

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

VYAIRE MEDICAL, INC., *et al.*,¹

Debtors.

Chapter 11

Case No. 24-11217 (BLS)

(Jointly Administered)

Re: Docket No. 237

**ORDER AUTHORIZING DEBTORS TO
EMPLOY AND RETAIN OMNI AGENT SOLUTIONS, INC. AS
ADMINISTRATIVE AGENT EFFECTIVE AS OF THE PETITION DATE**

Upon the application (the “Application”)² of the Debtors in the Chapter 11 Cases for entry of an order, pursuant to sections 327(a) and 328(a) of the Bankruptcy Code, Bankruptcy Rules 2014(a) and 2016, and Local Rule 2014-1, (a) authorizing the Debtors to employ and retain Omni Agent Solutions as the Administrative Agent in the Chapter 11 Cases effective as of the Petition Date pursuant to the Engagement Agreement; and (b) granting related relief; and the United States District Court for the District of Delaware having jurisdiction over this matter pursuant to 28 U.S.C. § 1334, which was referred to the Court under 28 U.S.C. § 157 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012; and the Court having authority to hear the matters raised in the Application pursuant to 28 U.S.C. § 157; and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and consideration of the Application and the requested relief

1 A complete list of each of the Debtors in these chapter 11 cases and each such Debtor's federal tax identification number may be obtained on the website of the Debtors' claims and noticing agent at <https://omniagentsolutions.com/Vyaire>. The location of Debtor Vyaire Medical, Inc.'s principal place of business and the Debtors' service address in these chapter 11 cases is 26125 North Riverwoods Boulevard, Mettawa, Illinois, USA 60045.

² Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Application.

being a core proceeding that the Court can determine pursuant to 28 U.S.C. § 157(b)(2); and due and proper notice of the Application and opportunity for a hearing on the Application having been given to the Notice Parties, and it appearing that no other or further notice need be provided; and the Court having reviewed and considered the Application, the Deutch Declaration and the First Day Declaration; and the Court having held, if necessary, a hearing on the Application (the “Hearing”); and the Court having found that the legal and factual bases set forth in the Application establish just cause for the relief granted herein; and the Court having found that the terms and conditions of Omni’s employment are reasonable as required by section 328(a) of the Bankruptcy Code; and the Court having found that Omni is a “disinterested person” as that term is defined in section 101(14) of the Bankruptcy Code; and the Court having found that the relief requested in the Application being in the best interests of the Debtors, their creditors, their estates, and all other parties in interest; 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 Application is approved as set forth in this Order.
2. The Debtors are authorized to retain Omni as Administrative Agent effective as of the Petition Date under the terms of the Engagement Agreement, and Omni is authorized to perform the bankruptcy administration services described in the Application and set forth in the Engagement Agreement.
3. Omni is authorized to take such other action to comply with all duties set forth in the Application.
4. Omni shall apply to the Court for allowance of compensation and reimbursement of expenses incurred after the Petition Date in accordance with the applicable provisions of the

Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and any orders entered in these cases regarding professional compensation and reimbursement of expenses.

5. Section XI of the Engagement Agreement is of no force or effect during these Chapter 11 Cases.

6. Notwithstanding anything contained in the Application, the Engagement Agreement, or any document ancillary thereto, absent a change in controlling law, Omni shall not be compensated or reimbursed for, or in connection with, the defense of its fee applications.

7. The Debtors shall indemnify Omni (or the “Indemnified Parties”) under the terms of the Engagement Agreement, as modified pursuant to this Order.

8. The Indemnified Parties shall not be entitled to indemnification, contribution, or reimbursement pursuant to the Engagement Agreement for services other than the services provided under the Engagement Agreement, unless such services and the indemnification, contribution or reimbursement therefor are approved by the Court.

9. Notwithstanding anything to the contrary in the Engagement Agreement, the Debtors shall have no obligation to indemnify the Indemnified Parties, or provide contribution or reimbursement to the Indemnified Parties, for any claim or expense that is either: (i) judicially determined (the determination having become final) to have arisen from the Indemnified Parties’ bad faith, self-dealing, breach of fiduciary duty (if any), gross negligence, willful misconduct or fraud; (ii) for a contractual dispute in which the Debtors allege the breach of the Indemnified Parties’ contractual obligations if the Court determines that indemnification, contribution or reimbursement would not be permissible pursuant to *In re United Artists Theatre Co.*, 315 F.3d 217 (3d Cir. 2003); or (iii) settled prior to a judicial determination under (i) or (ii), but determined by this Court, after notice and a hearing, to be a claim or expense for which the

Indemnified Parties should not receive indemnity, contribution or reimbursement under the terms of the Engagement Agreement as modified by this Order.

10. If, before the earlier of (i) the entry of an order confirming a chapter 11 plan in the Chapter 11 Cases (that order having become a final order no longer subject to appeal), or (ii) the entry of an order closing the Chapter 11 Cases, the Indemnified Parties believe they are entitled to the payment of any amounts by the Debtors on account of the Debtors' indemnification, contribution and/or reimbursement obligations under the Engagement Agreement (as modified by this Order), including the advancement of defense costs, the Indemnified Parties must file an application therefore in this Court, and the Debtors may not pay any such amounts to the Indemnified Parties before the entry of an order by this Court approving the payment requested therein. This paragraph is intended only to specify the period of time under which the Court shall have jurisdiction over any request for fees and expenses by the Indemnified Parties for indemnification, contribution or reimbursement, and not a provision limiting the duration of the Debtors' obligation to indemnify the Indemnified Parties. All parties in interest shall retain the right to object to any demand by the Indemnified Parties for indemnification, contribution, or reimbursement.

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

12. Notwithstanding any term in the Engagement Agreement to the contrary, the Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

13. Notwithstanding any provision in the Bankruptcy Rules to the contrary, this Order shall be immediately effective and enforceable upon its entry.

14. In the event of any inconsistency between the Engagement Agreement, the Application, and the Order, the Order shall govern.



BRENDAN L. SHANNON
UNITED STATES BANKRUPTCY JUDGE

Dated: July 30th, 2024
Wilmington, Delaware