IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
VYAIRE MEDICAL, INC., *et al.*,[1]	)	Case No. 24-11217 (___)
Debtors.	)	(Joint Administration Requested)

MOTION OF DEBTORS FOR ENTRY OF INTERIM AND FINAL ORDERS (I) AUTHORIZING THE DEBTORS TO (A) PAY PREPETITION WAGES, SALARIES, OTHER COMPENSATION, AND REIMBURSABLE EXPENSES AND (B) CONTINUE EMPLOYEE BENEFITS PROGRAMS, AND (II) GRANTING RELATED RELIEF

The above-captioned debtors and debtors in possession (collectively, the "Debtors" and, each, a "Debtor") state as follows in support of this motion:[2]

Relief Requested

1. The Debtors seek entry of interim and final orders, substantially in the forms attached hereto as **Exhibit A** and **Exhibit B** (respectively, the "Interim Order" and the "Final Order"), (a) authorizing, but not directing, the Debtors to pay all prepetition wages, salaries, other compensation, and Reimbursable Expenses on account of the Employee Compensation and Benefits Programs (as defined below) and continue to administer the Employee Compensation and Benefits Programs in the ordinary course of business, including payment of prepetition obligations

1 The last four digits of Debtor Vyaire Medical, Inc.'s federal tax identification number are 6495. 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' proposed 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 A detailed description of the Debtors and their business, including the facts and circumstances giving rise to the Debtors' chapter 11 cases, is set forth in the *Declaration of John Bibb, Group Chief Executive Officer of Vyaire Medical, Inc., in Support of Chapter 11 Filing and First Day Motions* (the "First Day Declaration"), filed contemporaneously herewith and incorporated by reference herein. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the First Day Declaration.

related thereto in an aggregate amount of approximately $5,404,200 pursuant to the Interim Order; and (b) granting related relief. In addition, the Debtors request that the Court schedule a final hearing approximately 21 days from the Petition Date.

Jurisdiction and Venue

2. The United States District Court for the District of Delaware has jurisdiction over this matter pursuant to 28 U.S.C. §1334, which was referred to the United States Bankruptcy Court for the District of Delaware (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. The Debtors confirm their consent, pursuant to rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules"), to the entry of a final order by the Court in connection with this motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

3. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

4. The statutory bases for the relief requested herein are sections 105(a), 362(d), 363(b), 507(a), and 541(b)(1) of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the "Bankruptcy Code"), rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Local Rules 2002-1 and 9013-1.

Background

5. Vyaire Medical, Inc., together with its direct and indirect subsidiaries (collectively, "Vyaire" or the "Company"), is a global company focused on developing products and providing related services for the diagnosis, treatment, and monitoring of various cardiology, pulmonology, and respiratory health conditions. With a 70-year history of pioneering breathing

technology, the integrated solutions offered by the Company help enable, enhance, and extend lives. Headquartered in Mettawa, Illinois, Vyaire operates approximately 27 offices and manufacturing facilities, and employs approximately 950 individuals around the world. The Company has a global reach, and Vyaire products are available in more than 100 countries. Its customers are the hospitals, health centers, and private practice facilities delivering life-enhancing products and services to patients every day.

6. On June 9, 2024 (the "Petition Date"), Vyaire Medical, Inc. and certain of its subsidiaries filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code. The Debtors are operating their business and managing their property as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. Concurrently with the filing of this motion, the Debtors filed a motion requesting procedural consolidation and joint administration of these chapter 11 cases pursuant to Bankruptcy Rule 1015(b). No request for the appointment of a trustee or examiner has been made in these chapter 11 cases, and no official committees have been appointed or designated.

The Debtors' Workforce

7. Throughout the United States, the Debtors employ approximately 480 individuals on a full-time basis (collectively, the "Employees").[3] The Employees perform a wide variety of functions critical to the administration of these chapter 11 cases. Their skills, knowledge, and understanding of the Debtors' operations and infrastructure are essential to preserving operational stability and efficiency. Many of these Employees have technical and unique Company-specific knowledge essential to the Debtors' operations. Without the continued, uninterrupted services of

[3] The Debtors' foreign, non-Debtor affiliates employ approximately 481 employees.

their Employees, the Debtors' business operations will be halted, and the administration of the Debtors' estates will be materially impaired.

8. Approximately 306 Employees are salaried, and 174 Employees are paid on an hourly basis. None of the Employees are represented by a collective bargaining unit. In addition to the Employees, the Debtors also hire certain contingent workers for a predetermined period on a temporary and as-needed basis (the "Contingent Workers") through a number of staffing agencies (collectively, the "Staffing Agencies").[4] The Contingent Workers include assemblers, accounts, virtual sales representatives, consultants, and engineers. As of the Petition Date, the Debtors have approximately 74 Contingent Workers. The Debtors also periodically retain consultants and engineers as independent contractors who are employed through single-employee limited liability companies (the "Independent Contractors") to meet staffing and project requirements on an as-needed basis. As of the Petition Date, the Debtors have approximately 14 Independent Contractors. Together, the Contingent Workers and Independent Contractors support the Debtors' workforce and operations by providing necessary staff augmentation in engineering, marketing, accounting, IT, and other operating roles. The Debtors' ability to maintain the Contingent Workers and Independent Contractors is critical to supplement the efforts of the Debtors' Employees.

9. In many instances, the Debtors' Employees, Contingent Workers, and Independent Contractors (collectively, the "Workforce") rely exclusively on their compensation and benefits to pay their daily living expenses and to support their families. The Debtors' Workforce will be exposed to significant financial hardship and may leave the employ of the company in the event

[4] The Staffing Agencies include Aerotek, Inc., David M Lewis Company, LLC, Aston Carter, Inc., Connexio Health LLC, Gispath, Inc., PRN Health Services, LLC, Real Staffing Group, Actalent, Inc., and Gravity Talent Solutions (Airlife).

the Debtors are not permitted to continue paying wages and salaries, provide employee benefits, and maintain existing employee programs in the ordinary course of business. Accordingly, the Debtors and their estates would be harmed if they are unable to provide compensation and benefits to their workforce consistent with past practice. Consequently, the Debtors respectfully submit that the relief requested herein is necessary and appropriate under the facts and circumstances of these chapter 11 cases.

Employee Compensation and Benefits Programs

10. The Debtors seek to minimize the personal financial burden that their Employees would suffer if prepetition Employee-related obligations were not paid or remitted when due or as expected. By this motion, the Debtors seek authority to pay and honor certain prepetition claims and/or continue to honor obligations on a postpetition basis, as applicable, relating to, among other things, wages, commissions, compensation, staffing agency obligations, payroll processing, withholding taxes, other amounts withheld (including garnishments, Employees' share of insurance premiums, taxes, and 401(k) contributions and other retirement savings contributions), reimbursable expenses, certain incentive and retention programs, health insurance benefits, health savings accounts, flexible spending accounts, COBRA benefits, life and AD&D insurance, short and long term disability benefits, voluntary benefits, the workers' compensation program, retirement savings plans, employee assistance programs, time off benefits (including paid time off, unpaid time off, excused work days, holidays, and parental leave), and other benefits that the Debtors have provided to Employees and/or Independent Contractors historically (collectively, the "Employee Compensation and Benefits Programs") on an interim and a final basis, as detailed herein, and summarized in the chart below. In addition, the Debtors also seek to pay all costs incidental to the Employee Compensation and Benefits Programs.

11. Subject to the Court's approval of the relief requested herein, the Debtors intend to continue their prepetition Employee Compensation and Benefits Programs in the ordinary course of business. Out of an abundance of caution, the Debtors request confirmation of their right to modify, change, and discontinue any of their Employee Compensation and Benefits Programs and to implement new programs, policies, and benefits, in the ordinary course of business during these chapter 11 cases and without the need for further Court approval, subject to applicable law.

12. By this motion, the Debtors seek authority to pay the aggregate prepetition amounts owed on account of the Employee Compensation and Benefits Programs set forth in the table below:

Employee Compensation and Benefits	Approximate Amount Accrued and Unpaid As of the Petition Date	
	Due in the First 21 Days of these Chapter 11 Cases	Due After the First 21 Days of these Chapter 11 Cases
Compensation and Withholding Obligations		
Unpaid Wages	$1,070,000	$0
Unpaid Commissions	$430,000	$0
Unpaid Independent Contractor Obligations	$54,000	$108,000
Unpaid Staffing Agency Obligations	$1,200,000	$900,000
Payroll Fees	$26,000	$7,000
Withholding Obligations	$430,000	$0
Reimbursable Expenses	$1,100,000	$1,000,000
Vyaire Incentive Plan	$0	$0
SIOS Incentive Plan	$0	$0
Non-Insider Quarterly Retention Program	$0	$0
Non-Insider Severance Program	$12,000	$27,000
Benefits and Entitlements		
Health Insurance Programs	$777,000	$233,000
Life and AD&D Insurance and Disability Benefits	$44,000	$13,000
Workers' Compensation Program	$0	$0
401(k) Obligations	$240,000	$720,000
Other Employee Benefits		
Employee Assistance Program	$1,200	$0
PTO	N/A	N/A
Miscellaneous Benefits	$20,000	$0
Total	**$5,404,200**	**$3,008,000**

13. As of the Petition Date, the Debtors estimate that approximately $5,404,200 on account of Employee Compensation and Benefits will become due and owing within the first 21 days of these chapter 11 cases. For the avoidance of doubt, the Debtors do not seek authority to pay any current or former Employee amounts in excess of the statutory cap of $15,150 imposed by sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code (the "Priority Claim Amount")

pursuant to the Interim Order. The Debtors seek authority to pay such amounts solely pursuant to the Final Order.

I. Compensation and Withholding Obligations.

A. Wages.

14. The Debtors pay the wages, salaries, and other compensation (excluding reimbursable expenses, commissions, and paid leave, the "Wages") to their Employees on a bi-weekly basis every other Friday, and one week in arrears. Because Employees are generally paid in arrears, certain Employees will be owed accrued and unpaid Wages as of the Petition Date. Wages may also be due and owing as of the Petition Date due to, among other things, pay discrepancies that, upon resolution, may reveal that additional amounts are owed to certain Employees.

15. On average, the Debtors paid approximately $4.8 million in the aggregate on account of Wages for the two pay cycles immediately preceding the Petition Date. As of the Petition Date, the Debtors estimate that they owe Employees approximately $1,070,000 in prepetition accrued and unpaid Wages (the "Unpaid Wages"), all of which will become due and owing within the first 21 days of these chapter 11 cases. Accordingly, the Debtors seek authority to pay any accrued Unpaid Wages and continue to pay Wages on a postpetition basis in the ordinary course of business and consistent with past practices.

B. Commissions.

16. The Debtors pay sales-based commissions to approximately 42 Employees, none of whom are Insiders (as defined herein). Employees on the Debtors' sales teams, which market the Debtors' products and services, are entitled to sale-based commissions as part of their compensation. These Employees generally receive commission payments in arrears on a monthly basis in varying percentages based on the sales tied to their individual efforts and regional sales

goals (the "Commissions"). Sales are measured and attributed to eligible sales personnel based on the Debtors' records of product shipment, direct sales to end users, rebate submissions, and revenue recognition procedures. Commission payments vary depending on the Employee's role with the Company, *i.e.*, sales consultants' commissions-based pay ranges from 3-10% of total applicable sales revenue in the assigned territory and sales supervisors' commissions-based pay ranges from 0.15-0.50% of total applicable sales revenue generated by the sales supervisors' team. Employees are eligible to earn Commissions on a year-to-date quota. As an Employee approaches or exceeds his or her revenue quota, they earn Commission at higher rates. The Commissions are an important part of these Employees' overall compensation packages and motivate the Employees to maximize their sales performance. Therefore, failure to pay Commissions could result in declining business performance and lower sales and revenue for the Company.

17. In the 12-month period immediately preceding the Petition Date, the Debtors paid an average of approximately $420,000 per month on account of the Commissions. As of the Petition Date, the Debtors estimate that they owe approximately $430,000 in accrued and unpaid Commissions. Accordingly, by this motion, the Debtors seek authority to pay any accrued and unpaid Commissions (the "Unpaid Commissions") and continue to pay the Commissions on a postpetition basis in the ordinary course of business and consistent with past practices.

C. Independent Contractor and Staffing Agency Obligations.

18. The Debtors make payments to their Independent Contractors directly (the "Independent Contractor Compensation") and to Contingent Workers indirectly through Staffing Agencies (the "Contingent Worker Compensation"). Payments are made on a bi-weekly or monthly basis at an agreed rate, depending on the terms of the Debtors' agreement with the Independent Contractor or Staffing Agency, as applicable. The Independent Contractors and Contingent Workers perform critical staff augmentation functions necessary to support the

Debtors' Employees and operations in areas such as engineering, marketing, accounting, and IT. Accordingly, the Debtors believe that the authority to continue paying their Independent Contractors and Contingent Workers is critical to maintaining and administering their estates.

19. In the 12-month period immediately preceding the Petition Date, the Debtors paid an average of approximately $54,000 per month on account of the Independent Contractor Compensation invoices. As of the Petition Date, the Debtors estimate that they owe approximately $162,000 in accrued and unpaid Independent Contractor Compensation (the "Unpaid Independent Contractor Obligations"), approximately $54,000 of which will become due and owing within the first 21 days of these chapter 11 cases. Accordingly, the Debtors seek authority to satisfy any accrued and Unpaid Independent Contractor Obligations and continue to pay the members of the Independent Contractors and Contingent Workers on a postpetition basis in the ordinary course of business and consistent with past practices.

20. Additionally, in the 12-month period immediately preceding the Petition Date, the Debtors paid an average of approximately $520,000 per month to the Staffing Agencies on account of the Contingent Workers and any related taxes and fees. As of the Petition Date, the Debtors estimate that they owe approximately $2.1 million in accrued and unpaid amounts to the Staffing Agencies (the "Unpaid Staffing Agency Obligations"), approximately $1.2 million of which will become due and owing within the first 21 days of these chapter 11 cases. Accordingly, the Debtors seek authority to satisfy any accrued and Unpaid Staffing Agency Obligations and continue to pay the Staffing Agencies on a postpetition basis in the ordinary course of business and consistent with past practices.

D. Payroll Processing.

21. The Debtors utilize software provided by Automatic Data Processing, Inc. ("ADP") to support payroll processing, payroll tax calculations and filings, and other payroll-related

services and, correspondingly, pay certain software, payroll-related, and other administrative fees to ADP (the "Payroll Fees"). In the ordinary course of business, the Debtors accrue Payroll Fees monthly. Failure to satisfy the Payroll Fees in the future could lead to a delay in payroll processing and delayed disbursement of payroll taxes to the appropriate third parties to the detriment of the Employees and the Debtors' operations. The Debtors believe the authority to continue paying ADP the Payroll Fees in order to maintain their use of ADP's payroll processing and application hosting services is critical to the Debtors' continued operations while in chapter 11.

22. In the 12-month period immediately preceding the Petition Date, the Debtors paid an average of approximately $25,000 per month on account of the Payroll Fees. As of the Petition Date, the Debtors estimate that they owe approximately $33,000 in accrued and unpaid Payroll Fees, approximately $26,000 of which will become due and owing within the first 21 days of these chapter 11 cases. Accordingly, the Debtors seek authority to remit the Payroll Fees to ADP and to continue administering payroll in the ordinary course of business.

E. Withholding Obligations.

23. During each applicable pay period, the Debtors routinely deduct certain amounts from Employees' paychecks, which may include, without limitation, garnishments, levies, child support and related fees, and pre-tax deductions payable in accordance with certain of the Health and Welfare Programs (as defined below), including payments pursuant to any supplemental Employee-elected, voluntary insurance programs (collectively, the "Deductions"). The Debtors deducted approximately $290,000 per bi-weekly pay period from Employees' paychecks for the two pay cycles immediately preceding the Petition Date.

24. The Debtors also are required by law to withhold from the Employees' Wages amounts related to, among other things, certain taxes, Social Security, and government-issued employment insurance (collectively, the "Employee Payroll Taxes") for remittance to the

appropriate governmental authorities. The Debtors are required by applicable statutory authorities to match from their own funds Social Security, Medicare taxes, and certain additional amounts for unemployment insurance and short term disability insurance (the "Employer Payroll Taxes" and, together with the Employee Payroll Taxes, the "Payroll Taxes").[5] The Payroll Taxes are generally processed and forwarded to the appropriate governmental authority in accordance with remittance intervals and deadlines established by those taxing authorities.

25. In the 12-month period immediately preceding the Petition Date, the Debtors paid an average of approximately $590,000 per month on account of the monthly Payroll Taxes. As of the Petition Date, the Debtors estimate that approximately $430,000 of accrued and unpaid Deductions and Payroll Taxes (together, the "Withholding Obligations") have been deducted but not remitted to the appropriate third-party payees, all of which will become due and owing within the first 21 days of these chapter 11 cases. Moreover, the Debtors believe that the Withholding Obligations are not property of their estates. However, out of an abundance of caution, the Debtors seek authority to remit the Withholding Obligations to the respective third-party payees and to continue to honor and process the Withholding Obligations on a postpetition basis in the ordinary course of business and consistent with past practices.

F. Expenses.

26. The Debtors reimburse certain Employees for certain expenses incurred in the scope of their duties (the "Reimbursable Expenses"). Reimbursable Expenses typically include out-of-pocket expenses associated with transportation, lodging, and meals incurred in connection with business travel and certain other work-related expenses, such as business mobile phones,

[5] For the avoidance of doubt, the Debtors seek authority to pay Payroll Taxes solely in this motion and not in the *Motion of Debtors for Entry of Interim and Final Orders (I) Authorizing the Payment of Certain Taxes and Fees, and (II) Granting Related Relief* filed contemporaneously herewith.

internet allowances, and general office expenses. Reimbursable Expenses are typically incurred directly by Employees with personal funds. Employees then submit invoices of their reimbursable out-of-pocket expenses through a platform maintained by Concur Technologies, Inc ("Concur").[6] Once the Debtors determines that the charges submitted are allowable work-related expenses, the Debtors reimburse such Reimbursable Expenses through direct deposit. Accordingly, without reimbursement Employees may be held personally liable for any unpaid obligations. The Debtors' inability to reimburse such expenses would impose hardship on such individuals where the obligations were incurred for the Debtors' benefit.

27. For the 4-month period immediately preceding the Petition Date, the Debtors paid an average of approximately $1.1 million per month on account of the Reimbursable Expenses. As of the Petition Date, the Debtors estimate that they will owe approximately $2.1 million in the aggregate amount of accrued and unpaid Reimbursable Expenses, approximately $1.1 million of which will become due and owing within the first 21 days of these chapter 11 cases. Accordingly, the Debtors seek authority to satisfy any accrued and unpaid prepetition Reimbursable Expenses and continue to pay the Reimbursable Expenses on a postpetition basis in the ordinary course of business and consistent with past practices.

G. Non-Insider Incentive and Retention Programs (Final Order Only).

28. The Debtors maintain certain incentive and retention programs to drive performance among certain employees (such programs as to non-Insider Employees, the "Non-Insider Incentive and Retention Programs").[7]

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6 For business travel flights, Employees book directly through Concur using a virtual credit card maintained by the Debtors.

7 The relief sought under this motion does not include the payment of any obligations to an "insider" (as defined in section 101(31) of the Bankruptcy Code, "Insiders"). The Debtors may seek separate authority with respect to such parties and reserve all rights with respect to the "insider" status of such parties.

1. Vyaire Incentive Plan.

29. The Debtors maintain an annualized incentive program for eligible Employees in the corporate, ventilation, and respiratory diagnostics business units. The program requires that the Debtors meet certain EBITDA and revenue targets, and that the Employees achieve certain individual key performance indicators (the "Vyaire Incentive Plan"). Incentive compensation is accrued on the achievement of individual goals, total revenue, and EBITDA targets, among others. Payments on account of the Vyaire Incentive Plan are made annually after the conclusion of the applicable fiscal year on which they are based.[8] On April 12, 2024, the Debtors remitted approximately $1.1 million to eligible Employees on account of the Vyaire Incentive Plan for fiscal year 2023. Presently, 160 non-Insider Employees are eligible to receive an award under the Vyaire Incentive Plan for fiscal year 2024.

30. The Debtors pay approximately $2.3 million annually on account of the Vyaire Incentive Plan. The Debtors do not believe they presently owe any amounts on account of the Vyaire Incentive Plan for fiscal year 2024.[9] Accordingly, the Debtors seek authority to continue the Vyaire Incentive Plan on a postpetition basis in the ordinary course of business and consistent with past practices. For the avoidance of doubt, the Debtors seek authority to pay the amounts related to the Vyaire Incentive Plan pursuant to the Final Order only and do not propose to make any payment on account of the Vyaire Incentive Plan to Insiders.

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[8] However, in one instance, in fiscal year 2023, there were two quarterly payments made under the SIOS Incentive Plan at the same time as payments made under the Vyaire Incentive Plan.

[9] The Debtors' fiscal year ends September 30, 2024, at which time amounts under the Vyaire Incentive Plan will become due.

2. Sharing in Our Success (SIOS) Incentive Plan.

31. The Debtors also maintain the Sharing in Our Success Incentive Plan (the "SIOS Incentive Plan" and, together with the Vyaire Incentive Plan, the "Incentive Programs"), a discretionary, annual program for Employees otherwise not eligible for bonuses under the Vyaire Incentive Plan or compensated through Commissions. Depending on the Employee's role, an eligible Employee will receive an award payout under the SIOS Incentive Plan based on either the Debtors' consolidated business results or the specific business unit's results (corporate, ventilation, or respiratory diagnostics, as applicable). All award payouts under the SIOS Incentive Plan are based on the Debtors' applicable EBITDA and revenue for the year on which the award is based. Eligible Employees are paid bonuses equal to a percentage of their salary subject to the applicable business results outlined above. Historically, payments on account of the SIOS Incentive Plan are made after the close of the fiscal year on which they are based.[10] The Debtors expect to make one payment on account of the SIOS Incentive Plan in October 2024 for fiscal year 2024. Presently, 252 non-Insider Employees are eligible to receive an award under the SIOS Incentive Plan for fiscal year 2024.

32. On average, the Debtors paid approximately $190,000 annually on account of the SIOS Incentive Plan. The Debtors do not believe they presently owe any amounts on account of the SIOS Incentive Plan. However, out of an abundance of caution, the Debtors seek authority to continue the SIOS Incentive Plan on a postpetition basis in the ordinary course of business and consistent with past practices. For the avoidance of doubt, the Debtors seek authority to pay the

[10] While the Debtors typically make one payment per fiscal year in connection with the SIOS Incentive Plan, in fiscal year 2023, the Debtors made two quarterly payments under the SIOS Incentive Plan. The 2023 fiscal payments were made at the same time as the Vyaire Incentive Plan payments.

amounts related to the SIOS Incentive Plan pursuant to the Final Order only and do not propose to make any payment on account of the SIOS Incentive Plan to Insiders.

3. Non-Insider Quarterly Retention Program

33. In addition to the Incentive Programs, the Debtors maintain an annualized retention bonus program for a select group of non-Insider Employees, which is paid out on a quarterly basis (the "Non-Insider Quarterly Retention Program"). The Non-Insider Quarterly Retention Program is for an aggregate amount of $1 million. The Debtors believe that the Non-Insider Quarterly Retention Program is crucial to avoiding the disruption that would result if certain key Employees were to leave their positions, especially during the pendency of these chapter 11 cases. Approximately 30 Employees are eligible for the compensation under the Non-Insider Quarterly Retention Program. Awards are paid on a quarterly basis in arrears.

34. The Debtors believe that, as of the Petition Date, no amounts are owed on account of the Non-Insider Quarterly Retention Program. However, out of an abundance of caution, the Debtors request authority to pay any outstanding amounts on account of the Non-Insider Quarterly Retention Program and to continue the Non-Insider Quarterly Retention Program in the ordinary course of business and consistent with past practices. For the avoidance of doubt, the Debtors seek authority to pay the amounts related to the Non-Insider Quarterly Retention Program pursuant to the Final Order only and do not propose to make any payment on account of the Non-Insider Quarterly Retention Program to Insiders.

H. Non-Insider Severance Program

35. In the ordinary course of business, the Debtors maintain a severance program for the benefit of certain non-Insider Employees (together, the "Non-Insider Severance Program"). Under the Non-Insider Severance Program, certain Employees may be eligible for payment of severance if their employment is terminated due to a workforce adjustment or any not-for-cause

employer-initiated termination. Such severance payments (the "Non-Insider Severance Benefits") are calculated based on length of service, with accrual of benefits capped at 6 months.

36. The Debtors' maintenance of the Non-Insider Severance Program and payment of Non-Insider Severance Benefits are critical to maintaining Employee morale and loyalty. Failure to maintain the Non-Insider Severance Program will result in increased instability in the Debtors' workforce, which will undermine the Debtors' ability to strengthen their financial and operational foundation, generate growth, and position themselves for long-term success.

37. As of the Petition Date, the Debtors believe that approximately $39,000 is owed on account of the Non-Insider Severance Program to two Employees, approximately $12,000 of which will become due and owing within the first 21 days of these chapter 11 cases. Accordingly, the Debtors seek authority to satisfy any accrued and unpaid prepetition Non-Insider Severance Benefits and continue to pay the Non-Insider Severance Benefits on a postpetition basis in the ordinary course of business and consistent with past practices.

II. Employee Benefits Programs.

A. Health and Welfare Programs.

38. The Debtors offer a number of health and welfare benefits programs to eligible current and former Employees, including the Health Insurance Programs, the Life and AD&D Insurance, the Disability Benefits, the Voluntary Benefits, the Workers' Compensation Program, and the 401(k) Plans, and pay certain administrative fees to third-party providers associated with such programs (each as defined herein and, collectively, the "Health and Welfare Programs"). The Debtors utilize AssuredPartners, Inc. to manage and administer the Health and Welfare Programs.

1. Health Insurance Programs.

39. The Debtors offer their Employees the opportunity to participate in a number of health insurance and benefit programs, including, among other programs, the Medical Plans, the

FSA and HSA, the Vision Plan, the Dental Plan, and the COBRA Benefits (each as defined herein, and collectively, the "Health Insurance Programs").

a. The Medical Plans.

40. The Debtors offer medical and prescription drug benefit programs (the "Medical Plans") to current and certain former Employees, which are administered by Cigna Healthcare, Inc. ("Cigna") and Kaiser Foundation Health Plan, Inc. ("Kaiser"). The Medical Plan administered by Kaiser is available only to Employees residing in California. The coverage in the Medical Plans differs depending on the level of coverage Employees or former Employees elect to receive. Monthly health care premiums differ depending on the Medical Plan in which the Employee or former Employee is enrolled and whether the Employee or former Employee has dependents covered by the applicable plan. The Debtors subsidize the premiums due on account of each Employee's coverage under the Medical Plans.

41. In the 12-months immediately preceding the Petition Date, the Debtors paid an average of approximately $620,000 per month to Cigna and Kaiser on account of the Medical Plans. The Debtors estimate that, as of the Petition Date, the aggregate amount of accrued and unpaid amounts on account of the Medical Plans is approximately $700,000.

b. The FSA and HSA.

42. The Debtors also offer Employees who participate in certain Medical Plans with access to a flexible spending account ("FSA") or a health savings account ("HSA"), which are both administered by HealthEquity, Inc. ("HealthEquity") and can be used to cover, among other things, medical, dental and vision deductibles, copays, coinsurance, prescription drugs, vision care, physical therapy, and counseling. Currently, approximately 76 Employees utilize the FSA and approximately 164 Employees utilize the HSA as part of the Health Insurance Program. If

Employees choose to participate in the HSA, they also have the option to participate in a limited-purpose FSA that covers only dental and vision expenses.

43. In the 12-months immediately preceding the Petition Date, the Debtors paid approximately $1,900 per month to HealthEquity for the administration of the FSA and HSA. The Debtors estimate that, as of the Petition Date, the aggregate amount of accrued and unpaid amounts payable to HealthEquity is approximately $2,200. The Debtors make certain contributions to Employees' HSA on a bi-weekly basis in accordance with internal policies. The Debtors estimate that, as of the Petition Date, the aggregate amount of accrued and unpaid contributions is approximately $10,900.

c. The Vision Plan.

44. The Debtors offer vision insurance through Vision Service Plan (the "Vision Plan"). The Vision Plan allows the freedom to use providers in and out of the network, though out of pocket costs may be higher where an out of network provider is used. The Debtors subsidize the premiums on account of each Employee's coverage under the Vision Plan.

d. The Dental Plan.

45. The Debtors provide dental insurance through MetLife (the "Dental Plan"). The Dental Plan allows the freedom to use providers in and out of the network, though out of pocket costs may be higher where an out of network provider is used. The coverage in the Dental Plan differs depending on the level of coverage Employees or former Employees elect to receive. The Debtors subsidize the premiums on account of each Employee's coverage under the Dental Plan.

e. COBRA Benefits.

46. The Debtors' Health Insurance Programs also provide former Employees with certain health benefits following their departure from the Debtors. More specifically, pursuant to the Consolidated Omnibus Budget Reconciliation Act of 1985 ("COBRA"), former Employees of

the Debtors (the "COBRA Employees") may continue to receive benefits in connection with certain of the Health Insurance Programs (the "COBRA Benefits"). COBRA Employees are entitled by law to continue to receive COBRA Benefits for up to eighteen months, and in some instances up to thirty-six months, following termination of employment.

47. Typically, COBRA Employees are responsible for paying all costs associated with the COBRA Benefits except with respect to those former Employees whose COBRA benefits are consideration under a severance agreement and release of claims or similar documents. As of the Petition Date, the Debtors estimate that they owe an aggregate of approximately $410 in COBRA Benefits.

48. The Debtors provide the COBRA Benefits as part of their Health and Welfare Programs in the ordinary course of business. Accordingly, the Debtors seek authority to continue providing the COBRA Benefits in the ordinary course, including any prepetition amounts that may ultimately be owed on account of the COBRA Benefits.

49. On average, the Debtors pay approximately $690,000 per month on account of the Health Insurance Programs, which is paid to the vendors under the Health Insurance Programs at the beginning of each month. As of the Petition Date, the Debtors estimate that they owe approximately $1,010,000 on account of the Health Insurance Programs, approximately $777,000 of which will become due and owing within the first 21 days of these chapter 11 cases. Accordingly, the Debtors seek authority to pay any prepetition amounts owed on account of the Health Insurance Programs and to continue the Health Insurance Programs on a postpetition basis in the ordinary course of business and consistent with past practices.

2. Insurance, Disability, and Workers' Compensation Programs.

a. Life and AD&D Insurance Programs.

50. The Debtors provide basic life and accidental death and dismemberment insurance coverage (the "Basic AD&D Insurance") at no cost to current and former Employees and their dependents through Standard Insurance Company ("Standard"), which provides coverage equal to two times an Employee's benefit pay[11] in the event of an Employee's death or dismemberment. Current and certain former Employees may also purchase supplemental life insurance (the "Supplemental Life Insurance," and together with the Basic AD&D Insurance, the "Life and AD&D Insurance") through Standard to cover themselves, their spouses, and children. The Debtors estimate that they will owe approximately $31,000 on account of Life and AD&D Insurance within the first 21 days of these chapter 11 cases. The Debtors are fully insured through the Life and AD&D Insurance.

b. Disability Benefits.

51. The Debtors provide Employees with short and long term disability benefits. All Employees are eligible for disability benefits. Under the short term disability benefits program, in the event of a short term medical disability due to an illness or injury, Employees are entitled to, among other things, continuation of 90% of their wages for the first eight weeks, after satisfying a seven day waiting period, followed by 70% of their wages up to a total maximum benefit period of 26 weeks (the "Short Term Disability Benefits"). Under the long term disability benefits program, in the event of a long term medical disability due to illness or injury, Employees are entitled to, among other things, continuation of 60% of their wages up to a monthly limit of

[11] For salaried Employees, benefit pay is equal to the Employee's annual salary rate. For hourly Employees, benefit pay is equal to the Employee's hourly rate multiplied by their regularly scheduled hours multiplied by 52 weeks. For commissioned Employees, benefit pay is a combination of base salary, plus commissions and draws.

$15,000 (the "Long Term Disability Benefits", and, together with the Short Term Disability Benefits, the "Disability Benefits").

52. An Employee's Short Term Disability Benefits begin after an Employee is unable to work due to illness or injury for seven consecutive days. The Long Term Disability Benefits begin after an Employee has been unable to work due to illness or injury for 180 days, or at the end of the Employees Short Term Disability Benefits. The Disability Benefits are fully insured and administered through Standard.

53. As of the Petition Date, the Debtors estimate that they owe approximately $57,000, including administrative fees, on account of the Life and AD&D Insurance and Disability Benefits, approximately $44,000 of which will become due and owing within the first 21 days of these chapter 11 cases. Accordingly, the Debtors seek authority to pay any prepetition amounts owed on account of the Life and AD&D Insurance and Disability Benefits and continue the Life and AD&D Insurance and Disability Benefits on a postpetition basis in the ordinary course of business and consistent with past practices.

c. Voluntary Benefits

54. The Debtors offer various voluntary health insurance plans to Employees that are funded entirely by Employees through post-tax and pre-tax payroll deductions, all of which are administered by Standard. Approximately 65 Employees participate in voluntary hospital indemnity insurance, which pays a cash benefit directly to Employees and eligible dependents for hospital admissions (the "Voluntary Hospital Indemnity Insurance"). Approximately 75 U.S. Employees participate in voluntary accident insurance, which pays a cash benefit directly to Employees and eligible dependents for specific injuries and events resulting from a covered accident (the "Voluntary Accident Insurance"). Approximately 95 Employees participate in voluntary critical illness insurance, which pays a cash benefit directly to Employees and eligible

dependents diagnosed with a covered illness or condition (such as cancer, heart attack, stroke, multiple sclerosis, Alzheimer's, etc.) (the "Voluntary Critical Illness Insurance").

55. The Debtors do not believe they presently owe any amounts on account of the Voluntary Benefits. As such, the Debtors seek authority to pay any prepetition amount solely out of an abundance of caution and to continue to the Voluntary Benefits on a postpetition basis in the ordinary course of business and consistent with past practices.

d. Workers' Compensation Program.

56. The Debtors maintain workers' compensation insurance for their Employees at the levels required by laws in the states in which the Debtors operate (collectively, the "Workers' Compensation Program"). All Employees participate in the Debtors' Workers' Compensation Program, which is fully insured. The Debtors maintain coverage for the Workers' Compensation Program through Marsh USA LLC (the "Workers' Compensation Broker") as broker and Chubb National Insurance Company as the carrier (together with the Workers' Compensation Broker, the "Workers' Compensation Vendors").[12] The Debtors pay approximately $100,000 annually to the Workers' Compensation Vendors to maintain the Workers' Compensation Program.

57. The Debtors must continue the claim assessment, determination, adjudication, and payment processing pursuant to the Workers' Compensation Program, without regard to whether such liabilities are outstanding before the Petition Date, to ensure that the Debtors comply with

[12] For the avoidance of doubt and in addition to the relief requested herein, pursuant to the *Motion of Debtors for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Maintain Insurance and Surety Coverage Entered Into Prepetition and Pay Related Prepetition Obligations, and (B) Renew, Supplement, Modify, or Purchase Insurance and Surety Coverage, and (II) Granting Related Relief*, filed contemporaneously herewith, the Debtors seek authority to maintain the Debtors' workers compensation policies.

applicable workers' compensation laws and requirements.[13] There are currently no open claims under the Workers' Compensation Program to which this would apply. The Debtors are not aware of any potential claims against them that have not yet been formally reported. Under their coverage from the Insurance Providers, the Debtors do not pay any amounts associated with each compensable claim; instead, the Insurance Providers pay any claim amounts directly. As of the Petition Date, the Debtors believe that there are no accrued, unpaid payments owed to Workers' Compensation Vendors.

58. For the claims administration process to operate in an efficient manner and to ensure that the Debtors comply with their contractual and legal obligations, the Debtors must continue to assess, determine, and adjudicate claims brought under the Workers' Compensation Program during these chapter 11 cases. In addition, to the extent any Employees assert claims under the Workers' Compensation Program, the Debtors request that the Court modify the automatic stay under section 362 of the Bankruptcy Code to permit the Employees to proceed with their claims under the Workers' Compensation Program. This requested modification of the automatic stay pertains solely to claims under the Workers' Compensation Program.

59. Because the Debtors are statutorily and/or contractually obligated to maintain the Workers' Compensation Program, their inability to do so may result in adverse legal consequences that would disrupt the chapter 11 process. Accordingly, the Debtors seek authority to continue the Workers' Compensation Program in the ordinary course of business on a postpetition basis,

[13] The Debtors' Workers' Compensation Program may change postpetition in the ordinary course of business due to changes in applicable laws and regulations and the Debtors' ability to meet requirements thereunder. By this motion, the Debtors request authority to continue making all payments related to Workers' Compensation Program postpetition, including making any changes to current policy and practices that become necessary.

including by modifying the automatic stay solely to allow affected Employees to assert claims under the Workers' Compensation Program.

3. Retirement Plans.

60. The Debtors offer all of their Employees the opportunity to participate in either a traditional 401(k) Plan or a Roth 401(k) Plan (together, the "401(k) Plans"). All Employees aged 21 or over are eligible for the 401(k) Plans. The 401(k) Plans generally provide for salary deductions of compensation up to limits set by the Internal Revenue Code. Each Employee's 401(k) contributions are deducted automatically from each paycheck. The Debtors match the Employees' 401(k) Plan contributions in an amount up to 100% of the Employees' first 3% of eligible compensation and up to a 50% match for the next 2% of eligible compensation for a total of 5% of eligible compensation (the "401(k) Match"). All 401(k) Plan contributions and 401(k) Matches are immediately fully vested.

61. On average, the Debtors' accrued approximately $180,000 per month on account of the 401(k) Match (the "401(k) Obligations") for the two pay cycles immediately preceding the Petition Date. As of the Petition Date, the Debtors estimate that they owe Employees approximately $960,000 on account of the 401(k) Plans, approximately $240,000 of which will become due and owing within the first 21 days of these chapter 11 cases. Accordingly, the Debtors seek authority to pay any accrued and unpaid 401(k) Obligations and continue the 401(k) Plans on a postpetition basis in the ordinary course of business and consistent with past practices.

62. The 401(k) Plan is administered by Fidelity Brokerage Services LLC ("Fidelity") as trustee record keeper and broker. Fees for the 401(k) Plan owed to Fidelity are paid out of the plan itself. Accordingly, as of the Petition Date, the Debtors believe that there are no outstanding amounts due to Fidelity on account of the 401(k) Plans.

4. The Employee Assistance Program.

63. The Debtors provide Employees and their immediate family members with a free, confidential, and voluntary counseling and referral service (the "Employee Assistance Program"). The Employee Assistance Program provides Employees and/or their family members with support and referrals regarding personal or work-related issues such as childcare and elder care, legal issues, financial counseling, identity theft, emotional support counseling, or any concern that becomes a problem in an Employee's (or their immediate family member's) life.

64. The Employee Assistance Program is administered by Cigna Behavioral Health, the behavioral health unit associated with Cigna. The Debtors paid approximately $1,200 on account of the Employee Assistance Program in the month preceding the Petition Date. As of the Petition Date, the Debtors estimate that they currently owe approximately $1,200 on account of the Employee Assistance Program, all of which will become due and owing within the first 21 days of these chapter 11 cases.

5. Paid and Unpaid Leave.

65. The Debtors provide paid leave in the form of Paid Time Off (as defined below) and certain other statutory Paid Leave (together, the "Paid Leave"); the Debtors also provide Unpaid Leave (as defined below) in certain situations.

66. In the ordinary course of business, the Debtors provide paid time off ("PTO") to the Employees as a Paid Leave benefit which may be used for any reason. Employees who actively work at least 20 hours per week are eligible to take PTO. Employees scheduled to work at least 20 hours and less than 40 hours per week earn PTO on a pro-rated basis. Contingent workers, such as temporary personnel or interns are not eligible to accrue PTO. For Employees at the director level and above (the "Exempt Employees"), PTO is self-directed (the "Open PTO Program") (unless otherwise mandated by applicable employment law).

67. Because of the Debtors' Open PTO Program, they do not officially offer vacation time, sick time off, floating holidays, or personal time off for regular full-time Exempt Employees, unless otherwise required by applicable employment law. As such, there is generally no "accrued" PTO, sick leave, or vacation, and Exempt Employees are not paid any amount of vacation, sick time, or PTO upon termination of employment. For all other eligible Employees, however, the amount of PTO available to a particular Employee and the rate at which such PTO accrues is generally determined by the Employee's tenure and whether the Employee is hourly or salaried. When an Employee elects to take PTO, that Employee is paid his or her regular hourly or salaried rate. Employees are generally allowed to carry over their PTO hours from the prior year up to the maximum amount of 228 to 432 hours, depending on the Employee's completed years of service.

68. Upon termination, such Employees could be eligible for a payout of accrued and unused PTO (unless applicable employment laws mandate otherwise). The Debtors believe that, within 21 days of the Petition Date, no such accrued PTO will become payable.

69. In addition, the Debtors provide certain other forms of Paid Leave and Unpaid Leave, including:

- paid holidays throughout the year, during which Employees are not required to work and are paid their base rate of pay;
- leave under the Family and Medical Leave Act for: (a) birth, adoption,[14] or foster care, (b) family care, (c) medical emergencies, (d) military exigencies, and (e) military caregiving needs; and
- other paid and unpaid leaves of absence for personal reasons, many of which are required by law, including statutory sick leave, emergency closings, missed work time in the ordinary course of business for bereavement leave, jury or court attendance, or time spent voting and unpaid leaves of absence for family medical leaves and military leaves (the "Unpaid Leave").

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[14] In addition, the Debtors provide six weeks of paid parental leave at 100% of base pay for Employees with a newborn or newly adopted child that have worked with the Debtors continuously for a year or more.

These other forms of Paid Leave and Unpaid Leave do not involve incremental cash outlays beyond standard payroll obligations.

70. The Debtors believe that the continuation of the Paid Leave and Unpaid Leave policies in accordance with prior practice is essential to maintaining Employee morale during these chapter 11 cases. Further, the policies are broad-based programs upon which all Employees have come to depend. The Debtors anticipate that their Employees will utilize any accrued Paid Leave in the ordinary course of business, which will not create any material cash flow requirements beyond the Debtors' normal payroll obligations.

B. Miscellaneous Benefits.

71. In addition to the above-mentioned benefits programs, the Debtors maintain the following benefits programs (the "Miscellaneous Benefits"):

- The Debtors offer a tuition reimbursement plan for eligible tuition expenses up to $5,250 per calendar year for undergraduate courses and, subject to managerial approval, graduate degree courses;
- The Debtors offer Employees business travel accident insurance to provide financial protection in the event of an accident or death while on company authorized business, in an amount equal to four times an Employee's pay, up to $1 million;
- The Debtors offer a commuter benefits program, administered through HealthEquity, that allows Employees to set aside pre-tax money for eligible commuting expenses;
- The Debtors offer a health and wellness program that addresses physical and mental health and wellness relationships, financial security, safety, and education;
- The Debtors offer partial reimbursement of Weight Watchers membership fees;
- The Debtors offer a car allowance for sales employees for business-related travel; and
- The Debtors offer an adoption assistance plan whereby the Debtors offer financial assistance up to $5,000 for eligible Employees who adopt a child

> for eligible expenses such as adoption agency fees, legal and court fees, adoption-related travel, and medical care for the child.

72. The Miscellaneous Benefits are an important part of the total benefits package offered by the Debtors to their Employees. The Debtors paid approximately $24,000 in the aggregate on account of the Miscellaneous Benefits for the two pay cycles immediately preceding the Petition Date for which the Debtors possess invoices. The Debtors believe that the continuation of the Miscellaneous Benefits will have a positive effect on Employee morale during the pendency of these chapter 11 cases. As of the Petition Date, the Debtors estimate that they owe approximately $20,000 on account of the Miscellaneous Benefits. Accordingly, the Debtors therefore seek authority to pay unpaid prepetition amounts owed on account of the Miscellaneous Benefits and to continue paying amounts that come due on a postpetition basis in the ordinary course of business.

Basis for Relief

I. Sufficient Cause Exists to Authorize the Debtors to Honor the Employee Compensation and Benefits Programs.

A. Certain Employee Compensation and Benefits Programs Are Entitled to Priority Treatment.

73. Sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code entitle the majority of the Employee Compensation and Benefits to priority treatment, to the extent such payments do not exceed $15,150 for each individual as provided for under sections 507(a)(4) and (5) of the Bankruptcy Code. As priority claims, the Debtors are required to pay these claims in full to confirm a chapter 11 plan. *See* 11 U.S.C. § 1129(a)(9)(B) (requiring payment of certain allowed unsecured claims given priority under sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code for (a) wages, salaries or commissions, including vacation, severance, and sick leave pay earned by an individual and (b) contributions to an employee benefit plan). To the extent that an

Employee receives no more than the $15,150 cap imposed by sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code (the "Priority Claim Amount"), the relief sought with respect to compensation only affects the timing of payments to Employees and does not have any material negative impact on recoveries for general unsecured creditors. To the extent an Employee is owed more than the Priority Claim Amount on account of certain Compensation and Benefits Programs, full payment of such obligations in the ordinary course is warranted under section 363(b)(1) of the Bankruptcy Code and the doctrine of necessity.

74. The Debtors' Employees are essential to the success of these chapter 11 cases and the Debtors' business. As such, payment of the Employee Compensation and Benefits Programs at this time is necessary to avoid potential material disruption to the Debtors' ordinary course operations. Finding, attracting, and training new qualified talent would be extremely difficult, particularly given current labor market conditions. Such recruitment efforts would most likely require, among other things, higher salaries, guaranteed bonuses, and more comprehensive compensation packages than are currently provided to Employees. To avoid potentially costly disputes that could reduce the value of the Debtors' estates, as well as ease potential concerns from Employees regarding ongoing compensation, it is necessary to pay any accrued and unpaid amount on account of Employee Compensation and Benefits Programs.

B. Payment of Certain Employee Compensation and Benefits Programs Is Required by Law.

75. As discussed above, the Debtors seek authority to pay the Withholding Obligations to the appropriate third-party entities. These amounts principally represent Employee earnings that governments, Employees, and judicial authorities have designated for deduction from the Employees' paychecks. Indeed, certain Withholding Obligations are not property of the Debtors' estates because the Debtors have withheld such amounts from the Employees' paychecks on

another party's behalf. *See* 11 U.S.C. §§ 541(b)(1), (d). Furthermore, federal and state laws require the Debtors to withhold certain tax payments from the Employees' paychecks and to pay such amounts to the appropriate taxing authority. 26 U.S.C. §§ 6672, 7501(a); *see also City of Farrell v. Sharon Steel Corp.*, 41 F.3d 92, 95–97 (3d Cir. 1994) (finding that state law requiring a corporate debtor to withhold city income tax from its employees' wages created a trust relationship between debtor and the city for payment of withheld income taxes); *In re DuCharmes & Co.*, 852 F.2d 194, 196 (6th Cir. 1988) (noting that individual officers of a company may be held personally liable for failure to pay trust fund taxes). Because the Withholding Obligations may not be property of the Debtors' estates, the Debtors request that the Court authorize them to transmit the Withholding Obligations on account of the Employees to the proper parties in the ordinary course of business. *See In re Dameron*, 155 F.3d 718, 721 (4th Cir. 1998). The Debtors therefore request that the Court recognize that the Withholding Obligations are not property of the Debtors' estates and, regardless of whether the Debtors collected the amounts prior to the Petition Date, authorize the Debtors to transmit such monies to the proper parties in the ordinary course of business.

76. Similarly, state laws require the Debtors to maintain the Workers' Compensation Program. If the Debtors fail to maintain the Workers' Compensation Program, state laws may prohibit the Debtors from operating in those states. Payment of all Workers' Compensation Program amounts is therefore crucial to the Debtors' continued operations and the success of the Debtors' restructuring. The Debtors therefore request that the Court authorize the Debtors to maintain the Workers' Compensation Program.

II. Payment of the Employee Compensation and Benefits Programs Is Proper Pursuant to Section 363(b) of the Bankruptcy Code and the Doctrine of Necessity.

77. Courts have recognized that it is appropriate to authorize the payment of prepetition obligations where necessary to protect and preserve the estate, including an operating business's

going-concern value. *See, e.g., In re Just for Feet, Inc.*, 242 B.R. 821, 825–26 (D. Del. 1999); *see also In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002); *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175–76 (Bankr. S.D.N.Y. 1989); *Armstrong World Indus., Inc. v. James A. Phillips, Inc.*, 29 B.R. 391, 398 (S.D.N.Y. 1983). In so doing, these courts acknowledge that several legal theories rooted in sections 105(a) and 363(b) of the Bankruptcy Code support the payment of prepetition claims.

78. Section 363(b) of the Bankruptcy Code permits a bankruptcy court, after notice and a hearing, to authorize a debtor to "use, sell, or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1). "In determining whether to authorize the use, sale or lease of property of the estate under this section, courts require the debtor to show that a sound business purpose justifies such actions." *Dai-Ichi Kangyo Bank, Ltd. v. Montgomery Ward Holding Corp. (In re Montgomery Ward Holding Corp.)*, 242 B.R. 147, 153 (D. Del. 1999) (collecting cases); *see also Armstrong World*, 29 B.R. at 397 (relying on section 363 to allow contractor to pay prepetition claims of suppliers who were potential lien claimants because the payments were necessary for general contractors to release funds owed to debtors); *Ionosphere Clubs*, 98 B.R. at 175 (finding that a sound business justification existed to justify payment of certain prepetition wages); *In re Phx. Steel Corp.*, 82 B.R. 334, 335–36 (Bankr. D. Del. 1987) (requiring the debtor to show a "good business reason" for a proposed transaction under section 363(b)).

79. Courts also authorize payment of prepetition claims in appropriate circumstances based on section 105(a) of the Bankruptcy Code, which codifies a bankruptcy court's inherent equitable powers to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a). Under section 105(a) of the Bankruptcy Code,

courts may authorize pre plan payments of prepetition obligations when essential to the continued operation of a debtor's business. *See Just for Feet,* 242 B.R. at 825–26. Specifically, a court may use its power under section 105(a) of the Bankruptcy Code to authorize payment of prepetition obligations pursuant to the "necessity of payment" rule (also referred to as the "doctrine of necessity"). *See, e.g., Ionosphere Clubs*, 98 B.R. at 176; *In re Lehigh & New England Ry Co*., 657 F.2d 570, 581 (3d Cir. 1981) (stating that courts may authorize payment of prepetition claims when there "is the possibility that the creditor will employ an immediate economic sanction, failing such payment"); *see also In re Columbia Gas Sys., Inc.*, 171 B.R. 189, 191–92 (Bankr. D. Del. 1994) (noting that, in the Third Circuit, debtors may pay prepetition claims that are essential to the continued operation of the business). A bankruptcy court's use of its equitable powers to "authorize the payment of prepetition debt when such payment is needed to facilitate the rehabilitation of the debtor is not a novel concept." *See Ionosphere Clubs*, 98 B.R. at 175–76 (citing *Miltenberger v. Logansport, C. & S.W. Ry. Co*., 106 U.S. 286 (1882)). Indeed, at least one court has recognized that there are instances when a debtor's fiduciary duty can "only be fulfilled by the preplan satisfaction of a prepetition claim." *See CoServ*, 273 B.R. at 497.

80. Payment of the Employee Compensation and Benefits Programs is warranted under this authority and the facts of these chapter 11 cases. Employees will be exposed to significant financial difficulties if the Debtors are not permitted to honor obligations for unpaid Employee Compensation and Benefits Programs. Additionally, continuing ordinary course benefits will help maintain Employee morale and minimize the adverse effect of the commencement of these chapter 11 cases on the Debtors' ongoing business operations.

81. Moreover, Employees provide the Debtors with services necessary to conduct the Debtors' businesses, and the Debtors believe that absent the payment of the Employee

Compensation and Benefits Programs owed to the Employees, the Debtors may experience Employee turnover and instability at this critical time in these chapter 11 cases. The Debtors believe that without these payments, Employee productivity may decline because of the potential significant financial strain and other hardships the Employees may face. Such Employees may then elect to seek alternative employment opportunities. Additionally, a significant portion of the value of the Debtors' businesses is tied to their workforce, which cannot be replaced without significant efforts—which efforts may not be successful given the overhang of these chapter 11 cases. Enterprise value may be materially impaired to the detriment of all stakeholders in such a scenario. The Debtors therefore believe that payment of the prepetition obligations with respect to the Employee Compensation and Benefits Programs is a necessary and critical element of the Debtors' efforts to preserve value and will give the Debtors the greatest likelihood of retention of their Employees as the Debtors seek to operate their businesses in these chapter 11 cases.

82. The importance of a debtor's workforce to its operations has been repeatedly recognized by courts in this district, and such courts have granted relief similar to the relief requested herein. *See, e.g., In re Appgate, Inc.*, No. 24-10956 (CTG) (Bankr. D. Del. May 28, 2024) (authorizing debtors to continue compensation and benefit programs and pay certain prepetition obligations related thereto on a postpetition basis); *In re Express, Inc.*, No. 24-10831 (KBO) (Bankr. D. Del. May 14, 2024) (same); *In re Sientra, Inc.,* No. 24-10245 (JTD) (Bankr. D. Del. March 11, 2024) (same); *In re MVK FarmCo LLC,* No. 23-11721 (LSS) (Bankr. D. Del. Nov. 13, 2023 (same); *In re Yellow Corporation*, No. 23-11069 (CTG) (Bankr. D. Del. Sept. 13, 2023) (same). Accordingly, the Debtors respectfully request that the Court authorize the Debtors to pay and continue the Employee Compensation and Benefits Programs in the ordinary course of business and consistent with past practices.

83. Additionally, courts in this district and others have authorized payments of prepetition commission obligations in excess of the Statutory Cap to non-insiders. *See, e.g.*, *In re MVK FarmCo LLC,* No. 23-11721 (LSS) (Bankr. D. Del. Nov. 13, 2023) (authorizing the debtors to continue employee compensation and benefit programs and pay certain prepetition obligations in the ordinary course, including amounts due on account of commission obligations in excess of the Statutory Cap); *In re Carestream Health, Inc.,* No. 22-10778 (JKS) (Bankr. D. Del. Sept. 22, 2022) (same); *In re Riverbed Tech., Inc.*, No. 21-11503 (CTG) (Bankr. D. Del. Nov. 18, 2021) (same); *In re APC Auto. Techs. Intermediate Holdings, LLC*, No. 20-11466 (CSS) (Bankr. D. Del. June 23, 2020) (same); *In re Millennium Lab Holdings II, LLC*, No. 15-12284 (LSS) (Bankr. D. Del. Dec. 14, 2015) (same). Accordingly, the Debtors respectfully request that the Court authorize the Debtors to continue the Employee Compensation and Benefits Programs and pay related obligations in the ordinary course of business.

III. A Limited Waiver of the Automatic Stay for Workers' Compensation Claims Is Appropriate Here.

84. Section 362(a) of the Bankruptcy Code operates to stay "the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title . . . ." 11 U.S.C. § 362(a)(1).

85. Section 362 of the Bankruptcy Code, however, permits a debtor or other parties in interest to request a modification or termination of the automatic stay for "cause." *Id.* at § 362(d)(1). Cause exists here to modify the automatic stay to permit the Employees to proceed with workers' compensation claims in the appropriate judicial or administrative forum. Staying the workers' compensation claims could have a detrimental effect on the financial

well-being and morale of the Employees and lead to the departure of Employees who are critical at this juncture. Such departures could cause a severe disruption in the Debtors' businesses, which would be to the detriment of all parties in interest.

86. Additionally, with respect to any amounts owed to non-insider Employees or Former Employees in excess of the Priority Claim Amount, out of an abundance of caution, the Debtors seek authority to pay such amounts solely pursuant to the Final Order. Accordingly, the Debtors request authority, but not direction, to continue the Compensation and Benefits Programs and pay related obligations in the ordinary course.

Processing of Checks and Electronic Fund Transfers Should Be Authorized

87. The Debtors have sufficient funds to pay the amounts described in this motion in the ordinary course of business by virtue of access to cash on hand and anticipated access to cash collateral and debtor-in-possession financing. In addition, under the Debtors' existing cash management system, the Debtors can readily identify checks or wire transfer requests as relating to any authorized payment in respect of the relief requested herein. Accordingly, the Debtors do not believe that checks or wire transfer requests, other than those relating to authorized payments, will be inadvertently honored. Therefore, the Debtors request authority, but not direction, to authorize all applicable financial institutions, when requested by the Debtors, to receive, process, honor, and pay any and all checks or wire transfer requests in respect of the relief requested in this motion.

The Requirements of Bankruptcy Rule 6003(b) Are Satisfied

88. Bankruptcy Rule 6003 empowers a court to grant certain relief within the first 21 days after the petition date only "to the extent that relief is necessary to avoid immediate and irreparable harm." For the reasons discussed above, the Debtors believe an immediate and orderly transition into chapter 11 is critical, and the failure to receive the requested relief during the first

21 days of these chapter 11 cases could impact the Debtors' operations at this important juncture. The requested relief is necessary for the Debtors to operate their businesses in the ordinary course, preserve the ongoing value of their operations, and maximize value of their estates for the benefit of all stakeholders. The Debtors have demonstrated that the requested relief is "necessary to avoid immediate and irreparable harm," as contemplated by Bankruptcy Rule 6003, and the Court should grant the requested relief.

Reservation of Rights

89. Nothing contained in this motion or any order granting the relief requested in this motion, and no action taken by the Debtors pursuant to the relief requested or granted (including any payment made in accordance with any such order), is intended as or shall be construed or deemed to be: (a) an admission as to the amount of, basis for, priority or validity of any claim against the Debtors under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of the Debtors' or any other party in interest's rights to dispute any claim on any grounds; (c) a promise or requirement to pay any particular claim; (d) an implication, admission or finding that any particular claim is an administrative expense claim, other priority claim or otherwise of a type specified or defined in this motion or any order granting the relief requested by this motion; (e) a request or authorization to assume, adopt or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) an admission as to the validity, priority enforceability or perfection of any lien on, security interest in or other encumbrance on property of the Debtors' estates; or (g) a waiver or limitation of any claims, causes of action or other rights of the Debtors or any other party in interest against any person or entity under the Bankruptcy Code or any other applicable law. If the Court grants the relief sought herein, any payment made pursuant to the Court's order is not intended and should not be construed as an admission as to the

validity, priority or amount of any particular claim or a waiver of the Debtors' rights to subsequently dispute such claim.

Waiver of Bankruptcy Rule 6004(a) and 6004(h)

90. To implement the foregoing successfully, the Debtors seek a waiver of the notice requirements under Bankruptcy Rule 6004(a) and the 14-day stay of an order authorizing the use, sale, or lease of property under Bankruptcy Rule 6004(h).

Notice

91. The Debtors will provide notice of this motion to: (a) the United States Trustee for the District of Delaware; (b) the holders of the 30 largest unsecured claims against the Debtors (on a consolidated basis); (c) the office of the attorney general for each of the states in which the Debtors operate; (d) the United States Attorney's Office for the District of Delaware; (e) the Internal Revenue Service; (f) the United States Securities and Exchange Commission; (g) counsel to the 1L Ad Hoc Group; (h) the agent of the DIP Facility and counsel thereto; (i) the agent of the First Lien Credit Agreement and counsel thereto; (j) the Second Lien Credit Agreement Agent and counsel thereto; (k) the agent of the First Lien Notes and counsel thereto; (l) ADP, (m) Cigna, (n) Kaiser, (o) HealthEquity, (p) VSP, (q) MetLife, (r) Standard, (s) Fidelity, (t) the Staffing Agencies and counsel thereto, (u) Concur, (v) the Workers' Compensation Vendors, (w) AssuredPartners, Inc., and (x) any party that has requested notice pursuant to Bankruptcy Rule 2002. As this motion is seeking "first day" relief, the Debtors will serve copies of this motion and any order entered in respect to this motion as required by Local Rule 9013-1(m). The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

WHEREFORE, the Debtors request entry of Interim Order and Final Order, substantially in the forms attached hereto as **Exhibit A** and **Exhibit B**, (a) granting the relief requested herein and (b) granting such other relief as the Court deems appropriate under the circumstances.

Dated: June 10, 2024
Wilmington, Delaware

/s/ Patrick J. Reilley

COLE SCHOTZ P.C.
Patrick J. Reilley, Esq. (DE Bar No. 4451)
500 Delaware Avenue, Suite 1410
Wilmington, Delaware 19801
Telephone: (302) 652-3131
Facsimile: (302) 652-3117
Email: preilley@coleschotz.com

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Michael D. Sirota, Esq. (*pro hac vice admission pending*)
Warren A. Usatine, Esq (*pro hac vice admission pending*)
Court Plaza North, 25 Main Street
Hackensack, New Jersey 07601
Telephone: (201) 489-3000
Facsimile: (201) 489-1536
Email: msirota@coleschotz.com
wusatine@coleschotz.com

Proposed Co-Counsel to the Debtors and Debtors in Possession

KIRKLAND & ELLIS LLP
KIRKLAND & ELLIS INTERNATIONAL LLP
Joshua A. Sussberg, P.C. (*pro hac vice admission pending*)
601 Lexington Ave
New York, New York 10022
Telephone: (212) 446-4800
Facsimile: (212) 446-4900
Email: joshua.sussberg@kirkland.com

- and -

Spencer A. Winters, P.C. (*pro hac vice admission pending*)
Yusuf U. Salloum (*pro hac vice admission pending*)
333 West Wolf Point Plaza
Chicago, Illinois 60654
Telephone: (312) 862-2000
Facsimile: (312) 862-2200
Email: spencer.winters@kirkland.com
yusuf.salloum@kirkland.com

Proposed Co-Counsel to the Debtors and Debtors in Possession

Exhibit A

Proposed Interim Order

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
VYAIRE MEDICAL, INC., *et al.*,[1]	)	Case No. 24-11217 (___)
Debtors.	)	(Joint Administration Requested)
	)	**Re: Docket No. __**

INTERIM ORDER (I) AUTHORIZING THE DEBTORS TO (A) PAY PREPETITION WAGES, SALARIES, OTHER COMPENSATION, AND REIMBURSABLE EXPENSES AND (B) CONTINUE EMPLOYEE BENEFITS PROGRAMS, AND (II) GRANTING RELATED RELIEF

Upon the motion (the "Motion")[2] of the above-captioned debtors and debtors in possession (collectively, the "Debtors") for the entry of an interim order (this "Interim Order"), (a) authorizing the Debtors (i) to pay undisputed prepetition wages, salaries, other compensation, and reimbursable expenses on account of the Employee Compensation and Benefits and (ii) to continue employee benefits programs in the ordinary course of business, including payment of certain undisputed prepetition obligations related thereto; (b) scheduling a final hearing to consider approval of the Motion on a final basis; and (c) granting related relief, all as more fully set forth in the Motion; and upon the First Day Declaration; and the United States District Court for the District of Delaware has 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*

[1] The last four digits of Debtor Vyaire Medical, Inc.'s federal tax identification number are 6495. 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' proposed 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 used but not otherwise defined herein have the meanings ascribed to them in the Motion.

from the United States District Court for the District of Delaware, dated February 29, 2012; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the relief requested in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and this Court having found that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Motion is granted on an interim basis as set forth herein.

2. The final hearing (the "Final Hearing") on the Motion shall be held on _________, 2024, at__:__ _.m., prevailing Eastern Time. Any objections or responses to entry of a final order on the Motion shall be filed on or before 4:00 p.m., prevailing Eastern Time, on _________, 2024 and shall be served on: (a) the Debtors, 26125 North Riverwoods Boulevard, Mettawa, Illinois, USA 60045, Attn.: Charles Braley (cbraley@alixpartners.com); (b) proposed co-counsel to the Debtors (i) Kirkland & Ellis LLP, 601 Lexington Avenue, New York, New York 10022, Attn.: Joshua A. Sussberg, P.C. (joshua.sussberg@kirkland.com), Chris Ceresa (chris.ceresa@kirkland.com), and Tiffani Chanroo (tiffani.chanroo@kirkland.com), (ii) Kirkland & Ellis LLP, 333 West Wolf Point Plaza, Chicago, Illinois, 60654, Attn.: Spencer A. Winters (spencer.winters@kirkland.com) and Yusuf U. Salloum (yusuf.salloum@kirkland.com),

(iii) Cole Schotz P.C., 500 Delaware Avenue, Suite 1410, Wilmington, Delaware 19801, Attn.: Patrick J. Reilley, Esq. (preilley@coleschotz.com), Stacy L. Newman (snewman@coleschotz.com), Michael E. Fitzpatrick, Esq. (mfitzpatrick@coleschotz.com), and Jack M. Dougherty, Esq. (jdougherty@coleschotz.com), and (iv) Cole Schotz P.C., Court Plaza North, 25 Main Street, Hackensack, New Jersey 07601, Attn.: Michael D. Sirota, Esq. (msirota@coleschotz.com) and Warren A. Usatine, Esq. (wusatine@coleschotz.com); (c) counsel to the 1L Ad Hoc Group, (i) Gibson, Dunn & Crutcher LLP, 200 Park Avenue, New York, NY 10166-0193, Attn.: Scott J. Greenberg (SGreenberg@gibsondunn.com), Jason Zachary Goldstein (JGoldstein@gibsondunn.com), Joshua Brody (JBrody@gibsondunn.com), and Kevin Liang (KLiang@gibsondunn.com) and (ii) Pachulski Stang Ziehl & Jones LLP, 919 North Market Street, 17th Floor, Wilmington, DE 19801, Attn.: Laura Davis Jones (ljones@pszjlaw.com); (d) the United States Trustee, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801, Attn.: Benjamin A. Hackman (Benjamin.A.Hackman@usdoj.gov); and (e) any statutory committee appointed in these chapter 11 cases.

3. The Debtors are authorized, but not directed, to continue and/or modify, change, and discontinue the Employee Compensation and Benefits Programs and to implement new programs, policies, and benefits, in the ordinary course of business during these chapter 11 cases and without the need for further Court approval, subject to applicable law. For the avoidance of doubt, nothing in this Interim Order should be construed as authorizing the Debtors to: (i) pay any amounts to Insiders on account of any bonus or incentive programs; or (ii) make any payment on account of the Employee Compensation and Benefits Programs that are outside the ordinary course of business without prior Court approval.

4. The Debtors are authorized, but not directed, in their discretion, to pay and honor prepetition amounts related to the Employee Compensation and Benefits Programs pursuant to this Interim Order; *provided* that such payments shall not exceed $5,404,200 in the aggregate pending entry of a final order, *provided further* that the Debtors are not authorized to pay any prepetition amounts on account of the Non-Insider Incentive and Retention Programs pursuant to this Interim Order.

5. Nothing herein shall be deemed to authorize the payment of any prepetition amounts above the statutory cap imposed by section 507(a)(4) and 507(a)(5) of the Bankruptcy Code with respect to the prepetition amounts owed on account of the Employee Compensation and Benefits Program, except upon further order of this Court.

6. Nothing herein shall be deemed to authorize the payment of any prepetition amounts in satisfaction of bonus or severance obligations, or which may implicate or be subject to section 503(c) of the Bankruptcy Code; *provided* that nothing in this Interim Order shall prejudice the Debtors' ability to seek approval of relief pursuant to section 503(c) of the Bankruptcy Code at a later time.

7. Pursuant to section 362(d) of the Bankruptcy Code: (a) the automatic stay is modified so that Employees are authorized to proceed with their workers' compensation claims in the appropriate judicial or administrative forum under the Workers' Compensation Program, and the Debtors are authorized to pay all undisputed prepetition amounts relating thereto in the ordinary course of business; and (b) the notice requirements pursuant to Bankruptcy Rule 4001(d) with respect to clause (a) are waived. This modification of the automatic stay pertains solely to claims under the Workers' Compensation Program, and any such claims must be pursued in accordance with the applicable Workers' Compensation Program. Payment on account of any

recoveries obtained in connection with a claim brought pursuant to this paragraph is limited to the terms and conditions of the applicable Workers' Compensation Program, including with regard to any policy limits or caps.

8. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Interim Order.

9. Nothing contained in the Motion or this Interim Order, and no action taken pursuant to the relief requested or granted (including any payment made in accordance with this Interim Order), is intended as or shall be construed or deemed to be: (a) an admission as to the amount, validity or priority of, or basis for any claim against the Debtors under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of the Debtors' or any other party in interest's right to dispute any claim on any grounds; (c) a promise or requirement to pay any particular claim; (d) an implication, admission or finding that any particular claim is an administrative expense claim, other priority claim or otherwise of a type specified or defined in the Motion or this Interim Order; (e) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) an admission as to the validity, priority, enforceability or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates; or (g) a waiver or limitation of any claims, causes of action or other rights of the Debtors or any other party in interest against any person or entity under the Bankruptcy Code or any other applicable law.

10. The Debtors are authorized, but not directed, to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a consequence of these chapter 11 cases with respect to prepetition amounts owed in connection with the relief granted herein.

11. Nothing in the Motion or this Interim Order waives or modifies the requirements of the Restructuring Support Agreement, including, without limitation, the consent and consultation rights contained therein.

12. Notwithstanding anything to the contrary contained herein, any payment to be made hereunder, and any authorization contained herein, shall be subject to any interim and final orders, as applicable, approving the use of such cash collateral and/or the Debtors' entry into any postpetition financing facilities or credit agreement, and any budgets in connection therewith governing any such postpetition financing and/or use of cash collateral (each such order, a "DIP Order"). To the extent there is any inconsistency between the terms of the DIP Order and any action taken or proposed to be taken hereunder, the terms of the DIP Order shall control.

13. The Debtors have demonstrated that the requested relief is "necessary to avoid immediate and irreparable harm," as contemplated by Bankruptcy Rule 6003.

14. Nothing in this Interim Order authorizes the Debtors to accelerate any payments not otherwise due prior to the date of the Final Hearing.

15. The contents of the Motion satisfy the requirements of Bankruptcy Rule 6003(b).

16. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by such notice.

17. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Interim Order are immediately effective and enforceable upon its entry.

18. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Interim Order in accordance with the Motion.

19. This Court retains jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Interim Order.

Exhibit B

Proposed Final Order

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
VYAIRE MEDICAL, INC., *et al.*,[1]	)	Case No. 24-11217 (___)
Debtors.	)	(Joint Administration Requested) **Re: Docket No. __**

FINAL ORDER (I) AUTHORIZING THE DEBTORS TO (A) PAY PREPETITION WAGES, SALARIES, OTHER COMPENSATION, AND REIMBURSABLE EXPENSES AND (B) CONTINUE EMPLOYEE BENEFITS PROGRAMS, AND (II) GRANTING RELATED RELIEF

Upon the motion (the "Motion")[2] of the above-captioned debtors and debtors in possession (collectively, the "Debtors") for the entry of a final order (this "Final Order"), (a) authorizing the Debtors (i) to pay undisputed prepetition wages, salaries, other compensation, and reimbursable expenses on account of the Employee Compensation and Benefits and (ii) to continue employee benefits programs in the ordinary course of business, including payment of certain undisputed prepetition obligations related thereto; and (b) granting related relief, all as more fully set forth in the Motion; and upon the First Day Declaration; and the United States District Court for the District of Delaware has 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 this Court having

[1] The last four digits of Debtor Vyaire Medical, Inc.'s federal tax identification number are 6495. 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' proposed 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 used but not otherwise defined herein have the meanings ascribed to them in the Motion.

found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court having found that this Court may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the relief requested in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and this Court having found that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate and no other notice need be provided; and this Court having reviewed the Motion; and this Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Motion is granted on a final basis as set forth herein.

2. The Debtors are authorized, but not directed, to continue and/or modify, change, and discontinue the Employee Compensation and Benefits Programs and to implement new programs, policies, and benefits, in the ordinary course of business during these chapter 11 cases and without the need for further Court approval, subject to applicable law. For the avoidance of doubt, nothing in this Final Order should be construed as authorizing the Debtors to: (i) pay any amounts to Insiders on account of any bonus or incentive programs; or (ii) make any payment on account of the Employee Compensation and Benefits Programs that are outside the ordinary course of business without prior Court approval.

3. Notwithstanding anything to the contrary herein, the Debtors are authorized, but not directed, to pay and honor prepetition amounts related to the Employee Compensation and Benefits Programs.

4. Nothing herein shall be deemed to authorize the payment of any amounts which violates or implicates section 503(c) of the Bankruptcy Code; *provided* that nothing herein shall prejudice the Debtors' ability to seek approval of relief pursuant to section 503(c) of the Bankruptcy Code at a later time.

5. Pursuant to section 362(d) of the Bankruptcy Code: (a) Employees are authorized to proceed with their workers' compensation claims in the appropriate judicial or administrative forum under the Workers' Compensation Program, and the Debtors are authorized to pay all undisputed prepetition amounts relating thereto in the ordinary course of business; and (b) the notice requirements pursuant to Bankruptcy Rule 4001(d) with respect to clause (a) are waived. This modification of the automatic stay pertains solely to claims under the Workers' Compensation Program and any such claims must be pursued in accordance with the applicable Workers' Compensation Program. Payment on account of any recoveries obtained in connection with a claim brought pursuant to this paragraph is limited to the terms and conditions of the applicable Workers' Compensation Program, including with regard to any policy limits or caps.

6. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Final Order.

7. Nothing contained in the Motion or this Final Order, and no action taken pursuant to the relief requested or granted (including any payment made in accordance with this Final Order), is intended as or shall be construed or deemed to be: (a) an admission as to the amount, validity or priority of, or basis for any claim against the Debtors under the Bankruptcy Code or

other applicable nonbankruptcy law; (b) a waiver of the Debtors' or any other party in interest's right to dispute any claim on any grounds; (c) a promise or requirement to pay any particular claim; (d) an implication, admission or finding that any particular claim is an administrative expense claim, other priority claim or otherwise of a type specified or defined in the Motion or this Final Order; (e) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) an admission as to the validity, priority, enforceability or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates; or (g) a waiver or limitation of any claims, causes of action or other rights of the Debtors or any other party in interest against any person or entity under the Bankruptcy Code or any other applicable law.

8. The Debtors are authorized, but not directed, to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a consequence of these chapter 11 cases with respect to prepetition amounts owed in connection with the relief granted herein.

9. Nothing in the Motion or this Interim Order waives or modifies the requirements of the Restructuring Support Agreement, including, without limitation, the consent and consultation rights contained therein.

10. Notwithstanding anything to the contrary contained herein, any payment to be made hereunder, and any authorization contained herein, shall be subject to any interim and final orders, as applicable, approving the use of such cash collateral and/or the Debtors' entry into any postpetition financing facilities or credit agreement, and any budgets in connection therewith governing any such postpetition financing and/or use of cash collateral (each such order, a "DIP

Order”). To the extent there is any inconsistency between the terms of the DIP Order and any action taken or proposed to be taken hereunder, the terms of the DIP Order shall control.

11. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by such notice.

12. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Final Order are immediately effective and enforceable upon its entry.

13. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Final Order in accordance with the Motion.

14. This Court retains jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Final Order.