All defined terms used in this Note that are defined in the Indenture shall have the meanings assigned to them in the Indenture. If any provision of this Note limits, qualifies or conflicts with a provision of the Indenture, such provision of the Indenture shall control.