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 SEEKING ENTRY OF INTERIM AND FINAL ORDERS (I) AUTHORIZING DEBTORS TO PAY PREPETITION CLAIMS OF CERTAIN CRITICAL VENDORS, FOREIGN VENDORS, 503(B)(9) CLAIMANTS, AND LIEN CLAIMANTS, (II) CONFIRMING ADMINISTRATIVE EXPENSE PRIORITY OF OUTSTANDING ORDERS, AND (III) 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 "Final Order"): (a) authorizing the Debtors to pay, in the ordinary course of business, prepetition amounts owing on account of (i) Critical Vendor Claims, (ii) Foreign Vendor Claims, (iii) 503(b)(9) Claims, and (iv) Lien Claims (each as defined herein); (b) confirming

[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.

administrative expense priority to all undisputed obligations on account of goods ordered by the Debtors prior to the date hereof that will not be delivered until after the Petition Date and authorizing the Debtors to satisfy such obligations in the ordinary course of business; and (c) 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), 363, 503, 1107(a), and 1108 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 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. On June 9, 2024 (the "Petition Date"), Vyaire Medical, Inc. and certain of its subsidiaries 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.

Overview of the Debtors' Vendors

7. The Debtors' customers require strict specifications for consistency and quality control to meet certain product-specific standards, often promulgated by the U.S. Food and Drug Administration (the "FDA") and similar state and local governmental agencies. These regulations address, among other things, manufacturing, packing, and transportation standards, delineation of processes and controls for raw materials and other components, and particular defect levels for natural or unavoidable defects in products. Careful assessment of the Debtors' products, including their components and production process, is a vital part of clearing the applicable regulatory and

customer requirements. The Debtors have spent considerable time and resources to develop their biomedical products, ensuring that their production process and final products comply with applicable regulations. Any deviation by the Debtors from these standards could put the Debtors in breach of these regulations and impact the Debtors' ability to place their products on the market.

8. Accordingly, to effectuate their business model and ensure the uninterrupted flow of products and services to their customers, the Debtors rely on goods and services provided by approximately 350 vendors. As of the Petition Date, the Debtors estimate that they owe approximately $35,000,000 in aggregate outstanding amount to all of their vendors on account of goods delivered and/or services rendered prior to the Petition Date. Many of the Debtors' vendors are not subject to long-term contractual obligations and supply the Debtors with goods and/or services primarily on purchase order payment terms. Additionally, many of the Debtors' suppliers are located outside the United States and may not fully understand the implications of chapter 11.

9. The Debtors estimate that approximately $8,000,000 is owed to an essential subset of their vendors as of the Petition Date, approximately $5,750,000 of which will be owed during the first 30 days of these chapter 11 cases. These amounts are summarized below:

Category	Description	Approximate Amount Accrued and Unpaid as of Petition Date	Approximate Amount Payable in the First 30 Days of these Chapter 11 Cases
Critical Vendor Claims	Claims of vendors that provide, among other things, key components, equipment, installation, repair services related thereto, IT services, freight, and equipment testing services allowing the Debtors to provide high quality products that meet specified materials and standards and comply with applicable regulations and specifications for products and services provided to customers.	$4,700,000	$3,300,000
Foreign Vendor Claims	Claims of foreign vendors and suppliers that provide a significant number of materials utilized by the Debtors in all stages of the manufacturing process of their products, including machine parts, filters, and assembly tools.	$1,800,000	$1,300,000
Lien Claims	Claims of shippers and third-party logistics providers that maintain liens on Debtors' goods in their possession and may refuse to release the Debtors' property if outstanding claims against the Debtors are not satisfied.	$1,100,000	$750,000
503(b)(9) Claims	Claims of vendors from whom the Debtors have received goods within the twenty-one days preceding the Petition Date, giving rise to claims under section 503(b)(9) of the Bankruptcy Code.	$400,000	$400,000
	Total	**$8,000,000**	**$5,750,000**

I. The Debtors' Critical Vendors.

10. The Debtors rely on several third-party vendors to provide them with goods and/or services used in the operation of their business. The Debtors and their advisors have carefully reviewed and analyzed the Debtors' books and records and consulted with key personnel to

identify those vendors of goods and/or services that are critical to the Debtors' business (collectively, the "Critical Vendors"). The Debtors' Critical Vendors provide, among other things, key components, equipment, installation, repair services related thereto, IT services, freight, and equipment testing services allowing the Debtors to provide high quality products that meet specified materials and standards and comply with applicable regulations and specifications for products and services provided to customers.

11. The Debtors rely on the goods and services provided by the Critical Vendors to continue to sell their life-enhancing products and provide services to customers efficiently and in compliance with applicable governmental regulations. The loss of the goods and services provided by the Critical Vendors could result in the Debtors' inability to produce and provide their life-enhancing products and services to customers, which would immediately and irreparably harm the Debtors' business and significantly impair their going-concern viability. Such harm would likely far outweigh the cost of payment of the prepetition claims accrued in the ordinary course of business held by certain Critical Vendors (collectively, the "Critical Vendor Claims"). As part of the Critical Vendor identification process, the Debtors considered numerous factors, including:

a. whether a vendor is a sole or limited-source or high-volume supplier for goods or services critical to the Debtors' business operations;

b. whether alternative vendors are available that can provide similar goods or services on equal (or better) terms and, if so, whether the Debtors would be able to continue operating while transitioning business thereto;

c. whether an agreement exists that permits the Debtors to compel a vendor to continue performing on prepetition terms;

d. whether certain regulatory frameworks, specifications, or contract requirements prevent, directly or indirectly, the Debtors from obtaining goods or services from alternative sources;

e. the degree to which replacement costs (including pricing, transition expenses, professional fees, and lost sales or future revenue) exceed the amount of a vendor's prepetition claim; and

f. whether failure to pay all or part of a particular vendor's claim could cause the vendor to refuse to provide critical goods or services on a postpetition basis.

12. Accordingly, the Debtors seek authority, in their sole discretion and business judgment, to make payments on account of Critical Vendor Claims in an estimated amount of $4,700,000, of which $3,300,000 shall be available upon entry of the Interim Order and the remaining $1,400,000 available upon entry of the Final Order, which amounts represent the Debtors' best estimate as to what aggregate amounts must be paid to the Critical Vendors to continue an uninterrupted supply of critical goods and services. The Debtors further request that the Court grant the Debtors the authority to allocate the foregoing amounts in their sole discretion, without prejudice to seek additional relief, and subject to an agreement (within the Debtors' discretion) to receive terms consistent with Customary Trade Terms (as defined herein) from the Critical Vendors.

II. Foreign Vendor Claims.

13. As a multinational company, the Debtors' supply chain includes certain foreign vendors and suppliers (collectively, the "Foreign Vendors") that provide a significant number of materials utilized by the Debtors in all stages of the manufacturing process of their products, including machine parts, filters, and assembly tools. These materials are sourced for their effectiveness and adherence to the Debtors', their customers', and regulatory standards. As of the Petition Date, the Debtors estimate that there is approximately $1,800,000 in aggregate amount outstanding on account of prepetition goods provided by the Debtors' Foreign Vendors (the "Foreign Vendor Claims").

14. Based on the reactions of foreign suppliers in other chapter 11 cases, the Debtors believe there is a material risk that the nonpayment could cause a Foreign Vendor to stop shipping goods and supplies to the Debtors on a timely basis and/or completely sever its business relationship with the Debtors. Suppliers and vendors located in foreign countries are often unfamiliar with the chapter 11 process and react skeptically to its debtor protections. Short of severing their relations with the Debtors, nonpayment of certain Foreign Vendor Claims may also cause Foreign Vendors to take other harmful actions, including delaying shipments of goods. Timely shipment of inventory is critical to the Debtors' business, and the Debtors can ill afford any delays or interruptions of this nature.

15. Accordingly, the Debtors seek authority, in their sole discretion and business judgment, to make payments on account of Foreign Vendor Claims in an aggregate of $1,800,000, of which $1,300,000 shall be available upon entry of the Interim Order and the remaining $500,000 available upon entry of the Final Order, which amounts represent the Debtors' best estimate as to what aggregate amounts must be paid to the Foreign Vendors to continue an uninterrupted supply of critical goods and services. The Debtors further request that the Court grant the Debtors the authority to allocate the foregoing amounts in their sole discretion, without prejudice to seek additional relief, and subject to an agreement (within the Debtors' discretion) to receive terms consistent with Customary Trade Terms (as defined herein) from the Foreign Vendors.

16. Overall, with respect to the Critical Vendors and Foreign Vendors, the Debtors believe that continuing to receive goods and services from the Foreign Vendors is necessary to operate and restructure their businesses as going concerns and to maximize value of their estates. If granted discretion to satisfy Foreign Vendor Claims as requested herein, the Debtors will assess, on a case-by-case basis, the benefits to their estates of paying the Foreign Vendor Claims and pay

any such claim only to the extent their estates will benefit. Without this relief, the Debtors believe that the Foreign Vendors may cease providing goods to the Debtors and thereby negatively impact the Debtors' going concern value—a result that could be devastating for the Debtors and their stakeholders.

III. Lien Claims.

17. In the ordinary course of business, the Debtors incur obligations (the "Lien Claims") to various shippers, maintenance workers, and other service providers (collectively, the "Lien Claimants") for the distribution, receipt, and delivery of the Debtors' goods. The Debtors' business depends on the ability to maintain uninterrupted flow of materials, components, goods, and services through their supply chain and distribution network, which relies heavily on shippers and third-party logistics providers. To maintain their operations and efficiently transport products, the Debtors employ an extensive distribution network that utilizes the services of the Lien Claimants. Under the laws of most states, these servicers or carriers will, in certain circumstances, have a lien on the goods in their possession that secures the charges or expenses incurred regarding the transportation of goods or the supply of labor.[3] Thus, if the Lien Claims are not satisfied, the Lien Claimants may refuse to release the Debtors' property, thereby disrupting the Debtors' supply chain and distribution network.

18. Accordingly, the Debtors seek authority, in their sole discretion and business judgement, to make payments on account of Lien Claims in an aggregate amount of $1,100,000, of which $750,000 shall be available upon entry of the Interim Order and the remaining $350,000

[3] For example, section 7-307 of the Uniform Commercial Code provides, in pertinent part, that a "carrier has a lien on the goods covered by a bill of lading or on the proceeds thereof in its possession for charges after the date of the carrier's receipt of the goods for storage or transportation (including demurrage and terminal charges) and for expenses necessary for preservation of the goods incident to their transportation or reasonably incurred in their sale pursuant to law." *See* U.C.C. § 7-307(a) (2005).

available upon entry of the Final Order, which amounts represent the Debtors' best estimate as to what aggregate amounts must be paid to the Lien Claimants to continue an uninterrupted supply of critical goods and services. The Debtors further request that the Court grant the Debtors the authority to continue paying Lien Claims on a postpetition basis in the ordinary course of business.

IV. 503(b)(9) Claims.

19. The Debtors may have received goods from various vendors within the twenty-day period immediately preceding the Petition Date (collectively, the "503(b)(9) Claimants"), thereby giving rise to prepetition claims under section 503(b)(9) of the Bankruptcy Code (the "503(b)(9) Claims"). The Debtors receive large volumes of equipment components and related materials from their vendors on a rolling basis to satisfy their customers' demands.

20. The vast majority of the 503(b)(9) Claimants are also Critical Vendors or Foreign Vendors. The Debtors' relationships with the majority of their vendors and, similarly, with many of the other 503(b)(9) Claimants, are not governed by long-term contracts. Rather, the Debtors obtain goods from such claimants on an order-by-order basis, typically subject to applicable payment terms. As a result, a 503(b)(9) Claimant may refuse to supply new orders if the Debtors do not pay the 503(b)(9) Claims. Such refusal would negatively affect the Debtors' estates, as the Debtors' businesses are dependent on the steady flow of biomedical manufacturing components.

21. The Debtors also believe that certain 503(b)(9) Claimants could demand payment in cash on delivery, further exacerbating the Debtors' liquidity. As of the Petition Date, the Debtors estimate that they owe approximately $400,000 on account of materials and services delivered within the twenty days immediately preceding the Petition Date, approximately all of which may become due within the first thirty days of these chapter 11 cases, the value of which may be entitled to administrative priority under section 503(b)(9) of the Bankruptcy Code.

22. Accordingly, the Debtors request the authority, but not direction, to make payments on account of the undisputed 503(b)(9) Claims as and when they come due, in an aggregate amount of $400,000, all of which shall be available upon entry of the Interim Order, which amounts represent the Debtors' best estimate as to what aggregate amounts must be paid in order for the 503(b)(9) Claimants to continue supplying new orders. Importantly, the Debtors do not seek to accelerate or modify existing payment terms with respect to the 503(b)(9) Claims. Rather, the Debtors will pay the 503(b)(9) Claims as they come due in the ordinary course of business; *provided* that such claimants make commercially reasonable efforts to maintain or restore Customary Trade Terms (as defined herein).

V. Customary Trade Terms.

23. Subject to Court approval, the Debtors intend to pay the Critical Vendor Claims, Foreign Vendor Claims, 503(b)(9) Claims, and Lien Claims only to the extent necessary to preserve their business. To that end, in return for paying such claims either in full or in part, the Debtors propose that they be authorized to require the Critical Vendors, the Foreign Vendors, the 503(b)(9) Claimants, and Lien Claimants as applicable, to provide favorable trade terms for the postpetition procurement of goods and services.

24. Specifically, the Debtors seek authorization, but not direction, to condition payment of the Critical Vendor Claims, Foreign Vendor Claims, 503(b)(9) Claims, and Lien Claims upon such claimant's agreement to continue—or recommencement of—supplying such products and services to the Debtors pursuant to trade terms (including credit limits, discounts, pricing, timing of payments, availability, and other terms) consistent with the parties' ordinary course practice or as otherwise agreed by the Debtors in their reasonable business judgment (the "Customary Trade Terms").

25. In addition, the Debtors request that if any party accepts payment pursuant to the relief requested by this motion and thereafter does not continue to provide goods or services on Customary Trade Terms, then: (a) any payment on account of a prepetition claim received by such party shall be deemed, in the Debtors' sole discretion, an improper postpetition transfer and, therefore, immediately recoverable in cash upon written request by the Debtors; (b) upon recovery by the Debtors, any prepetition claim of such party shall be reinstated as if the payment had not been made; and (c) if there exists an outstanding postpetition balance due from the Debtors to such party, the Debtors may elect to recharacterize and apply any payment made pursuant to the relief requested by the motion to such outstanding postpetition balance and such supplier or vendor will be required to repay to the Debtors such paid amounts that exceed the postpetition obligations then outstanding, without the right of any setoffs, claims, provisions for payment of any claims, or otherwise.

VI. Outstanding Orders.

26. Prior to the Petition Date, and in the ordinary course of business, the Debtors may have ordered goods that will not be delivered until after the Petition Date. Any such goods delivered and accepted by the Debtors following the Petition Date are referred to herein as the "Outstanding Orders." In the mistaken belief that they would be general unsecured creditors of the Debtors' estates with respect to such goods, certain suppliers may refuse to ship or transport such goods (or may recall such shipments) with respect to such Outstanding Orders unless the Debtors issue substitute purchase orders postpetition—potentially disrupting the Debtors' ongoing business operations and requiring the Debtors to expend substantial time and effort in issuing such substitute orders. As set forth in greater detail below, because the Outstanding Orders are likely administrative expenses of the Debtors' estates, the Debtors are requesting that the Court confirm

the administrative expense priority of the Outstanding Orders and authorize the Debtors to pay amounts due on account of Outstanding Orders in the ordinary course of business.

Basis for Relief

I. The Court Should Authorize the Payment of the Critical Vendor Claims and the Foreign Vendor Claims.

27. Allowing the Debtors to pay the Critical Vendor Claims and the Foreign Vendor Claims pursuant to all or some of the above-referenced Bankruptcy Code provisions is especially appropriate where, as here, doing so is consistent with the "two recognized policies" of chapter 11 of the Bankruptcy Code—preserving going concern value and maximizing the value of property available to satisfy creditors. *See Bank of Am. Nat'l Tr. & Savs. Ass'n v. 203 N. LaSalle St. P'Ship*, 526 U.S. 434, 453 (1999). Indeed, recognizing that payment of prepetition claims of certain essential suppliers and vendors is, in fact, both critical to a debtor's ability to preserve any going-concern value and maximize creditor recovery, courts in this district regularly grant relief consistent with that which the Debtors are seeking in this motion. *See, e.g.*, *In re Appgate, Inc.*, No. 24-10956 (CTG) (Bankr. D. Del. May 28, 2024) (authorizing the debtors to pay critical vendor claims on a final 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. Mar. 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. Aug. 6, 2023) (same).

28. Additionally, if the Debtors do not pay certain of the Foreign Vendor Claims, certain Foreign Vendors may refuse to do business with the Debtors unless and until they receive payment on account of their prepetition claims. The Foreign Vendors may take other actions against the Debtors based on the incorrect belief they are not bound by the automatic stay. As a result, the Debtors would be unable to procure related products and services, potentially causing

the Debtors to fail or delay providing products to their customers. Courts in this jurisdiction routinely grant authorization for debtors to pay claims owing to foreign entities against which the automatic stay cannot be enforced readily in the United States and as to which it would be unduly time consuming and expensive to seek enforcement of an order of the bankruptcy court in the creditor's home country. *See, e.g.*, *In re Yellow Corporation*, No. 23-11069 (CTG) (Bankr. D. Del. Sept. 13, 2023) (authorizing payment of certain prepetition and postpetition foreign vendor claims on a final basis); *In re SiO2 Med. Prods. Inc.*, No. 23-10366 (JTD) (Bankr. D. Del. Apr. 24, 2023) (same); *In re Akorn, Inc.*, No. 20-11177 (KBO) (Bankr. D. Del. June 6, 2020) (same); *In re Bluestem Brands, Inc.*, No. 20-10566 (MFW) (Bankr. D. Del. Mar. 30, 2020) (same).

29. The Debtors depend on the materials and technical services provided by the Critical Vendors and the Foreign Vendors. Ensuring these Critical Vendors and Foreign Vendors continue to supply certain materials and provide services is therefore vital to the success of these chapter 11 cases and the ability of the Debtors to maximize any going-concern value. Accordingly, for the reasons set forth herein, it is appropriate for the Court to authorize the Debtors to satisfy the Critical Vendor and Foreign Vendor Claims.

II. The Court Should Authorize the Payment of Lien Claims.

30. Certain Lien Claimants may be entitled under applicable non-bankruptcy law to assert certain possessory liens on the Debtors' goods or equipment in their possession (notwithstanding the automatic stay under section 362 of the Bankruptcy Code) in an attempt to secure payment of their prepetition claim. Under section 362(b)(3) of the Bankruptcy Code, the act of perfecting such liens, to the extent consistent with section 546(b) of the Bankruptcy Code,

is expressly excluded from the automatic stay.[4] 11 U.S.C. § 362(b)(3). As a result, the Debtors anticipate that certain Lien Claimants may assert or perfect liens, refuse to turn over goods in their possession, or stop performing their ongoing obligations. Even absent a valid lien, to the extent that certain Lien Claimants have possession of the Debtors' inventory, mere possession or retention would disrupt the Debtors' operations.

31. Additionally, pursuant to section 363(e) of the Bankruptcy Code, the Lien Claimants may be entitled to adequate protection of a valid possessory lien to the extent that the Debtors use or sell the estate property against which a Lien Claim is asserted. Given that the value of such property will generally far exceed the value of the related Lien Claim, creditors will not be harmed—and, in fact, will be benefited—by satisfying certain amounts owed to the Lien Claimants. Those payments will facilitate the use and/or sale of estate property against which liens may otherwise be asserted, helping to preserve the going-concern value of the Debtors' business, and enabling the Debtors to smoothly transition into chapter 11.

32. For these reasons, courts in this jurisdiction have authorized the payment of prepetition lien claims under similar circumstances in recent chapter 11 cases. *See, e.g.*, *In re Express, Inc.*, No. 24-10831 (KBO) (Bankr. D. Del. May 14, 2024) (authorizing payment to parties with lien claims on a final basis); *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); *In re SiO2 Med. Prods. Inc.*, No. 23-10366 (JTD) (Bankr. D. Del. Apr. 24, 2024) (same); *In re Akorn, Inc.*, No. 20-11177 (KBO) (Bankr. D. Del. June 11, 2020) (same).

[4] *See* 11 U.S.C. § 546(b)(1)(A) (providing that a debtor's lien avoidance powers "are subject to any generally applicable law that . . . permits perfection of an interest in property to be effective against an entity that acquires rights in such property before the date of perfection.").

Accordingly, for the reasons set forth herein, it is appropriate for the Court to authorize the Debtors to satisfy the Lien Claims.

III. The Court Should Authorize the Payment of Claims Entitled to Priority Pursuant to Section 503(b)(9) of the Bankruptcy Code.

33. Section 503(b)(9) of the Bankruptcy Code provides administrative priority for "the value of any goods received by the debtor within twenty days before the date of commencement of a case under this title in which the goods have been sold to the debtor in the ordinary course of such debtor's business." The 503(b)(9) Claims must be paid in full for the Debtors to confirm a chapter 11 plan. *See* 11 U.S.C. § 1129(a)(9)(A). Consequently, paying such claims now only provides such parties with what they would be entitled to receive under a chapter 11 plan. Moreover, the timing of such payments lies squarely within the Court's discretion. *See In re Glob. Home Prods., LLC*, No. 06-10340 (KG), 2006 WL 3791955, at *3 (Bankr. D. Del. Dec. 21, 2006) (agreeing with parties that "the timing of the payment of that administrative expense claim is left to the discretion of the Court"). The Debtors' ongoing ability to obtain goods as provided herein is key to their survival and necessary to preserve the value of their estates. Absent this relief, the Debtors could be denied access to the goods necessary to maintain their operations and maximize the value of their estates.

34. Moreover, the Bankruptcy Code does not prohibit a debtor from paying such claims prior to confirmation. As administrative claims incurred in the ordinary course of business, the Debtors believe they may pay such claims in an exercise of their business judgment pursuant to section 363(c)(1) of the Bankruptcy Code. *See, e.g.*, October 31, 2006 Hr'g Tr. at 49, *In re Dura Auto. Sys., Inc.*, No. 06-11202 (KJC) (Bankr. D. Del. Nov. 6, 2006) ("THE COURT: I think arguably the debtor could pay its 503(b)(9) claimants without court approval.").

35. For these reasons, courts in this district have regularly authorized the payment of claims arising under section 503(b)(9) of the Bankruptcy Code in the ordinary course of business. *See, e.g.*, *In re Express, Inc.*, No. 24-10831 (KBO) (Bankr. D. Del. May 14, 2024) (authorizing payment to parties with section 503(b)(9) claims on a final basis); *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); *In re SiO2 Med. Prods. Inc.*, No. 23-10366 (JTD) (Bankr. D. Del. Apr. 24, 2024) (same); *In re Akorn, Inc.*, No. 20-11177 (KBO) (Bankr. D. Del. June 11, 2020) (same). Accordingly, it is appropriate for the Court to authorize the Debtors to satisfy the 503(b)(9) Claims.

IV. The Court Should Confirm that Outstanding Orders are Administrative Expenses and that Payment of Such Claims is Authorized.

36. Pursuant to section 503(b)(1) of the Bankruptcy Code, obligations that arise in connection with the postpetition delivery of goods and services, including goods ordered prepetition, are administrative expenses because they benefit the estate postpetition. *See* 11 U.S.C. § 503(b)(1)(A) (providing that the "actual [and] necessary costs and expenses of preserving the estate" are administrative expenses); *see also In re John Clay & Co.*, 43 B.R. 797, 809–10 (Bankr. D. Utah 1984) (holding that goods ordered prepetition but delivered postpetition are entitled to administrative priority). Thus, granting the relief sought herein with respect to the Outstanding Orders will not afford such claimants any greater priority than they otherwise would have if the relief requested herein were not granted and will not prejudice any other party in interest.

37. Absent such relief, however, the Debtors may be required to expend substantial time and effort reissuing the Outstanding Orders to provide certain suppliers with assurance of such administrative priority. The attendant disruption and delay to the continuous and timely flow of critical materials and other goods to the Debtors would force the Debtors to potentially halt

operations and production, disrupt the Debtors' business, and lead to a loss of revenue, all to the detriment of the Debtors and their creditors.

V. The Court Should Grant the Relief Requested in this Motion Pursuant to Sections 105(a) and 363(b) of the Bankruptcy Code.

38. 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. (In re 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.

39. 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) of the Bankruptcy Code).

40. 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 businesses. *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." *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." *CoServ*, 273 B.R. at 497.

41. As discussed above, every segment of the Debtors' supply chain is indispensable to ensure the Debtors' products are safe and within specified standards. It is therefore imperative

that the Debtors have the authority to pay all of the Critical Vendors, Foreign Vendors, 503(b)(9) Claimants, and Lien Claimants if determined necessary to preserve the Debtors' operations, reputation, and the go-forward success of the Debtors' businesses. The relief requested herein represents a sound exercise of the Debtors' business judgment and is necessary to avoid immediate and irreparable harm to the Debtors' estates; it is therefore justified under sections 105(a), 363(b), 1107(a), and 1108 of the Bankruptcy Code.

Processing of Checks and Electronic Fund Transfers Should be Authorized

42. 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

43. Bankruptcy Rule 6003 empowers a court to grant certain relief within the first twenty-one 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 twenty-one 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

44. 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)

45. 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

46. 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) 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.

[*Remainder of page intentionally left blank*]

WHEREFORE, the Debtors request entry of Interim Order and Final Order, substantially in the forms attached hereto as **Exhibit A** and **Exhibit B**, respectively, (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

- and -

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 DEBTORS TO PAY PREPETITION CLAIMS OF CERTAIN CRITICAL VENDORS, FOREIGN VENDORS, 503(B)(9) CLAIMANTS, AND LIEN CLAIMANTS, (II) CONFIRMING ADMINISTRATIVE EXPENSE PRIORITY TO ALL UNDISPUTED OBLIGATIONS ON ACCOUNT OF OUTSTANDING ORDERS, AND (III) GRANTING RELATED RELIEF

Upon the motion (the "Motion")[2] of the above-captioned debtors and debtors in possession (collectively, the "Debtors") for entry of an interim order (this "Interim Order") (a) authorizing the Debtors to pay, in the ordinary course of business, prepetition amounts owing on account of (i) Critical Vendor Claims and Foreign Vendor Claims; (ii) 503(b)(9) Claims; and (iii) Lien Claims; (b) confirming administrative expense priority to all undisputed obligations on account of goods ordered by the Debtors prior to the date hereof that will not be delivered until after the Petition Date and authorizing the Debtors to satisfy such obligations in the ordinary course of business; 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* from the United States District Court for the

[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.

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 pay all or part of, and discharge, on a case-by-case basis, the Critical Vendor Claims on an interim basis, absent further order of the Court.

4. The Debtors are authorized, but not directed, to pay all or part of, and discharge, on a case-by-case basis, the Foreign Vendor Claims on an interim basis, absent further order of the Court.

5. The Debtors are authorized, but not directed, to pay all or part of, and discharge, on a case-by-case basis, the Lien Claims on an interim basis, absent further order of the Court.

6. The Debtors are authorized, but not directed, to pay all or part of, and discharge, on a case-by-case basis, the 503(b)(9) Claims on an interim basis, absent further order of the Court.

7. The Debtors are authorized on an interim basis to negotiate, pay, and remit all claims pursuant to this Interim Order, *provided* that such payments shall not exceed $5,750,000 in the aggregate pending entry of the Final Order.

8. All undisputed obligations related to the Outstanding Orders are granted administrative expense priority in accordance with section 503(b)(1)(A) of the Bankruptcy Code.

9. The Debtors are authorized, but not directed, to pay all undisputed amounts relating to the Outstanding Orders in the ordinary course of business consistent with the parties' customary practices in effect prior to the Petition Date.

10. As a condition to receiving payment hereunder, the Debtors, in their sole discretion, may require, by written agreement, such parties to continue supplying goods or services to the Debtors in accordance with trade terms at least as favorable to the Debtors as those practices and programs (including credit limits, pricing, cash discounts, timing of payments, allowances, product mix, availability, and other programs) consistent with the parties' ordinary course practice (collectively, the "Customary Trade Terms"). The Debtors reserve the right to require more favorable trade terms with any party as a condition to payment of any prepetition claim.

11. If any party accepts payment hereunder for a prepetition obligation of the Debtors premised on compliance with the above, and thereafter fails to comply with the Customary Trade Terms, or other such terms as agreed to by the Debtors, then, subject to entry of a final order on the Motion from this Court: (a) any payment on account of a prepetition claim received by such party shall be deemed, in the Debtors' sole discretion, an improper postpetition transfer and, therefore, immediately recoverable in cash upon written request by the Debtors; (b) upon recovery

by the Debtors, any prepetition claim of such party shall be reinstated as if the payment had not been made; and (c) if there exists an outstanding postpetition balance due from the Debtors to such party, the Debtors may elect to recharacterize and apply any payment made pursuant to the relief requested by the Motion to such outstanding postpetition balance and such supplier or vendor will be required to repay to the Debtors such paid amounts that exceed the postpetition obligations then outstanding, without the right of any setoffs, claims, provisions for payment of any claims, or otherwise.

12. Any Critical Vendor, Foreign Vendor, 503(b)(9) Claimant, and Lien Claimant that accepts payment from the Debtors on account of all or a portion of such party's claim pursuant to this Interim Order shall be deemed to (a) agree to the terms and provisions of this Interim Order and (b) have waived, to the extent so paid, Critical Vendor Claims, Foreign Vendor Claims, 503(b)(9) Claims, or Lien Claims of any type, kind, or priority (including any reclamation claim), against the Debtors, their assets, and properties. The Debtors shall provide a copy of this Interim Order to any Critical Vendor, Foreign Vendor, 503(b)(9) Claimant, and/or Lien Claimant to whom a payment is made pursuant to this Interim Order.

13. Nothing herein shall impair or prejudice the Debtors' ability to contest, in their sole discretion, the extent, perfection, priority, validity, or amounts of any claims held by any Critical Vendor, Foreign Vendor, 503(b)(9) Claimant, and Lien Claimant. The Debtors do not concede that any claims satisfied pursuant to this Interim Order are valid, and the Debtors expressly reserve all rights to contest the extent, validity, or perfection, or to seek the avoidance of all such liens, or the priority of such claims.

14. Notwithstanding the foregoing, prior to entry of an order granting the relief requested in the Motion on a final basis, the Debtors are not authorized to pay any prepetition

amounts on account of Critical Vendor Claims, Foreign Vendor Claims, 503(b)(9) Claims, or Lien Claims before the applicable due dates of such claims.

15. 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.

16. 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.

17. 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.

18. 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.

19. The Debtors are authorized 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.

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

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

22. 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.

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

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

25. 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 DEBTORS TO PAY PREPETITION CLAIMS OF CERTAIN CRITICAL VENDORS, FOREIGN VENDORS, 503(B)(9) CLAIMANTS, AND LIEN CLAIMANTS, (II) CONFIRMING ADMINISTRATIVE EXPENSE PRIORITY TO ALL UNDISPUTED OBLIGATIONS ON ACCOUNT OF OUTSTANDING ORDERS, AND (III) GRANTING RELATED RELIEF

Upon the motion (the "Motion")[2] of the above-captioned debtors and debtors in possession (collectively, the "Debtors") for entry of a final order (this "Final Order") (a) authorizing the Debtors to pay, in the ordinary course of business, prepetition amounts owing on account of (i) Critical Vendor Claims and Foreign Vendor Claims, (ii) 503(b)(9) Claims, and (iii) Lien Claims; (b) confirming administrative expense priority to all undisputed obligations on account of goods ordered by the Debtors prior to the date hereof that will not be delivered until after the Petition Date and authorizing the Debtors to satisfy such obligations in the ordinary course of business; and (c) granting related relief, all as more fully set forth in the Motion; and upon the First Day Declaration; and this Court having 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

[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.

(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 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 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 a final basis as set forth herein.

2. The Debtors are authorized, but not directed, to pay all or part of, and discharge, on a case-by-case basis, the Critical Vendor Claims on a final basis, absent further order of the Court.

3. The Debtors are authorized, but not directed, to pay all or part of, and discharge, on a case-by-case basis, the Foreign Vendor Claims on a final basis, absent further order of the Court.

4. The Debtors are authorized, but not directed, to pay all or part of, and discharge, on a case-by-case basis, the Lien Claims on a final basis, absent further order of the Court.

5. The Debtors are authorized, but not directed, to pay all or part of, and discharge, on a case-by-case basis, the 503(b)(9) Claims on a final basis, absent further order of the Court.

6. All undisputed obligations related to the Outstanding Orders are granted administrative expense priority in accordance with section 503(b)(1)(A) of the Bankruptcy Code.

7. The Debtors are authorized, but not directed, to pay all undisputed amounts relating to the Outstanding Orders in the ordinary course of business consistent with the parties' customary practices in effect prior to the Petition Date.

8. As a condition to receiving payment hereunder, the Debtors at their discretion may require, by written agreement, such parties to continue supplying goods or services to the Debtors in accordance with trade terms at least as favorable to the Debtors as those practices and programs (including credit limits, pricing, cash discounts, timing of payments, allowances, product mix, availability, and other programs) consistent with the parties' ordinary course practice (collectively, the "Customary Trade Terms"). The Debtors reserve the right to require more favorable trade terms with any party as a condition to payment of any prepetition claim.

9. If any party accepts payment hereunder for a prepetition obligation of the Debtors premised on compliance with the above, and thereafter fails to comply with the Customary Trade Terms, or other such terms as agreed to by the Debtors, then: (a) any payment on account of a prepetition claim received by such party shall be deemed, in the Debtors' sole discretion, an improper postpetition transfer and, therefore, immediately recoverable in cash upon written request by the Debtors; (b) upon recovery by the Debtors, any prepetition claim of such party shall be reinstated as if the payment had not been made; and (c) if there exists an outstanding postpetition balance due from the Debtors to such party, the Debtors may elect to recharacterize and apply any payment made pursuant to the relief requested by the Motion to such outstanding postpetition balance and such supplier or vendor will be required to repay to the Debtors such paid amounts

that exceed the postpetition obligations then outstanding, without the right of any setoffs, claims, provisions for payment of any claims, or otherwise.

10. Any Critical Vendor, Foreign Vendor, 503(b)(9) Claimant, or Lien Claimant that accepts payment from the Debtors on account of all or a portion of such party's claim pursuant to this Final Order shall be deemed to (a) agree to the terms and provisions of this Final Order and (b) have waived, to the extent so paid, any and all prepetition claims, of any type, kind, or priority (including any reclamation claim), against the Debtors, their assets, and properties. The Debtors shall provide a copy of this Final Order to any Critical Vendor, Foreign Vendor, 503(b)(9) Claimant, and/or Lien Claimant to whom a payment is made pursuant to this Final Order.

11. Nothing herein shall impair or prejudice the Debtors' ability to contest, in their sole discretion, the extent, perfection, priority, validity, or amounts of any claims held by any Critical Vendor, Foreign Vendor, 503(b)(9) Claimant, or Lien Claimant. The Debtors do not concede that any claims satisfied pursuant to this Final Order are valid, and the Debtors expressly reserve all rights to contest the extent, validity, or perfection, or to seek the avoidance of all such liens, or the priority of such claims.

12. 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.

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

14. 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.

15. 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.

16. The Debtors are authorized 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.

17. Nothing in this Final Order authorizes the Debtors to accelerate any payments not otherwise due.

18. 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.

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

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

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