

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

In re:

VYAIRE MEDICAL, INC., *et al.*,¹

Debtors.

)
) Chapter 11
)
) Case No. 24-11217 (BLS)
)
) (Jointly Administered)
) **Re: Docket No. 4**

**ORDER (I) AUTHORIZING AND APPROVING
THE APPOINTMENT OF OMNI AGENT SOLUTIONS, INC.
AS CLAIMS AND NOTICING AGENT AND (II) GRANTING RELATED RELIEF**

Upon the application (the “Application”)² of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for the entry of an order (this “Order”), (a) authorizing the Debtors to (a) appoint Omni Agent Solutions, Inc. (“Omni”) as Claims and Noticing Agent to, among other things, (i) distribute required notices to parties in interest, (ii) receive, maintain, docket, and otherwise administer the proofs of claim filed in these chapter 11 cases, and (iii) provide such other administrative services—as required by the Debtors—that would fall within the purview of services to be provided by the Clerk’s Office, 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

¹ The last four digits of Debtor Vyair 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/Vyair>. The location of Debtor Vyair 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 Application.

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 Application 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 Application 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 Application and opportunity for a hearing on the Application were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Application 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 Application 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 Application is granted on a final basis as set forth herein.
2. Notwithstanding the terms of the Engagement Agreement attached as **Exhibit 1**, the Order is granted solely as set forth in this Order and solely with respect to the Claims and Noticing Services (as defined herein).
3. The Debtors are authorized, pursuant to 28 U.S.C. § 156(c) and Local Rule 2002-1(f) to retain Omni as Claims and Noticing Agent, effective as of the Petition Date, under the terms of the Engagement Agreement.
4. Omni is authorized and directed to perform noticing services and to receive, maintain, record, and otherwise administer the proofs of claim filed in these chapter 11 cases

(if any), and all related tasks, all as described in the Application (collectively, the “Claims and Noticing Services”).

5. Omni shall serve as the custodian of court records and shall be designated as the authorized repository for all proofs of claim (if any) filed in these chapter 11 cases and is authorized and directed to maintain official claims registers for each of the Debtors and to provide public access via a case website to every proof of claim (free of charge) unless otherwise ordered by the Court, and to provide the Clerk with a certified duplicate thereof upon the request of the Clerk (if necessary).

6. Omni is authorized and directed to provide an electronic interface for filing proofs of claim and to obtain a post office box or address for the receipt of proofs of claim (if necessary).

7. Omni is authorized to take such other action to comply with all duties set forth in the Application and this Order.

8. Omni shall comply with all requests of the Clerk and the guidelines promulgated by the Judicial Conference of the United States for the implementation of 28 U.S.C. § 156(c).

9. The Debtors are authorized to compensate Omni in accordance with the terms of the Engagement Agreement upon the receipt of reasonably detailed invoices setting forth the services provided by Omni and the rates charged for each, and to reimburse Omni for all reasonable and necessary expenses it may incur, upon the presentation of appropriate documentation, without the need for Omni to file fee applications or otherwise seek this Court’s approval for the compensation of its services and reimbursement of its expenses.

10. Omni shall maintain records of all services performed, showing dates, categories of services, fees charged, and expenses incurred, and shall serve monthly invoices on (a) the Debtors, (b) the Office of the United States Trustee for the District of Delaware, (c) counsel for

the Debtors, (d) counsel for any official committee appointed in these chapter 11 cases, and any party in interest who specifically requests service of the monthly invoices.

11. The parties shall meet and confer in an attempt to resolve any dispute which may arise relating to the Engagement Agreement or monthly invoices and the parties may seek resolution of such matter from this Court if resolution is not achieved.

12. Pursuant to section 503(b)(1)(A) of the Bankruptcy Code, the fees and expenses of Omni under this Order shall be an administrative expense of the Debtors' estates.

13. Omni may apply its retainer to all prepetition invoices, which retainer shall be replenished to the original retainer amount, and thereafter, Omni may hold its retainer under the Engagement Agreement during the chapter 11 cases as security for the payment of fees and expenses incurred under the Engagement Agreement.

14. The Debtors shall indemnify each Indemnified Party (as defined in the Engagement Agreement) under the terms of the Engagement Agreement, subject to the following modifications:

- a. An Indemnified Party shall not be entitled to indemnification, contribution or reimbursement pursuant to the Engagement Agreement for services other than the services provided under the Engagement Agreement, unless such services and the indemnification, contribution or reimbursement therefore are approved by the Court;
- b. Notwithstanding anything to the contrary in the Engagement Agreement, the Debtors shall have no obligation to indemnify, or provide contribution or reimbursement to, any Indemnified Party, for any claim or expense that is either: (i) judicially determined (the determination having become final) to have arisen from an Indemnified Party's gross negligence, willful misconduct, or fraud; (ii) for a contractual dispute in which the Debtors allege the breach of an Indemnified Party's contractual obligations if the Court determines that indemnification contribution or reimbursement would not be permissible pursuant to *In re United Artists Theatre Co.*, 315 F.3d 217 (3d Cir. 2003); or (iii) settled prior to a judicial determination under (i) or (ii), but determined by this Court, after notice and a hearing, to be a claim or expense for which an Indemnified Party should not receive indemnity, contribution, or reimbursement under the terms of the Engagement Agreement as modified by this Order; and

- c. If, before the earlier of (i) the entry of an order confirming a chapter 11 plan in these cases (that order having become a final order no longer subject to appeal), or (ii) the entry of an order closing these cases, an Indemnified Party believes that it is entitled to the payment of any amounts by the Debtors on account of the Debtors' indemnification, contribution and/or reimbursement obligations under the Engagement Agreement (as modified by this Order), including without limitation the advancement of defense costs, an Indemnified Party must file an application therefor in this Court, and the Debtors may not pay any such amounts to an Indemnified Party before the entry of an order by this Court approving the payment. This paragraph is intended only to specify the period of time under which the Court shall have jurisdiction over any request for fees and expenses by an Indemnified Party for indemnification, contribution or reimbursement, and not a provision limiting the duration of the Debtors' obligation to indemnify an Indemnified Party. All parties-in-interest shall retain the right to object to any demand by an Indemnified Party for indemnification, contribution, or reimbursement.

15. In the event Omni is unable to provide the Claims and Noticing Services, Omni will immediately notify the Clerk and the Debtors' counsel and, upon approval of this Court, cause to have all original proofs of claim and computer information turned over to another claims and noticing agent with the advice and consent of the Clerk and the Debtors' counsel and co-counsel.

16. The Debtors may submit a separate retention application, pursuant to 11 U.S.C. § 327 and/or any applicable law, for work that is to be performed by Omni but is not specifically authorized by this Order.

17. Omni shall not cease providing claims processing services during these chapter 11 cases for any reason, including nonpayment, without an order of this Court.

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

19. All time periods set forth in this Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

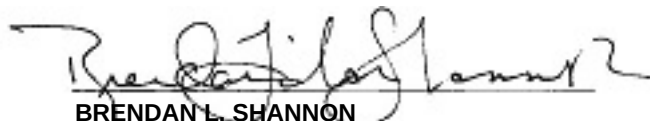
20. Notice of the Application as provided therein shall be deemed good and sufficient notice of such Application and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by such notice.

21. Notwithstanding any Bankruptcy Rule to the contrary, the terms and conditions of this Order are immediately effective and enforceable upon its entry.

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

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

Dated: June 11th, 2024
Wilmington, Delaware



BRENDAN L. SHANNON
UNITED STATES BANKRUPTCY JUDGE