

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

In re:	)	
	)	Chapter 11
	)	
VYAIRE MEDICAL, INC., <i>et al.</i> , ¹	)	Case No. 24-11217 (BLS)
	)	
Debtors.	)	(Jointly Administered)
	)	

**THIRD SUPPLEMENTAL DECLARATION OF
SPENCER A. WINTERS IN SUPPORT OF THE APPLICATION
OF DEBTORS FOR ENTRY OF AN ORDER AUTHORIZING THE
RETENTION AND EMPLOYMENT OF KIRKLAND & ELLIS LLP AND
KIRKLAND & ELLIS INTERNATIONAL LLP AS ATTORNEYS FOR THE
DEBTORS AND DEBTORS IN POSSESSION EFFECTIVE AS OF JUNE 9, 2024**

I, Spencer A. Winters, being duly sworn, state the following under penalty of perjury:

1. I am the president of Spencer A. Winters, P.C., a partner of the law firm of Kirkland & Ellis LLP, located at 333 West Wolf Point Plaza, Chicago, Illinois 60654, and a partner of Kirkland & Ellis International, LLP (together with Kirkland & Ellis LLP, “Kirkland”).² I am one of the lead attorneys from Kirkland working on the above-captioned chapter 11 cases. I am a member in good standing of the Bar of the State of Illinois, and I have been admitted to practice in the U.S. District Court for the Northern District of Illinois. There are no disciplinary proceedings pending against me.

2. On June 9, 2024, (the “Petition Date”), Vyair Medical, Inc. and certain of its subsidiaries (collectively, the “Debtors”) filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”). On July 9, 2024, the Debtors filed an

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 Capitalized terms used but not otherwise defined herein shall have the meaning as set forth in the Application or Prior Declarations (as defined herein), as applicable.

application to employ and retain Kirkland as counsel for the Debtors [Docket No. 236] (the “Application”) pursuant to sections 327(a) and 330 of the Bankruptcy Code, rules 2014(a) and 2016 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and rules 2014-1 and 2016-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”).

3. My declaration in support of the Application (the “Original Declaration”) was attached to the Application as Exhibit B. On July 26, 2024, I submitted the *Supplemental Declaration of Spencer A. Winters in Support of an Order Authorizing the Retention and Employment of Kirkland & Ellis LLP and Kirkland & Ellis International LLP as Attorneys for the Debtors and Debtors in Possession Effective as of June 9, 2024* [Docket No. 326] (the “First Supplemental Declaration”). On August 5, 2024, the Court entered the *Order Authorizing the Retention and Employment of Kirkland & Ellis LLP and Kirkland & Ellis International LLP as Attorneys for the Debtors and Debtors in Possession Effective as of June 9, 2024* [Docket No. 350] (the “Retention Order”). On October 3, 2024 I submitted the *Second Supplemental Declaration of Spencer A. Winters in Support of the Application of Debtors for Entry of an Order Authorizing the Retention and Employment of Kirkland & Ellis LLP and Kirkland & Ellis International LLP as Attorneys for the Debtors and Debtors in Possession Effective as of June 9, 2024* [Docket No. 603] (together with the Original Declaration and the First Supplemental Declaration, the “Prior Declarations”) to provide additional information related to the disclosures made in the Application and the Prior Declarations.

4. In connection with the Application and the Retention Order, I submit this Third supplemental declaration (the “Third Supplemental Declaration”) to provide additional disclosures in accordance with rules 2014(a) and 2016(b) of the Bankruptcy Rules and as required under the Retention Order. Unless otherwise stated in this Third Supplemental Declaration, I have personal knowledge of the facts set forth herein.

Additional Disclosures

5. This Third Supplemental Declaration makes certain additional disclosures. As I stated in the Original Declaration, Kirkland has searched its electronic database of representations for connections to parties in interest in these chapter 11 cases. Consistent with this statement, Kirkland has continued to obtain information regarding all Potential Parties in Interest disclosed on Schedule 1 attached to the Original Declaration (the “PPII List”).

6. Based on the conflicts searches conducted to date, to the best of my knowledge, neither I, Kirkland, nor any partner, of counsel, or associate thereof, insofar as I have been able to ascertain, has any connections with the Debtors, their creditors, or any other entities who may be parties in interest, their respective attorneys or accountants, the Office of the United States Trustee for the District of Delaware (the “U.S. Trustee”), any person employed by the U.S. Trustee, or any person employed by the United States Bankruptcy Court for the District of Delaware, the United States District Court for the District of Delaware, or the United States Court of Appeals for the Third Circuit, except as disclosed or otherwise described herein and in the Prior Declarations.

7. As I stated in the Prior Declarations, Kirkland has searched its electronic database of representations for connections to parties in interest in these chapter 11 cases. Certain connections were disclosed in the Prior Declarations. Since the filing of the Prior Declarations, Kirkland has updated those conflicts searches and has searched additional parties in interest in these chapter 11 cases of whom Kirkland has become aware. In addition to the entities searched and disclosed in the Prior Declarations, Kirkland has searched its electronic database for the entities listed on Schedule 1 attached hereto. The following is a list of the additional categories that Kirkland has searched:³

Schedule	Category
1(a)	Debtors and their Non-Debtor Affiliates

³ Kirkland’s inclusion of parties in the following schedules is solely to illustrate Kirkland’s conflict search process and is not an admission that any party has a valid claim against the Debtors or that any party properly belongs in the schedules or has a claim or legal relationship to the Debtors of the nature described in the schedules.

- 1(b) Bankruptcy Professionals
- 1(c) Claims Parties
- 1(d) Material Contract Counterparties
- 1(e) M&A Counterparties

8. I have included the results of Kirkland's conflicts searches of the entities included in the above-listed categories on **Schedule 2** to this Third Supplemental Declaration.⁴ In addition, Kirkland re-ran searches in its electronic database for the entities that were previously reviewed in the Prior Declarations. The results of Kirkland's conflicts searches from the entities that were re-run are listed on **Schedule 3**. All current and prior representations of the parties identified on **Schedule 2** and **Schedule 3** are in matters unrelated to the Debtors and these chapter 11 cases.

9. Generally, it is Kirkland's policy to disclose entities in the capacity that they first appear in a conflicts search. For example, if an entity already has been disclosed in the Prior Declarations in one capacity (*e.g.*, a customer), and the entity appears in a subsequent conflicts search in a different capacity (*e.g.*, a vendor), Kirkland does not disclose the same entity again in supplemental declarations unless the circumstances are such in the latter capacity that additional disclosure is required.

10. As set forth in the Prior Declarations and herein, Kirkland in the past may have represented, may currently represent, and may in the future will represent, entities that may be parties in interest in these chapter 11 cases in connection with matters unrelated (except as otherwise disclosed in the Prior Declarations and herein) to the Debtors and these chapter 11 cases. None of the representations set forth on **Schedule 2** or **Schedule 3** are materially adverse to the

⁴ As referenced in **Schedule 2** and **Schedule 3**, the term "current" means an entity listed as a client in Kirkland's conflicts search system to whom time was posted in the 12 months preceding the Petition Date. As referenced in **Schedule 2** and **Schedule 3**, the term "former" means an entity listed as a client in Kirkland's conflicts search system to whom time was posted between 12 and 36 months preceding the Petition Date. As referenced in **Schedule 2** and **Schedule 3**, the term "closed" means an entity listed as a client in Kirkland's conflicts search system to whom time was posted in the 36 months preceding the Petition Date, but for which the client representation has been closed. Whether an actual client relationship exists can only be determined by reference to the documents governing Kirkland's representation rather than its potential listing in Kirkland's conflicts search system. The list generated from Kirkland's conflicts search system is over-inclusive. As a general matter, Kirkland discloses connections with "former" or "closed" clients for whom time was posted in the last 36 months, but does not disclose connections if time was billed more than 36 months before the Petition Date.

interests of the Debtors' estates. Moreover, pursuant to section 327(c) of the Bankruptcy Code, Kirkland is not disqualified from acting as the Debtors' counsel merely because it represents certain of the Debtors' creditors, equity security holders, or other parties in interest in matters unrelated to these chapter 11 cases.

A. Specific Disclosures.

11. Of the entities listed on Schedule 3, one counterparty that considered participation in the Debtors' sale and marketing process,⁵ represented more than one percent of Kirkland's fee receipts for the twelve-month period ending on November 30, 2024.⁶ Kirkland has not represented, and will not represent, this counterparty in connection with these chapter 11 cases during the pendency of these chapter 11 cases. I do not believe that any current or former representation of this party precludes it from meeting the disinterestedness standard under the Bankruptcy Code.

Affirmative Statement of Disinterestedness

12. Based on the conflicts searches conducted to date and described in the Prior Declarations and herein, to the best of my knowledge and insofar as I have been able to ascertain, (a) Kirkland is a "disinterested person" within the meaning of section 101(14) of the Bankruptcy Code, as required by section 327(a) of the Bankruptcy Code, and does not hold or represent an interest adverse to the Debtors' estates and (b) Kirkland has no connection to the Debtors, their creditors, or other parties in interest, except as may be disclosed in the Prior Declarations and herein.

⁵ As noted in paragraph 39 of the Original Declaration, due to the inherently competitive nature of this process, it remains imperative that the identities of these potential counterparties remain confidential. The Debtors have disclosed to the U.S. Trustee the identities of the potential counterparties and Kirkland's connections to such potential counterparties.

⁶ Specific percentages will be disclosed to the U.S. Trustee upon request.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Dated: January 14, 2025

Respectfully submitted,

/s/ Spencer A. Winters

Spencer A. Winters
as President of Spencer A. Winters, P.C.,
as Partner of Kirkland & Ellis LLP and
as Partner of Kirkland & Ellis International LLP

SCHEDULE 1

List of Schedules

<u>Schedule</u>	<u>Category</u>
1(a)	Debtors and their Non-Debtor Affiliates
1(b)	Bankruptcy Professionals
1(c)	Claims Parties
1(d)	Material Contracts
1(e)	M&A Counterparties

SCHEDULE 1(a)

Debtors and their Non-Debtor Affiliates

Vyair Finance Sub LLC (US)

SCHEDULE 1(b)

Bankruptcy Professionals

Bielli & Klauder LLC
Klauder, David M.

SCHEDULE 1(c)

Claims Parties

3MD Relocation Services LLC	Hisco Inc.
ACE American Insurance Co.	Hughes Marino Inc.
Airgas USA LLC	iData Research Inc.
ArtiQ NV	IES Communications LLC
Ayming USA Inc.	Inari Medical Inc.
Barta-Schoenewald Inc.	Industrial Hearing & Pulmonary Management
Battle Creek, City of (MI)	Ingmar Medical
Bay Corp.	Insight Direct USA Inc.
Becton Dickinson & Co.	Integrity Solutions LLC
Bi-Search International Inc.	Intelligent SCM LLC
Brenner-Fiedler & Associates	Interstate Packaging
CA Seydel Sohne Gmbh	iPrime Legal AG
Calligo (UK) Ltd.	Jabil Inc.
CDW Direct LLC	John Henry Foster
Central-Midori (International) Pte Ltd.	Kaesar Compressors Inc.
CEVA Freight LLC	Keystone Partners LLC
CIM Med Inc.	Landauer Inc.
Cirtec Medical Group	Lee Co., The
Clarivate plc	Leister Technologies LLC
CommonSpirit Health	Lewis Gale Hospital Pulaski
Concur Technologies Inc.	LinkedIn Corp.
Cornerstone OnDemand Inc.	McKinley Equipment Corp.
Crown Equipment Corp.	McMaster-Carr Supply Co.
Datasite LLC	MedPro Systems LLC
Dawar Technologies Inc.	Memorial Satila Health
Dell-Mettawa LLC	Messner Reeves LLP
DeRoyal Industries Inc.	MetroGroup Inc.
Dittmar & Indrenius Attorneys Ltd.	Micro-Matics Inc.
E&S Precision Sheetmetal Manufacturing Inc.	Mississippi, State of, Franchise Tax Board
EBSCO Industries Inc.	Moody's Investors Service Inc.
Enhanced Filter Co.	OpenMarkets Inc.
Environment Associates Inc.	Opentext Corp.
EPM Pros Inc.	Oracle America Inc.
Ergoline GmbH	Orange, City of (CA), Treasurer - Tax Collector
Esker Inc.	Pavese AG Prazisionsmechanik
Estes Express Lines	Pax Industries Inc.
Euduce Group Inc., The	Paymetric Inc.
Fischer USA Inc.	Pelonis Technologies Inc.
Full Vision Inc.	Plastech Corp.
Global Healthcare Exchange LLC	Polyomed Oy Ltd.
Hakama AG	

PPR AG
Precision Associates Inc.
PRN Medical Solutions
ProSymmetry LLC
PSN Labs
QMedic WLL
Quad DBC Holdings LLC
Quail Electronics Inc.
Reed Smith LLP
Regional Medical Center of San Jose
RS Americas Inc.
Salesforce Inc.
Signify Research Ltd. Simon Harris
SiliconExpert Technologies Inc.
Spectrum Plastics Group Inc.
Standard & Poor's Financial Services LLC
Sterling Infosystems Inc.
Suntech Medical
Tata Consultancy Services Ltd.
TCI Precision Metals
TEKsystems
Teledyne Marine
TestEquity LLC
Therm-O-Namel Inc.
TouchPoint Medical Inc.
Trademark Plastics Inc.
TransPerfect Translations
Trench Rossi e Watanabe Advogados
Tricon Transportation Inc.
TTI Inc.
Twenty Poms LLC
Uline Inc.
United Language Group Inc.
United Parcel Service Inc.
United States Plastic Corp.
United States, Government of the,
 Department of Homeland Security, US
 Customs & Border Protection
Vacumetrics
Vestis Services LLC
Vincent Medical Manufacturing Co. Ltd.
Washington, State of, Department of Labor
 & Industries
Wells Fargo Leasing Inc.
West Valley Medical Center Inc.
Zensar Technologies Inc.

SCHEDULE 1(d)

Material Contracts

IMT Information Management Technology AG
Iron Mountain Information Management LLC
Politecnico Di Milano
Showpad Inc.
Silmates Private Ltd.

SCHEDULE 1(e)

M&A Counterparties

[Confidential]

SCHEDULE 2

Name of Entity Searched	Name of Entity and/or Affiliate of Entity, that is a K&E Client	Status
ACE American Insurance Co.	Chubb Bermuda Insurance Ltd.	Current
CDW Direct LLC	CDW Corporation CDW LLC	Current Current
Concur Technologies Inc.	SAP National Security Services Inc.	Former
Cornerstone OnDemand Inc.	Behdad Eghbali Clearlake Capital Group LP Clearlake Capital Partners II, L.P. Clearlake Capital Partners V LP Clearlake Capital Partners VII LP Clearlake Opportunities Partners (P) LP Clearlake Opportunities Partners II LP Jose E. Feliciano	Current Closed Current Current Current Current Current Current
Datasite LLC	Datasite	Current
Esker Inc.	Esker SA	Current
Opentext Corp.	Micro Focus	Closed
Oracle America Inc.	Oracle Corporation	Current
PRN Medical Solutions	ConvaTec Group PLC	Closed
Spectrum Plastics Group Inc.	DowDuPont Inc. E.I. DuPont de Nemours & Company, Inc. Laird Technologies, Inc.	Current Current Closed
Sterling Infosystems Inc.	Greg Mondre Mary Hannaford Conrad Silver Lake Partners L.P.	Current Current Current
Tata Consultancy Services Ltd.	Tata Consultancy Services Ltd.	Current
TTI Inc.	Berkshire Hathaway Inc. BHE Renewables LLC BNSF Railway Brilliant National Services, Inc.	Current Current Closed Current

Name of Entity Searched	Name of Entity and/or Affiliate of Entity, that is a K&E Client	Status
	HomeServices of America, Inc. PPW Holdings LLC	Current Current
Uline Inc.	Brian Uihlein Richard E. Uihlein Stephen Ellis Uihlein	Closed Current Current
United States, Government of the, Department of Homeland Security, US Customs & Border Protection	Konstantina Diamantopoulos	Former
Wells Fargo Leasing Inc.	Norwest Equity Partners Wells Fargo Asset Management (International) Limited Wells Fargo Asset Management Luxembourg S.A. Wells Fargo Bank, N.A. Wells Fargo Securities LLC	Current Current Current Current Current

SCHEDULE 3

[illegible]