

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

In re:

VYAIRE MEDICAL, INC., *et al.*,¹

Debtors.

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Chapter 11

Case No. 24-11217 (BLS)

(Jointly Administered)

Hearing Date: July 9, 2024, at 10:00 a.m. (ET)

Obj. Deadline: July 2, 2024, at 4:00 p.m. (ET)

**MOTION OF DEBTORS FOR
ENTRY OF AN ORDER (I) AUTHORIZING
AND APPROVING PROCEDURES TO REJECT EXECUTORY
CONTRACTS AND UNEXPIRED LEASES AND (II) GRANTING RELATED RELIEF**

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

Relief Requested

1. The Debtors seek entry of an order, substantially in the form attached hereto as **Exhibit A** (the “Order”), (a) authorizing and approving procedures (as described herein, the “Contract Rejection Procedures”) for rejecting executory contracts and unexpired leases (each, a “Contract” and, collectively, the “Contracts”), and (b) granting related relief. The Debtors also request authority, but not direction, at any time on or before the effective date of any proposed rejection, to remove or abandon personal property of the Debtors, including,

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’ 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 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 Vyair Medical, Inc., in Support of Debtors’ Chapter 11 Petitions and First Day Motions* [Docket No. 15] (the “First Day Declaration”). Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the First Day Declaration.

without limitation, equipment, fixtures, furniture, and other personal property that may be located on, or may have been installed in, leased premises that are subject to a rejected Contract.

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 bases for the relief requested herein are sections 105(a), 362, 363, 365, and 554 of chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”), rules 2002, 6004, 6006, 6007, and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Local Rule 2002–1.

Background

5. Vyair Medical, Inc., together with its direct and indirect subsidiaries (collectively, “Vyair” 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, Vyair operates approximately 27 offices and manufacturing facilities, and employs approximately 950 individuals around the world. The Company has a global reach, and Vyair 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”), Vyair 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. On June 11, 2024, the Court entered an order authorizing the procedural consolidation and joint administration of these chapter 11 cases pursuant to Bankruptcy Rule 1015(b) and Local Rule 1015-1. *See* Docket No. 84. No request for the appointment of a trustee or examiner has been made in these chapter 11 cases, and no official committees have been appointed or designated.

The Debtors’ Executory Contracts and Unexpired Leases

7. The Debtors are party to a multitude of Contracts, which include, among other things, agreements with vendors for the supply and distribution of goods and services, partnership agreements, equipment service agreements, group purchasing organization agreements, customer agreements, physician consulting agreements, insurance and employee benefits agreements, license agreements, software and information technology arrangements, other contracts related to the Debtors’ businesses, and leases with respect to real and personal property. The Debtors are in the process of evaluating all of their Contracts to determine which Contracts may provide value to, or be necessary for, the Debtors’ businesses on a post-sale basis. Though the Debtors’ objective in these chapter 11 cases is to run a successful sale process, the

Debtors anticipate that they may reject (if not renegotiated) a number of Contracts during the pendency of these chapter 11 cases to reduce expenses during such process.

8. Absent the relief requested in this motion, the Debtors would be required to file separate motions to reject Contracts, resulting in substantial costs to, and administrative burdens on, the Debtors' estates—in addition to burdening the Court's docket. To that end, the Debtors hereby request approval of the Contract Rejection Procedures to minimize such costs and burdens.

The Proposed Contract Rejection Procedures

9. The Debtors seek entry of the Order authorizing and approving the following Contract Rejection Procedures:

- a. ***Rejection Notice.*** The Debtors shall file one or more notices, with the consent of the Required DIP Lenders,³ substantially in the form annexed as Exhibit 1 to the Order (the "Rejection Notice"), to reject a Contract or Contracts pursuant to section 365 of the Bankruptcy Code, which Rejection Notice(s) shall set forth, among other things, with respect to each Contract listed on the Rejection Notice: (i) the Contract or Contracts to be rejected; (ii) the Debtor or Debtors party to such Contract; (iii) the names and addresses of the counterparties to such Contract; (iv) the proposed effective date of the rejection for such Contract (the "Rejection Date"); and (v) if such Contract is an unexpired lease, the location affected by the Rejection Notice and a summary description of personal property to be abandoned, if any (the "Abandoned Property"). The Rejection Notice shall also set forth the deadlines and procedures for filing objections to the Rejection Notice (as set forth below). Each Rejection Notice may list multiple Contracts; *provided* that the number of counterparties to Contracts listed on any one Rejection Notice shall be limited to no more than 100. For the avoidance of doubt, the Debtors may serve multiple Rejection Notices, as long as the counterparties listed on each notice are limited to no more than 100.
- b. ***Service of Rejection Notices.*** The Debtors will cause each Rejection Notice to be served (i) via email, if available, and by overnight delivery service upon (a) the Contract counterparties affected by such Rejection

³ The DIP Lenders holding at least 66.67% of the aggregate outstanding principal amount and commitments of the DIP Facility at the relevant time of determination shall constitute the "Required DIP Lenders."

Notice (each, a “Rejection Counterparty”) at the notice address provided in the applicable Contract (and upon such Rejection Counterparty’s counsel, if known) and (b) all parties who may have any interest in any Abandoned Property (if known); and (ii) by first class mail, email, or fax upon: (a) counsel to the 1L Ad Hoc Group, 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); (b) counsel to the 1L Ad Hoc Group, Pachulski Stang Ziehl & Jones LLP, 919 North Market Street, 17th Floor, Wilmington, DE 19801, Attn.: Laura Davis Jones (ljones@pszjlaw.com) and Timothy P. Cairns (tcairns@pszjlaw.com); (c) the United States Trustee for the District of Delaware, Attn.: Benjamin A. Hackman (Benjamin.A.Hackman@usdoj.gov); (d) counsel to any statutory committee appointed in these chapter 11 cases; (e) the United States Attorney’s Office for the District of Delaware; and (f) any party that has requested notice pursuant to Bankruptcy Rule 2002 (collectively, the “Master Notice Parties”).

- c. **Objection Procedures.** Parties objecting to a proposed rejection must file and serve a written objection⁴ so that such objection is filed with this Court on the docket of the Debtors’ chapter 11 cases no later than seven (7) days after the date the Debtors file and serve the relevant Rejection Notice (the “Rejection Objection Deadline”) and promptly serve such objection on the following parties (collectively, the “Objection Service Parties”): (a) the Debtors, Vyair Medical, Inc., 26125 North Riverwoods Boulevard, Mettawa, Illinois 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), and (ii) Kirkland & Ellis LLP, 333 Wolf Point Plaza, Chicago, Illinois, 60654, Attn.: Spencer A. Winters (spencer.winters@kirkland.com) and Yusuf U. Salloum (yusuf.salloum@kirkland.com); (c) proposed co-counsel to the Debtors (i) 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 (ii) Cole Schotz P.C., Court Plaza North, 25 Main Street, Hackensack, New Jersey 07601, Attn.: Michael D. Sirota, Esq. (msirota@coleschotz.com), Warren A. Usatine, Esq. (wusatine@coleschotz.com); (d) counsel to the 1L Ad Hoc Group,

⁴ An objection to the rejection of any particular Contract listed on a Rejection Notice shall not constitute an objection to the rejection of any other Contract listed on such Rejection Notice.

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); (e) counsel to the 1L Ad Hoc Group, Pachulski Stang Ziehl & Jones LLP, 919 North Market Street, 17th Floor, Wilmington, DE 19801, Attn.: Laura Davis Jones (ljones@pszjlaw.com) and Timothy P. Cairns (tcairns@pszjlaw.com); (f) the United States Trustee for the District of Delaware, Attn.: Benjamin A. Hackman (Benjamin.A.Hackman@usdoj.gov); and (g) counsel to any statutory committee appointed in these chapter 11 cases.

- d. ***No Objection Timely Filed.*** If no objection to the rejection of any Contract is timely filed, then the Debtors shall submit a proposed form of order substantially in the form attached as Exhibit B to the Rejection Notice approving the rejection of each Contract listed in the applicable Rejection Notice, for entry by the Court under certification of counsel, and each such Contract shall be deemed rejected as of the Rejection Date set forth in the Rejection Notice or such other date as the Debtors and the counterparty or counterparties to such Contract(s) agree; *provided* that the effective date of a rejection of a nonresidential real property lease shall not occur until the later of (i) the date the Debtors file and serve a Rejection Notice for such lease, (ii) the Rejection Date set forth in the Rejection Notice, and (iii) the date the Debtors relinquish control of the premises by notifying the affected landlord or their counsel in writing (email sufficient) of the Debtors' surrender of the premises and turning over, surrendering, or allowing to be reset, as applicable, the keys, key codes, and security codes, if any, to the affected landlord.
- e. ***Unresolved Timely Objections.*** If one or more objections to the rejection of any Contract(s) listed in the applicable Rejection Notice is timely filed and properly served as specified above and not withdrawn or resolved, the Debtors shall file a notice for a hearing to consider the rejection of the Contract(s) implicated by such objection(s) and shall provide at least seven (7) days' notice of such hearing to each objecting party and the Objection Service Parties. If any such objection is overruled or withdrawn, the Contract(s) that are the subject of such objection shall be rejected as of the Rejection Date set forth in the Rejection Notice or such other date as agreed by the parties or determined by the Court as set forth in any order overruling such objection.
- f. ***No Application of Security Deposits.*** If the Debtors have deposited monies with a Rejection Counterparty as a security deposit or other arrangement in connection with such rejected Contract, such Rejection Counterparty may not setoff, recoup, or otherwise use such deposit without the prior approval of the Court, unless the Debtors and the applicable Rejection Counterparty otherwise agree in writing.

- g. ***Abandoned Property.*** The Debtors are authorized, but not directed, at any time on or before the applicable Rejection Date, to remove or abandon, at their option, any of the Debtors' personal property that may be located on the Debtors' leased premises that are subject to a rejected Contract; *provided, however*, that to the extent the Debtors seek to abandon personal property that contains "personally identifiable information," as that term is defined in section 101(41A) of the Bankruptcy Code (the "PII"), the Debtors will use commercially reasonable efforts to remove the PII from such personal property before abandonment. The Debtors shall generally describe the Abandoned Property in the applicable Rejection Notice and their intent to abandon such property. Absent a timely objection, the described property shall be deemed abandoned pursuant to section 554 of the Bankruptcy Code, as is, effective as of the Rejection Date. After the Abandoned Property is deemed abandoned pursuant to section 554 of the Bankruptcy Code, the applicable Rejection Counterparty or counterparties may, in their sole discretion and without further order of this Court, utilize and/or dispose of such property and, to the extent applicable, the automatic stay is modified to allow such disposition. To the extent requested by Rejection Counterparty, the Debtors shall be permitted to abandon the Abandoned Property to such Rejection Counterparty to facilitate such party's use or disposal of such Abandoned Property.
- h. ***Proofs of Claim.*** Claims arising out of the rejection of Contracts, if any, must be filed on or before the later of (i) the applicable deadline for filing proofs of claim established in these chapter 11 cases, and (ii) thirty (30) days after the entry of an order of the Court approving the rejection. If no proof of claim is timely filed, such claimant shall be forever barred from asserting a claim for damages arising from the rejection and from participating in any distributions on such a claim that may be made in connection with these chapter 11 cases.
- i. ***Removal from Schedule.*** The Debtors reserve the right to remove any Contract from the schedule to any Rejection Notice at any time prior to the date of entry of an order of the Court approving the rejection, and the Debtors will provide notice (by overnight delivery service at the notice address provided in the applicable Contract) of such removal to the relevant Rejection Counterparties.

Basis for Relief

I. The Contract Rejection Procedures Are in the Best Interests of the Debtors' Estates.

10. The Debtors may reject a number of Contracts prior to the consummation of any plan or sale transaction. Establishing the Contract Rejection Procedures will streamline the administration of these chapter 11 cases and enhance the efficiency of the Debtors' chapter 11

process by eliminating substantial legal expenses that would otherwise be incurred if multiple hearings were held on separate motions with respect to every Contract that the Debtors seek to reject. The Contract Rejection Procedures are reasonable and fair to Rejection Counterparties because they afford parties in interest the opportunity to be heard with respect to the rejection of the Contracts (or abandonment of property related thereto).

11. Courts in this district often enter orders approving similar relief. *See, e.g., In re Express, Inc.*, No. 24-10831 (KBO) (Bankr. D. Del. May 17, 2024) (entering an order approving procedures to assume or reject executory contracts and unexpired leases); *In re Yellow Corp.*, No. 23-11069 (CTG) (Bankr. D. Del. Sept. 14, 2023) (entering an order approving procedures to reject executory contracts and unexpired leases); *In re PGX Holdings, Inc.*, No. 23-10718 (CTG) (Bankr. D. Del. July 19, 2023) (same); *In re The Rockport Co., LLC*, No. 23-10774 (BLS) (Bankr. D. Del. July 12, 2023) (entering an order approving procedures to reject executory contracts); *In re Town Sports Int'l, LLC*, No. 20-12168 (CSS) (Bankr. D. Del. Oct. 13, 2020) (entering an order approving procedures to reject executory contracts and unexpired leases); *In re Bluestem Brands, Inc.*, No. 20-10566 (MFW) (Bankr. D. Del. Apr. 13, 2020) (entering an order approving procedures to assume or reject executory contracts and unexpired leases); *In re Z Gallerie, LLC*, No. 19-10488 (LSS) (Bankr. D. Del. Apr. 9, 2019) (same).

II. Rejection of the Contracts Is an Exercise of the Debtors' Business Judgment.

12. Section 365(a) of the Bankruptcy Code provides that a debtor in possession, “subject to the court’s approval, may assume or reject any executory contract or unexpired lease of the debtor.” 11 U.S.C. § 365(a). The ability to reject executory contracts and unexpired leases is “vital to the basic purpose of [Chapter 11], because rejection can release the debtor’s estate from burdensome obligations that can impede a successful reorganization.” *N.L.R.B. v.*

Bildisco and Bildisco, 465 U.S. 513, 528 (1984). The decision to reject an executory contract or unexpired lease is a matter within the “business judgment” of the debtor. *See In re Extraction Oil & Gas*, 622 B.R. 608, 614 (Bankr. D. Del. Nov. 2, 2020) (holding that courts will generally authorize a debtor to reject executory contracts and unexpired leases when such debtor appropriately exercises its business judgment); *see also N.L.R.B v. Bildisco and Bildisco (In re Bildisco)*, 682 F.2d 72, 79 (3d Cir. 1982) (“The usual test for rejection of an executory contract is simply whether rejection would benefit the estate, the ‘business judgment’ test.”) (citation omitted). The business judgment standard mandates that a court approve a debtor’s business decision unless the decision is the product of bad faith, whim, or caprice. *See Lubrizol Enters., Inc. v. Richmond Metal Finishers, Inc. (In re Richmond Metal Finishers, Inc.)*, 756 F.2d 1043, 1047 (4th Cir. 1985), *cert. denied*, 475 U.S. 1057 (1986). Courts generally will not second-guess a debtor’s business judgment concerning the rejection of an executory contract or unexpired lease.

13. Further, the business judgment standard is satisfied when a debtor determines that rejection will benefit the estate. *See In re Trans World Airlines, Inc.*, No. 01-0056, 2001 WL 1820019, at *2 (Bankr. D. Del. Mar. 16, 2001) (noting that the standard under section 365 requires consideration of the benefit of the rejection to the debtor’s estate); *see also In re TS Indus., Inc.*, 117 B.R. 682, 685 (Bankr. D. Utah 1990); *In re Del Grosso*, 115 B.R. 136, 138 (Bankr. N.D. Ill. 1990).

14. In addition, the Court may also authorize the Contract Rejection Procedures based on section 105(a) of the Bankruptcy Code. Section 105(a) codifies a bankruptcy court’s inherent equitable powers, and allows the Court to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” A bankruptcy court’s exercise

of its authority under section 105(a) of the Bankruptcy Code is appropriately used to allow the Debtors to minimize costs and reorganize their estates around assets that will drive value in their go-forward operations.

15. The Debtors have determined, in their sound business judgment, that the rejection of Contracts in accordance with the Contract Rejection Procedures proposed herein is and will be in the best interest of the Debtors' estates. Further, the Contract Rejection Procedures will avoid substantial legal expense and the use of Court time that would result if a motion were filed and a hearing held for every Contract that the Debtors reject. The Debtors submit that the information provided on the Rejection Notices will provide the Court and interested parties with sufficient information to establish that the Debtors are entitled to make such a rejection in their sound business judgment. Accordingly, the Court should approve the Contract Rejection Procedures.

III. The Debtors' Abandonment of Personal Property Is Proper Under Section 554(a).

16. The Debtors submit that the standard set forth in section 554(a) of the Bankruptcy Code is or will be satisfied in the event the Debtors seek to abandon property located at the premises subject to a rejected lease of real property. Section 554(a) provides that a debtor in possession may abandon, subject to court approval, "property of the estate that . . . is of inconsequential value and benefit to the estate." Before authorizing abandonment of property, a Bankruptcy Court must find that either (a) the property is burdensome to the estate or (b) the property is both of inconsequential value and inconsequential benefit to the estate. *See, e.g., Midlantic Nat'l Bank v. N.J. Dep't of Env'tl. Prot.*, 474 U.S. 494, 497 (1986); *Matter of Boogaard*, 89 B.R. 397, 397 (Bankr. D. Del. 1988); *In re Pilz Compact Disc, Inc.*, 229 B.R. 630, 635 (Bankr. E.D. Pa. 1999). The personal property proposed to be abandoned in connection with any future rejections of Contracts that are real property leases would primarily consist of fixtures, furniture, and other equipment that is (a) of minimal or no material value or

benefit to the Debtors' estates and/or (b) burdensome insofar as the costs and expenses of removal and storage of such property are likely to exceed the net proceeds realizable from their sale.

IV. The Contract Rejection Procedures Satisfy Due Process.

17. The counterparties to the Contracts will not be prejudiced by the Contract Rejection Procedures because, upon receipt of a Rejection Notice, such counterparties will have received advance notice of the Debtors' intent to reject their respective Contract as of the effective date of such rejection. *See, e.g., In re DB Holdings Liquidation, Inc.*, 592 B.R. 539, 558 (D. Del. 2018) (reasoning that the timing of assumption or rejection and any notices served are pertinent variables to determining whether the contract counterparty has been prejudiced by such assumption or rejection); *In re Phila. Newspapers, LLC*, 424 B.R. 178, 185 (Bankr. E.D. Pa. 2010) (reasoning that rejection should be granted when it does not prejudice the contract counterparty); *In re Mid Region Petrol., Inc.*, 111 B.R. 968, 970 (Bankr. N.D. Okla. 1990) (holding effective date of rejection of leases was the date the trustee gave notice to lessor of intent to reject), *aff'd* 1 F.3d 1130 (10th Cir. 1993); *In re Carlisle Homes, Inc.*, 103 B.R. 524, 535 (Bankr. D.N.J. 1988) (finding debtor may reject executory contract by clearly communicating intention to reject). Additionally, in the case of unexpired leases of nonresidential real property, the Debtors may vacate the premises before or upon serving the Rejection Notice, thereby allowing the counterparties to take possession of and relet the property promptly. *See, e.g., Adelphia Bus. Solutions, Inc. v. Abnos*, 482 F.3d 602, 608–09 (2d Cir. 2007) (holding that the bankruptcy court did not abuse its discretion in finding balance of equities favored making rejection of a nonresidential lease of real property retroactive to date tenant vacated premises, as tenant's action provided landlord with opportunity to relet premises); *In re New Valley Corp*, No. 98-982, 2000 U.S. Dist. LEXIS 12663, at *44–46 (D.N.J. Aug. 31,

2000) (holding that the bankruptcy court properly exercised its discretion in adjusting the effective date of rejection from the date the court signed the order authorizing rejection to the date on which the debtor vacated and the landlord exercised control over the property); *In re Amber's Stores, Inc.*, 193 B.R. 819, 827 (Bankr. N.D. Tex. 1996) (holding that lease at issue should be deemed rejected as of the petition date due to equities of the case where debtor turned over keys and vacated premises and served motion to reject lease as soon as possible).

18. As a procedural matter, “[a] proceeding to assume, reject, or assign an executory contract or unexpired lease . . . is governed by Rule 9014.” Fed. R. Bankr. P. 6006(a). Bankruptcy Rule 9014 provides that “[i]n a contested matter not otherwise governed by these rules, relief shall be requested by motion, and reasonable notice and opportunity for hearing shall be afforded the party against whom relief is sought.” The notice and hearing requirements for contested matters in Bankruptcy Rule 9014 are satisfied if appropriate notice and an opportunity for hearing are given ***in light of the particular circumstances***. See 11 U.S.C. § 102(1)(A) (defining “after notice and a hearing” or a similar phrase to mean such notice and an opportunity for hearing “as [are] appropriate in the particular circumstances.”).

19. Under Bankruptcy Rule 6006(f), a debtor may join requests for authority to reject multiple executory contracts or unexpired leases in one motion, subject to Bankruptcy Rule 6006(e), which provides that the court may “authorize [a motion to assume or assign multiple executory contracts or unexpired leases] to be filed.” Bankruptcy Rule 6006(f) sets forth six requirements that motions to reject multiple executory contracts or unexpired leases must satisfy. These requirements are procedural in nature. Bankruptcy Rule 6006(f) provides that a motion to reject multiple executory contracts or unexpired leases that are not between the same parties shall:

- a. state in a conspicuous place that parties receiving the omnibus motion should locate their names and their contracts or leases listed in the motion;
- b. list parties alphabetically and identify the corresponding contract or lease;
- c. specify the terms, including the curing of defaults, for each requested assumption or assignment;
- d. specify the terms, including the identity of each assignee and the adequate assurance of future performance by each assignee, for each requested assignment;
- e. be numbered consecutively with other omnibus motions to assume, assign, or reject executory contracts or unexpired leases; and
- f. be limited to no more than one hundred executory contracts or unexpired leases.

20. The purpose of Bankruptcy Rule 6006(f) is to protect the due process rights of counterparties to the Contracts while conserving estate resources. Counterparties must be able to locate their Contracts and readily determine whether their Contracts are being rejected.

21. The Contract Rejection Procedures satisfy Bankruptcy Rule 6006(f), including the 100-Contract limit set forth therein. Further, given the number of Contracts the Debtors may be seeking to reject, obtaining Court approval of each rejection would impose unnecessary administrative burdens on the Debtors and the Court and result in costs to the Debtors' estates that may decrease the economic benefits of rejection.

22. In accordance with Bankruptcy Rule 6007(a), the Debtors will provide the U.S. Trustee and other parties in interest with the requisite notice and an opportunity to object to any proposed abandonment of property.

23. As a result, the Contract Rejection Procedures afford Rejection Counterparties and all other parties in interest their due process rights by providing notice and the opportunity to be heard. Moreover, the Court maintains authority and oversight in the event of an objection.

For the foregoing reasons, the Contract Rejection Procedures should be approved, and the Debtors should be authorized to reject the Contracts consistent with their terms.

24. In sum, the Contract Rejection Procedures will minimize costs to the Debtors' estates and reduce the burden on this Court's docket while protecting parties in interest by providing notice and the opportunity to object and obtain a hearing. Moreover, the Debtors have determined that the Contract Rejection Procedures are an appropriate means to protect and maximize the value of the Debtors' estates.

Reservation of Rights

25. 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, 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) 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 (f) 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.

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

26. 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

27. 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 agent of the Second Lien Credit Agreement and counsel thereto; (k) the agent of the First Lien Notes and counsel thereto; (l) the Contract counterparties; and (m) 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.

WHEREFORE, the Debtors request entry of the 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 25, 2024
Wilmington, Delaware

/s/ Patrick J. Reilley

COLE SCHOTZ P.C.

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