

**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)
	Objection Deadline: Dec. 4, 2024 at 4:00 p.m. (ET)

**THIRD MONTHLY APPLICATION OF BERKELEY RESEARCH GROUP, LLC FOR
COMPENSATION FOR SERVICES RENDERED AND REIMBURSEMENT OF
EXPENSES INCURRED AS FINANCIAL ADVISOR TO THE OFFICIAL
COMMITTEE OF UNSECURED CREDITORS DURING THE PERIOD
FROM SEPTEMBER 1, 2024 THROUGH SEPTEMBER 30, 2024**

Name of Applicant:	Berkeley Research Group LLC (“ <u>BRG</u> ”)
Authorized to Provide Professional Services to:	The Official Committee of Unsecured Creditors (“the <u>Committee</u> ”)
Date of Retention:	July 30, 2024 effective as of June 28, 2024
Period for which Compensation and reimbursement is sought:	September 1, 2024 through September 30, 2024
Amount of compensation sought as actual, reasonable, and necessary:	\$270,357.20 (80% of \$337,946.50)
Amount of expense reimbursement sought as actual, reasonable, and necessary:	\$0.00
This is an:	<u> X </u> monthly <u> </u> interim <u> </u> final application

The total time expended for fee application preparation is approximately 25.3 hours and the corresponding compensation requested is approximately \$7,092.50.

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.

Attachment A - Prior Applications Filed:

<i>Application</i>		<i>Requested</i>			<i>Paid to Date</i>		<i>Total Unpaid</i>
Dt Filed Dkt No	Period	Fees	Expenses	CNO/ Order	Fees	Expenses	Fees and Expenses
9/13/2024 Dkt No. 524	6/28/2024- 7/31/2024	\$ 572,627.00	\$ -	10/10/2024 Dkt No. 617	\$ -	\$ -	\$ 572,627.00
10/9/2024 Dkt No. 612	8/1/2024- 8/31/2024	363,126.00	-	TBD	-	-	363,126.00
10/16/2024 Dkt No. 633	<i>First Interim</i>	935,753.00	-	<i>TBD</i>	-	-	935,753.00
Total		\$ 935,753.00	\$ -		\$ -	\$ -	\$ 935,753.00

In re: Vyair Medical, Inc., et al.



Attachment B: Fees By Professional

Berkeley Research Group, LLC

For the Period 9/1/2024 through 9/30/2024

Professional	Title	Billing Rate	Hours	Fees
D. Galfus	Managing Director	\$1,325.00	36.1	\$47,832.50
R. Zaidman	Managing Director	\$1,095.00	102.4	\$112,128.00
K. McColgan	Director	\$1,050.00	32.0	\$33,600.00
R. Cohen	Senior Managing Consultant	\$850.00	83.0	\$70,550.00
A. Kashanirokh	Associate	\$420.00	122.3	\$51,366.00
J. Rogala	Associate	\$480.00	33.5	\$16,080.00
M. Haverkamp	Case Manager	\$375.00	8.2	\$3,075.00
E. Degnan	Case Assistant	\$195.00	17.0	\$3,315.00
Total			434.5	\$337,946.50
Blended Rate				\$777.78

In re: Vyair Medical, Inc., et al.



Attachment C: Fees By Task Code

Berkeley Research Group, LLC

For the Period 9/1/2024 through 9/30/2024

Task Code	Hours	Fees
01. Asset Acquisition/ Disposition	45.6	\$40,324.50
05. Professional Retention/ Fee Application Preparation	25.3	\$7,092.50
07. Interaction/ Meetings with Debtors/ Counsel	1.9	\$2,241.50
08. Interaction/ Meetings with Creditors/ Counsel	22.8	\$26,540.00
10. Recovery/ SubCon/ Lien Analysis	19.3	\$13,000.00
11. Claim Analysis/ Accounting	44.9	\$24,421.00
17. Analysis of Historical Results	12.9	\$12,306.50
18. Operating and Other Reports	1.4	\$1,533.00
19. Cash Flow/Cash Management/ Liquidity	103.1	\$85,276.50
25. Litigation	106.7	\$76,150.50
27. Plan of Reorganization/ Disclosure Statement	50.6	\$49,060.50
Total	434.5	\$337,946.50
Blended Rate		\$777.78

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FOR THE DISTRICT OF DELAWARE**

In re:

VYAIRE MEDICAL, INC., *et al.*,¹

Debtors.

Chapter 11

Case No. 24-11217 (BLS)

(Jointly Administered)

Objection Deadline: Dec. 4, 2024 at 4:00 p.m. (ET)

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COMPENSATION FOR SERVICES RENDERED AND REIMBURSEMENT OF
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COMMITTEE OF UNSECURED CREDITORS DURING THE PERIOD
FROM SEPTEMBER 1, 2024 THROUGH SEPTEMBER 30, 2024**

Berkeley Research Group, LLC (“BRG”) as financial advisor to the Official Committee of Unsecured Creditors (the “Committee”) of the above-captioned debtors and debtors in possession (collectively, the “Debtors”), hereby submits its third monthly fee application (the “Application”) for an order pursuant to sections 105(a), 330 and 331 chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”), Rule 2016 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), Rule 2016-2 of the Local Rules of Bankruptcy Practice and Procedure for the United States Bankruptcy Court of the District of Delaware (the “Local Rules”), the *Order (I) Establishing Procedures for Interim Compensation and Reimbursement of Expenses for Retained Professionals and (II) Granting Related Relief* (the “Interim Compensation Order”), [Dkt. No. 218] entered July 9, 2024, and the *United States Trustee’s Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses filed under 11 U.S.C. § 330*, effective January 30, 1996 (the “U.S. Trustee Guidelines”) seeking (a) the allowance of reasonable compensation for

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professional services rendered by BRG to the Committee during the period September 1, 2024 through September 30, 2024 (the “Fee Period”) and (b) reimbursement of actual and necessary charges and disbursements incurred by BRG during the Fee Period in the rendition of required professional services on behalf of the Committee. In support of this Application, BRG represents as follows:

JURISDICTION

1. The United States Bankruptcy Court for the District of Delaware (the “Court”) has jurisdiction over this Motion under 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated February 29, 2012. This matter is a core proceeding within the meaning of 28 U.S.C. §157(b)(2)(A) and the Committee confirms their consent pursuant to Local Rule 9013-l(f) to the entry of a final order by the Court in connection with this Application 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. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory bases for the relief requested herein are sections 105(a), 330 and 331 of the Bankruptcy Code, Bankruptcy Rule 2016, and Local Rule 2016-2.

BACKGROUND

3. On June 9, 2024 (the “Petition Date”), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code (the “Cases”) with the Court. The Debtors are authorized to continue to operate their businesses and manage their properties as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in these Chapter 11 Cases.

4. The Cases are being jointly administered pursuant to Bankruptcy Rule 1015(b) and the Court's *Order (I) Directing Joint Administration of Chapter 11 Cases and (II) Granting Related Relief* [Docket No. 84], entered on June 11, 2024.

5. On June 26, 2024 (the "Formation Date"), the Office of the United States Trustee for the District of Delaware (the "U.S. Trustee") appointed the Committee. The Committee is presently comprised of the following members: (i) Sunmed Group Holdings, LLC (d/b/a AirLife); (ii) Zensar Technologies Inc.; (iii) Cognizant Worldwide Ltd.; (iv) Presido; (v) Vizient, Inc.; (vi) David M. Lewis Company; and (vii) Data Modul, Inc.

6. On June 28, 2024, the Committee selected BRG to serve as its financial advisor. The Committee also selected McDermott Will & Emery LLP ("MWE" or "Counsel") to serve as its counsel. On July 30, 2024, the Court entered an order [Docket No. 332] approving BRG's retention effective as of June 28, 2024.

FEE PROCEDURES ORDER

7. On July 9, 2024, this Court signed the Interim Compensation Order. Pursuant to the Interim Compensation Order, on or after the twenty first (21st) day of each month (the "Fee Filing Period") following the month for which compensation and reimbursement is sought (the "Compensation Period"), each Professional seeking interim compensation may file with the Court a monthly application (each a "Monthly Fee Application") pursuant to section 331 of the Bankruptcy Code for interim approval and allowance of compensation for services rendered and reimbursement of expenses during the Compensation Period. Each Notice Party shall have twenty one (21) days after service of a Monthly Fee Application to review the Monthly Fee Application (the "Review Period") and serve a written notice of objection (a "Notice of Objection").

SUMMARY OF SERVICES RENDERED

8. BRG is a global strategic advisory and expert consulting firm that provides independent expert testimony, litigation and regulatory support, authoritative studies, strategic advice, and document and data analytics to major law firms, Fortune 500 corporations, government agencies, and regulatory bodies around the world. BRG has a wealth of experience in providing financial consulting in distressed scenarios and enjoys an excellent reputation for services it has rendered in large and complex chapter 11 cases on behalf of debtors and creditors throughout the United States.

9. Since being retained by the Committee, BRG has rendered professional services to the Committee as requested and as necessary and appropriate in furtherance of the interests of the unsecured creditors of the Debtors' estates. BRG respectfully submits that the professional services that it rendered on behalf of the Committee were necessary and have directly benefited the creditor constituents represented by the Committee and have contributed to the effective administration of these Cases.

10. BRG submits that the interim fees applied for herein for professional services rendered in performing services for the Committee in this proceeding are fair and reasonable in view of the time spent, the extent of work performed, the nature of the Debtors' capitalization structure and financial condition, the Debtors' financial accounting resources and the results obtained. BRG's fees typically are based on the actual hours charged at BRG's standard hourly rates, which are in effect when the services are rendered.

11. BRG expended an aggregate of 434.5 hours, all of which was expended by the professional staff of BRG. The work involved, and thus the time expended, was carefully assigned in light of the experience and expertise required for a particular task. Assigned staff was utilized to optimize efficiencies and avoid redundant efforts.

12. BRG's approach is to utilize senior, experienced personnel to create efficiencies in time spent reviewing and minimize total cost. In addition, BRG's hourly rates for professionals of comparable experience are at or below those of firms we consider our peers. We believe that the compensation in this Application is based on the customary compensation charged by comparably skilled professionals in cases other than cases under Title 11.

13. BRG believes that there has been no duplication of services between BRG and any other consultants or accountants to the bankruptcy estate.

14. No agreement or understanding exists between BRG and any other person for the sharing of compensation received or to be received for services rendered in connection with the chapter 11 cases, except for internal agreements among employees of BRG regarding the sharing of revenue or compensation. Neither BRG nor any of its employees has entered into an agreement or understanding to share compensation with any entity as described in Bankruptcy Rule 2016.

15. BRG, in accordance with the Bankruptcy Rules and the Local Rules, will be charging travel time at 50% of the time incurred. No travel time was incurred during the Fee Period.

16. BRG's time records for the Fee Period are attached hereto as **Exhibit A**. These records include daily time logs describing the time spent by each BRG professional and administrative-level person in these Cases.

17. BRG also maintains records of all actual and necessary out-of-pocket expenses incurred in connection with the rendition of its professional services. At this time BRG is not requesting reimbursement for any expenses incurred during the Fee Period but reserves the right to request reimbursement therefor in the future.

18. The general summary of the services rendered by BRG during the Fee Period, based on tasks and number of hours, is set forth below. Where more than one task code may apply to a particular entry, BRG endeavored to select the most applicable.

Asset Acquisition/Disposition – Task Code 01

19. Time charged to this task code relates to BRG’s evaluation of the sales process. Specifically, BRG spent time (i) reviewing amendments to the APAs; (ii) analyzing Transition Services Agreements (“TSA”) related agreements; (iii) evaluating transition issues related to the sale; (iv) evaluating liability assumptions of sale transactions; (v) preparing an analysis related to proposed contract assumptions; (vi) analyzing revised cure cost schedule; (vii) evaluating additional sale opportunities; and (viii) evaluating the status of the sale. Further time was spent meeting and corresponding with Counsel and the Debtors’ professionals about the liability assumptions, Transition Services Agreements, contract assumptions and next steps.

20. BRG has expended 45.6 hours on this category for a fee of \$40,324.50.

Professional Retention/ Fee Application Preparation – Task Code 05

21. Time charged to this task code relates to time spent preparing BRG’s June/July and August monthly fee applications.

22. BRG has expended 25.3 hours on this category for a fee of \$7,092.50.

Interactions/Meetings with Debtors/Debtors’ Counsel – Task Code 07

23. Time charged to this task code relates to BRG’s participation in meetings and calls, as well as correspondence with the Debtors’ professionals relating to asset disposition, TSA, next steps with respect to the sale process, DIP budget, cash activity and other case matters.

24. BRG has expended 1.9 hours on this category for a fee of \$2,241.50.

Interaction/Meetings with Creditors/Creditors' Counsel – Task Code 08

25. Time charged to this task code relates to BRG's preparation for and participation in meetings and calls with the Committee and other Committee professionals relating to case status and next steps on various matters. Topics discussed included the sale hearing, sale closing, DIP matters, liquidity, case timeline, recent case developments, Chapter 11 Plan, investigation status, Committee call agendas, and other case issues.

26. BRG has expended 22.8 hours on this category for a fee of \$26,540.00.

Recovery/SubCon/Lien Analysis – Task Code 10

27. Time charged to this task code relates to time spent by BRG analyzing creditor recoveries under various scenarios in order to advise the Committee on the development of appropriate case strategies. Specific tasks included (i) reviewing Debtors' analysis of potential recoveries from miscellaneous assets not sold; (ii) preparing a recovery analysis; and (iii) preparing a report related to the recovery analysis.

28. BRG has expended 19.3 hours on this category for a fee of \$13,000.00.

Claim Analysis/Accounting – Task Code 11

29. Time charged to this task code primarily relates to BRG's review and analysis of claims. Specifically, time was spent (i) analyzing filed claims including supporting documentation; (ii) preparing an analysis estimating the unsecured claims pool; (iii) preparing a claims analysis report based on key findings from the unsecured claims analysis; and (iv) preparing summaries related to certain categories of unsecured filed claims.

30. BRG has expended 44.9 hours on this category for a fee of \$24,421.00.

Analysis of Historical Results – Task Code 17

31. This task code primarily relates to BRG’s analysis of the Debtors’ and non-Debtors’ historical financial information, including financial statements and other operating and financial metrics, including reviewing historical liabilities and transactions, analyzing historical foreign entity obligation balances, and preparing analyses related to the Debtors’ financial position over the last three years.

32. BRG has expended 12.9 hours on this category for a fee of \$12,306.50.

Operating and Other Reports – Task Code 18

33. Time charged to this task code primarily relates to the review of the Debtors’ August Monthly Operating Reports.

34. BRG has expended 1.4 hours on this category for a fee of \$1,533.00.

Cash Flow/ Cash Management Liquidity – Task Code 19

35. This task code relates to time spent by BRG reviewing and analyzing matters impacting the Debtors’ cash management processes and overall liquidity. Specifically, time was spent (i) evaluating the Debtors’ cash flow; (ii) analyzing the Debtors’ updated liquidity forecast and weekly variance reports; (iii) evaluating matters related to the DIP budget; (iv) preparing the weekly DIP and liquidity reports for the Committee; (v) reviewing liquidity, costs, and holdback schedule related to the wind down period; (vi) analyzing diligence information; and (vii) analyzing accounts payable roll forward estimates prepared by the Debtors. Time was also spent meeting and corresponding with Counsel and the Debtors’ advisors about the same.

36. BRG has expended 103.1 hours on this category for a fee of \$85,276.50.

Litigation – Task Code 25

37. Time charged to this task code primarily relates to BRG's efforts in support of various ongoing litigation and investigation workstreams. Specifically, time was spent (i) examining the Debtors' discovery production based on various search terms to identify documents relevant to the investigation workstream; (ii) analyzing historical transaction related files; (iii) evaluating the status of the investigation; (iv) reviewing historical operation materials; (v) reviewing documents from investigation related interviews; (vi) reviewing various investigation updates; (vii) analyzing payments and related summaries; and (viii) preparing investigation related reporting for Counsel.

38. BRG has expended 106.7 hours on this category for a fee of \$76,150.50.

Plan of Reorganization/Disclosure Statement – Task Code 27

39. Time charged to this task code primarily relates to BRG's analysis of the Debtors' Chapter 11 Plan and Disclosure Statement. Specifically, time was spent (i) reviewing various drafts of the Plan and Disclosure Statement and supporting documents; (ii) evaluating the Debtors' liquidation analysis and related assumptions; (iii) preparing a report related to the Debtors' liquidation analysis; (iv) reviewing a draft of the UCC's objection to the Disclosure Statement; (v) analyzing Plan issues for the potential impact on creditor recoveries; and (vi) reviewing the status of the Plan. Additional time was spent meeting and corresponding with Counsel regarding the Committee's comments on the Plan and Disclosure Statement, and other Plan-related matters.

40. BRG has expended 50.6 hours on this category for a fee of \$49,060.50.

ACTUAL AND NECESSARY EXPENSES

41. BRG incurred no actual out-of-pocket expenses in connection with the rendition of the professional services to the Committee.

42. Disbursements and expenses are incurred in accordance with BRG's normal practice of charging clients for expenses clearly related to and required by particular matters. Such expenses are often incurred to enable BRG to devote time beyond normal office hours to matters, which imposed extraordinary time demands. BRG endeavors to minimize these expenses to the fullest extent possible.

43. BRG's billing rates do not include charges for photocopying, telephone and facsimile charges, computerized research, travel expenses, "working meals," secretarial overtime, postage, and certain other office services, because the needs of each client for such services differ. BRG believes that it is fairest to charge each client only for the services actually used in performing services for such client. BRG endeavors to minimize these expenses to the fullest extent possible.

44. In providing a reimbursable service such as copying or telephone, BRG does not make a profit on that service. In charging for a particular service, BRG does not include in the amount for which reimbursement is sought the amortization of the cost of any investment, equipment, or capital outlay. In seeking reimbursement for service which BRG justifiably purchased or contracted for from a third party, BRG requests reimbursement only for the amount billed to BRG by such third-party vendor and paid by BRG to that vendor.

NOTICE AND NO PRIOR APPLICATION

45. Notice of this Application has been given to (a) the Debtors; (b) counsel to the Debtors; (c) counsel to the IL Ad Hoc Group and (d) the Office of the U.S. Trustee; (collectively, the "Notice Parties"). In light of the nature of the relief requested herein, BRG submits that no further or other notice is required.

46. With respect to these amounts, as of the date of the Application, BRG has received no payments, and no previous application for the relief sought herein has been made to this or any other Court.

CONCLUSION

WHEREFORE, BRG respectfully requests: (a) that it be allowed on an interim basis (i) fees in the amount of \$337,946.50 for reasonable, actual and necessary services rendered by it on behalf of the Committee during the Fee Period and (ii) reimbursement of \$0.00 for reasonable, actual and necessary expenses incurred during the Fee Period; (b) that the Debtors be authorized and directed to immediately pay to BRG the amount of \$270,357.20 which is equal to the sum of 80% of BRG's fees and 100% of BRG's expenses incurred during the Fee Period, and (c) and granting such other and further relief as the Court may deem just and proper.

Dated: 11/13/2024
Saddle Brook, NJ

BERKELEY RESEARCH GROUP, LLC

/s/ David Galfus
David Galfus
Managing Director
250 Pehle Avenue, Suite 301
Saddle Brook, NJ 07663
(201) 587-7117

Financial Advisor to the Official Committee of
Unsecured Creditors

**IN 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)

VERIFICATION

David Galfus, pursuant to 28 U.S.C. § 1746, declares as follows:

- a) I am a Managing Director at the applicant firm, Berkeley Research Group, LLC (“BRG”), and am authorized to submit this verification on behalf of BRG.
- b) I have personally performed or supervised many of the professional services rendered by BRG as financial advisor to the Official Committee of Unsecured Creditors (the “Committee”) and am familiar with the work performed on behalf of the Committee by the professionals and other persons in the firm.
- c) I have reviewed the foregoing Application and the facts set forth therein are true and correct to the best of my knowledge, information, and belief.
- d) All services for which compensation is requested by BRG were professional services performed for and on behalf of the Committee and not on behalf of any other person.
- e) I have reviewed the requirements of Local Rule 2016-2 and certify to the best of my information, knowledge, and belief that this Application complies with Local Rule 2016-2.

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f) I certify under penalty of perjury that the foregoing is true and correct.

Executed on 11/13/2024

/s/ David Galfus
David Galfus