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 AN ORDER AUTHORIZING THE DEBTORS TO FILE UNDER SEAL THE NAMES OF CERTAIN CONFIDENTIAL PARTIES IN INTEREST RELATED TO THE DEBTORS' PROFESSIONAL RETENTION APPLICATIONS

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 an order (the "Proposed Order"), substantially in the form attached hereto as **Exhibit A**, authorizing the Debtors' Professionals (as defined herein) to redact and file under seal the names of certain Confidential Parties (as defined below) in connection with the Debtors' third-party marketing process, and granting related relief.

[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.

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) and 107(b) of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the "Bankruptcy Code"), Rule 9018 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Local Rule 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. In April 2024, the Debtors, with the assistance of their proposed investment banker PJT Partners LP ("PJT") launched a third-party marketing process to solicit proposals for one or more potential sales of all, substantially all, or any portion of the Debtors' assets. At the outset of the process, the Debtors, with PJT's assistance, prepared teaser marketing materials. In May 2024, PJT commenced market outreach and provided the teaser materials to potentially interested parties.

7. On the date hereof, each of the Debtors filed a voluntary petition 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.

8. During these chapter 11 cases, the Debtors and any official committee, if any, will file applications (the "Retention Applications") to retain certain professionals (collectively, the "Professionals").

9. The Debtors presently anticipate filing retention applications for Kirkland & Ellis LLP, Cole Schotz P.C., PJT Partners LP, AlixPartners LLC, and Omni Agent Solutions, Inc.

10. By this motion, the Debtors seek entry of an order authorizing the Debtors to file under seal the names of certain of the potential M&A counterparties in the Debtors' marketing and sale process (the "Marketing and Sale Process" and, the potential M&A counterparties the "Confidential Parties") in any Retention Applications to protect the Debtors' commercially

sensitive information while providing the necessary disclosures required under the Bankruptcy Code and the Bankruptcy Rules. The Confidential Parties are included in the potential parties-in-interest list and may appear in the disclosures of certain Professionals.

11. The sealing of the identities of the Confidential Parties will prevent harm to the Debtors, bolster the Debtors' ongoing marketing process, and help foster goodwill, trust, and ultimately create value in future negotiations. To foster competitive tensions and ensure that the Marketing and Sale Process is fair and yields a value-maximizing result, the identities of the Confidential Parties need to be kept in strictest confidence at this time. Such anonymity is important in incentivizing the Confidential Parties to participate in the Debtors' marketing process as it ensures that parties will not be dissuaded from participating in the process because they know the identities of their competitors and also lessens the likelihood of any collusion among potential bidders.

12. For the avoidance of doubt, the Proposed Order authorizes any future filings containing the Confidential Parties to be filed under seal, whether filed by the Debtors, any official committee, or any other party in interest, including without limitation affidavits of services filed on the docket.

Basis for Relief

13. Section 107(b) of the Bankruptcy Code provides bankruptcy courts with authority to issue orders that will protect entities from potential harm that may result from the disclosure of certain confidential information. This section provides, in relevant part:

> On request of a party in interest, the bankruptcy court shall, and on the bankruptcy court's own motion, the bankruptcy court may—
>
> (1) protect an entity with respect to a trade secret or confidential research, development, or ***commercial information*** . . . .

11 U.S.C. § 107(b)(1) (emphasis added).

14. Bankruptcy Rule 9018 defines the procedures by which a party may move for relief under section 107(b) of the Bankruptcy Code, providing that:

> On motion or on its own initiative, with or without notice, the court may make any order which justice requires (1) to protect the estate or any entity in respect of a trade secret or other confidential research, development, or commercial information . . . .

Fed. R. Bankr. P. 9018.

15. Further, Local Rule 9018-1(d)(i) additionally provides, in relevant part, that "[a]ny entity seeking to file a document . . . under seal must file a motion requesting such relief . . . ." Del. Bankr. L.R. 9018-1(d)(i).

16. If the material sought to be protected satisfies one of the categories identified in section 107(b) of the Bankruptcy Code, "the court is *required* to protect a requesting party and has no discretion to deny the application." *Video Software Dealers Ass'n v. Orion Pictures Corp. (In re Orion Pictures Corp.)*, 21 F.3d 24, 27 (2d Cir. 1994) (emphasis in original); *see also In re Altegrity, Inc.*, No. 15-10226 (LSS), 2015 WL 10963572, at *3 (Bankr. D. Del. July 6, 2015) ("if it is established that the documents sought to be sealed fall within the enumerated statutory exception, the Court must grant the requested relief (or such other relief that protects the moving party)."); *In re 50-Off Stores, Inc.*, 213 B.R. 646, 655–56 (Bankr. W.D. Tex. 1997) ("The statute, on its face, states that the bankruptcy court is ***required*** to protect such an entity on request of a party in interest . . . .") (emphasis in original). Stated differently, section 107(b) of the Bankruptcy Code does not require a party seeking its protections to demonstrate "good cause." *Orion Pictures*, 21 F.3d at 28. "Courts have supervisory power over their records and files and may deny access to those records and files to prevent them from being used for an improper purpose." *In re Kaiser Aluminum Corp.*, 327 B.R. 554, 560 (D. Del. 2005). Courts are required to provide such protections "generally where open inspection may be used as a vehicle for improper purposes."

Orion Pictures, 21 F.3d at 27. Indeed, the "authority goes not just to the protection of confidential documents, but to other confidentiality restrictions that are warranted in the interests of justice." *See In re Glob. Crossing Ltd.*, 295 B.R. 720, 724 (Bankr. S.D.N.Y 2003).

17. "[Confidential] commercial information is information which would result in 'an unfair advantage to competitors by providing them information as to the commercial operations of the debtor.'" *In re Alterra Healthcare Corp.*, 353 B.R. 66, 75 (Bankr. D. Del. 2006) (quoting *Orion Pictures Corp.*, 21 F.3d at 27–28). Commercial information need not rise to the level of a trade secret to be protected under section 107(b) of the Bankruptcy Code. *See In re Altegrity, Inc.*, 2015 WL 10963572, at *3 ("Such information, however, need not rise to the level of a 'trade secret.'"); *see also Orion Pictures*, 21 F.3d at 27–28 (holding that section 107(b)(1) creates an exception to the general rule that court records are open to examination by the public and, under this exception, an interested party must show only that the information it wishes to seal is "confidential" and "commercial" in nature).

18. Here, the Confidential Parties are participants in the Debtors' efforts to solicit and negotiate a sale for the benefit of all their stakeholders. The Confidential Parties have executed non-disclosure agreements with respect to certain of the Debtors' confidential information, and the Debtors continue to engage with such Confidential Parties as part of the Marketing and Sale Process. Due to the inherently competitive nature of such transactions, it is imperative that the identities of the Confidential Parties remain confidential, or parties will be discouraged from participating in future transactions with the Debtors.

19. The Professionals have recognized (and been responsive to) their disclosure obligations under the Bankruptcy Code and have narrowly tailored the request set forth in this motion to protect only the kind of commercially sensitive information that is entitled to be

protected under section 107 of the Bankruptcy Code. While the Professionals will run conflicts on the Confidential Parties, the Debtors request authority to maintain the confidentiality of the Confidential Parties at this time.

20. As a result, the Debtors believe that authorizing the names of the Confidential Parties to be filed under seal is the best method to ensure transparency with respect to information disclosure while still preventing the negative implications of public disclosure.

21. The Debtors request authority for the Debtors and the Professionals to file redacted versions of the Retention Applications and other pleadings filed in these chapter 11 cases that redact the names of the Confidential Parties. The Debtors will provide the Court, any official committee appointed in these chapter 11 cases, and the U.S. Trustee with unredacted versions of the Retention Applications and other pleadings filed in these chapter 11 cases.

22. This proposed format for disclosure is carefully tailored to provide appropriate levels of information in these chapter 11 cases while still maintaining confidentiality of "commercial information" where truly necessary.

Certification Pursuant to Local Rule 9018-1(d)

23. To the best of the knowledge, information, and belief of the undersigned proposed counsel to the Debtors, this motion does not contain information subject to the Confidentiality Rights of another Holder of Confidentiality Rights (each as defined in Local Rule 9018-1(d)(iii)).

Notice

24. 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; and (l) and any party that has requested notice pursuant to Bankruptcy Rule 2002. The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

[*Remainder of page intentionally left blank*]

WHEREFORE, the Debtors request entry of the Proposed Order, substantially in the form attached hereto as **Exhibit A**, (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

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Exhibit A

Proposed 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. __**

ORDER AUTHORIZING THE DEBTORS TO FILE UNDER SEAL THE NAMES OF CERTAIN CONFIDENTIAL PARTIES IN INTEREST RELATED TO THE DEBTORS' PROFESSIONAL RETENTION APPLICATIONS

Upon the motion (the "Motion")[2] of the above-captioned debtors and debtors in possession (collectively, the "Debtors") for entry of an order (this "Order") (a) authorizing the Debtors' Professionals to redact and file under seal the names of the Confidential Parties consistent with the Debtors' obligations under certain confidentiality agreements executed in connection with the Debtors' third-party marketing process, and (b) granting related relief, all as more fully set forth in the Motion; and the United States District Court for the District of Delaware having jurisdiction over this matter pursuant to 28 U.S.C. § 1334, which was referred to this 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 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

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[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.

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 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 as set forth herein.

2. The Debtors and any official committee, if any, are authorized, pursuant to sections 105(a) and 107(b) of the Bankruptcy Code, to file the Retention Applications and any other documents with the names of the Confidential Parties under seal pursuant to section 107(b) of the Bankruptcy Code, Bankruptcy Rule 9018, and Local Rule 9018-1.

3. The names of the Confidential Parties shall remain under seal, and shall not be made available to anyone except: (a) the Court; (b) the U.S. Trustee; and (c) any official committee appointed or designated in these chapter 11 cases, and, to the extent the names of any of the Confidential Parties become public knowledge, the Debtors will file subsequent supplemental declaration(s) disclosing the Professionals' connections to such publicly known parties.

4. The Debtors, the Professionals, any official committee, and any party authorized to receive the unredacted versions of the Retention Applications shall be authorized and directed, subject to Local Rule 9018-1, to redact the Confidential Parties from any pleadings filed on the

public docket maintained in these chapter 11 cases, including, without limitation, any affidavits of service.

5. Any party who receives the identities of the Confidential Parties in accordance with this Order shall not disclose or otherwise disseminate this information to any other person or entity.

6. The requirements set forth in Local Rule 9018-1 are satisfied by the contents of the Motion.

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

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