**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 (BLS)
Debtors.	)	(Jointly Administered)
	)	**Hearing Date: July 31, 2024 at 2:00 p.m. (ET)**
	)	**Objection Deadline: July 23, 2024 at 4:00 p.m. (ET)**

DEBTORS' APPLICATION FOR ENTRY OF AN ORDER AUTHORIZING THE RETENTION AND EMPLOYMENT OF BDO USA P.C. AS TAX ACCOUNTANT FOR THE DEBTORS AND DEBTORS IN POSSESSION EFFECTIVE AS OF THE PETITION DATE, AND MODIFYING CERTAIN TIMEKEEPING REQUIREMENTS

Vyaire Medical, Inc. and certain of its affiliates (collectively, the "Debtors") in the above-captioned chapter 11 cases (the "Chapter 11 Cases") hereby file this application (this "Application") for entry of an order, substantially in the form attached hereto as **Exhibit A** (the "Proposed Order"), authorizing the employment and retention of BDO USA, P.C. ("BDO"), effective as of June 9, 2024, as tax accountant to the Debtors in accordance with the terms and conditions set forth in that certain letter attaching the "Terms and Conditions of the Master Services Agreement" dated June 10, 2022, by and among the Debtors and BDO (the "Terms and Conditions Letter"), a copy of which is attached hereto as **Exhibit B,** together with any future statements of work by and among the Debtors and BDO (the "SOWs" and, together with the Terms and Conditions Letter, the "Services Agreement"). In support of this Application, the Debtors respectfully submit the declaration of Kevin Wilkes, a principal of BDO (the "Wilkes

[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' 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.

Declaration"), attached hereto as **Exhibit C**. In further support of this Application, the Debtors respectfully state as follows:

JURISDICTION AND VENUE

1. 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, 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.

2. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The statutory bases for the relief requested herein are sections 327, 328, 330, and 331 of title 11 of the United States Code (the "Bankruptcy Code"), Rule 2014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and rule 2014-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules").

4. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2) and, pursuant to Bankruptcy Rule 7008, the Debtors consent 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 consistent with Article III of the United States Constitution.

BACKGROUND

5. 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 businesses and managing their properties 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 joint administration and procedural consolidation of these chapter 11 cases pursuant to Bankruptcy Rule 1015(b). *See* Docket No. 84. On June 26, 2024, the United States Trustee for the District of Delaware (the "U.S. Trustee") appointed an official committee of unsecured creditors (the "Committee"). *See* Docket No. 121. No trustee or examiner has been appointed in these chapter 11 cases.

6. No request for the appointment of a trustee or examiner has been made in these chapter 11 cases.

7. A description of the Debtors' business, the reasons for commencing the chapter 11 cases, and the relief sought from the Court to allow for a smooth transition into chapter 11 are set forth in the *Declaration of John Bibb, Group Chief Executive Officer of Vyaire Medical, Inc., in Support of Debtors' Chapter 11 Petitions and First Day Motions*, filed on June 10, 2024, incorporated herein by reference. *See* Docket No. 15.

RELIEF REQUESTED

8. By this Application, the Debtors seek the entry of an order, pursuant to sections 327(a), 328(a), and 330 of the Bankruptcy Code, Bankruptcy Rules 2014(a) and 2016, and Local Rules 2014-1 and 2016-2: (i) authorizing the Debtors to retain and employ BDO to perform the services set forth below in these Chapter 11 Cases, effective as of June 9, 2024 and

in accordance with the Services Agreement; (ii) approving the terms of BDO's employment and retention, including the fee and expense structure set forth herein; (iii) granting the relief requested in the Proposed Order; and (iv) granting all other and further relief as is just and proper.

RETENTION OF BDO

9. The Debtors have selected BDO as their accountant due to: (i) the firm's extensive experience in and knowledge of the Debtors' operations that BDO has obtained by providing accounting services to the Debtors since approximately 2022; and (ii) BDO's outstanding reputation as a provider of accounting services generally.

10. BDO is a leading full-service accounting, tax, and business advisory firm with offices, partners, and professional staff located throughout the United States. BDO is a United States firm of a global network of separate, independent member firms that operate in countries and offices throughout the world. BDO has considerable experience providing accounting, tax, auditing, and financial advisory services to businesses in chapter 11 and has been employed in numerous cases under the Bankruptcy Code, such as *In re Acorda Therapeutics, Inc*., Case No. 24-22284 (DSJ) (Bankr. S.D.N.Y. May 29, 2024) (authorizing the retention of BDO), *In re Purdue Pharma, L.P*., Case No. 19-23649 (SHL) (Bankr. S.D.N.Y. Apr. 24, 2024) (same), *In re Inmet Mining, LLC*, Case No. 23-70113 (GRS) (Bankr. E.D. Ky. June 6, 2023) (same), *In re 1 GC Collections*, Case No. 18-19121 (RAM) (Bankr. S.D. Fla. Feb. 28, 2022) (same), *In re Richardson Foods Inc.*, Case No. 20-11203 (SCC) (Bankr. S.D.N.Y. Sept. 1, 2021) (same), *In re AeroCentury Corp.*, Case No. 21-10636 (JTD) (Bankr. D. Del. May 4, 2021) (same), and *In re Emerge Energy, Inc.*, Case No. 19-11563 (KBO) (Bankr. D. Del. Oct. 7, 2019) (same).

11. The Debtors are familiar with the professional standing and reputation of BDO and have selected BDO as accountant to the Debtors because BDO can provide the Debtors with the

necessary services on a timely basis. The Debtors believe BDO is well-qualified and able to represent the Debtors in the Chapter 11 Cases in an efficient and timely manner. Thus, the Debtors submit that the employment and retention of BDO as tax accountant is in the best interests of the Debtors and their estates.

SCOPE OF SERVICES

12. Subject to further order of the Court, and consistent with the Services Agreement, the Debtors request the employment and retention of BDO to perform certain tax and accounting services for the Debtors, including (i) federal and state income tax return preparation; (ii) federal and state income tax provision; (iii) unclaimed property and audit defense; (iv) income tax consulting related to potential sales, including cancellation of indebtedness income tax analysis; and (v) other tax accounting services requested by the Debtors (collectively, the "Services").

13. The Services are necessary to enable the Debtors to maximize value for all of the Debtors' creditors. The Debtors believe that the Services would not duplicate the services that other professionals will be providing to the Debtors in connection with the Chapter 11 Cases. Specifically, BDO would carry out unique functions and use reasonable efforts to coordinate with the Debtors' other retained professionals to avoid the unnecessary duplication of services.

PROFESSIONAL COMPENSATION

14. BDO's standard hourly rates for each level of professional are set forth in the following schedule:

Resource	Standard Rate
Principals/ Managing Director	$725-$1,150
Director	$650-$850
Manager	$550-$750
Seniors	$375-$625
Associates	$175-$375

15. In addition to the rates described above, the Debtors and BDO have agreed that the Debtors shall reimburse BDO for actual expenses BDO incurs in connection with BDO's performance of the Services.

16. BDO has advised the Debtors that for accountant engagements such as those under the Services Agreement, it is not BDO's general practice to keep detailed time records similar to those customarily maintained by attorneys or restructuring professionals. Despite this general practice, BDO intends to include as an exhibit to its fee applications filed with the Court a description of the services provided as well as time detail regarding the hours, in half-hour (0.5) increments, spent by each professional to support the requested fees.

17. The Debtors believe that the compensation structure described above and set forth in the Services Agreement is consistent with the compensation generally charged by accountants similar to BDO for comparable engagements, both in and out of bankruptcy. Furthermore, the Debtors believe that the compensation structure is consistent with BDO's normal and customary billing practices for cases of comparable size and complexity requiring the level and scope of services to be provided in the Chapter 11 Cases.

PAYMENTS RECEIVED PRIOR TO THE PETITION DATE

18. As set forth above, BDO has provided services to the Debtors since approximately 2022. The payments that BDO received within the 90 days before the Petition Date are as follows:

Invoice Date	Invoice Amount	Dates of Services Covered by Invoice	Payment Date	Payment Amount	Purpose of Payment
01/02/2024	002136684	11/02/2023 thru 01/02/2024	3/25/2024	$103,520.00	Payment for Services
01/25/2024	002149017	10/30/2023 thru 01/25/2024	4/22/2024	$123,395.00	Payment for Services
02/05/2024	002156518	12/01/2023 thru 02/05/2024	4/22/2024	$11,315.00	Payment for Services

As of the Petition Date, approximately $228,908.50 remains due and owing to BDO. BDO understands and agrees that if the Court grants the relief requested in this Application, BDO shall waive this prepetition claim.

INDEMNIFICATION PROVISIONS

19. As a material part of the consideration for which BDO has agreed to provide the Services described herein, the Debtors have agreed to the indemnification provisions in paragraph 3 of the terms and conditions annexed to the Terms and Conditions Letter (the "Indemnification Provisions"). The Indemnification Provisions provide that the Debtors will indemnify BDO for any claims, liabilities, damages, or expenses related to the Services or the Services Agreement that are brought by a third party and that the Debtors will release, indemnify, and hold BDO harmless from all claims related to the Services or the Services Agreement attributable to any misrepresentations made by the Debtors. The Debtors and BDO believe that the Indemnification Provisions, as modified by the Proposed Order, are customary and reasonable for accountant engagements, both in-court and out-of-court and, as modified in the Proposed Order, reflect the

qualifications and limitations on indemnification provisions that are customary in this district and other jurisdictions.

20. The Indemnification Provisions contained in the Services Agreement were negotiated by the Debtors and BDO at arm's length and in good faith. The Debtors respectfully submit that the indemnification, contribution, reimbursement, and other provisions contained in the Indemnification Provisions, viewed in conjunction with the other terms of BDO's proposed retention, and as modified in the Proposed Order, are reasonable and in the best interests of the Debtors and their creditors given that the Debtors require BDO's services to successfully prosecute the Chapter 11 Cases.

21. Accordingly, as part of this Application, the Debtors request that the Court approve the Services Agreement.

BDO'S DISINTERESTEDNESS

22. To the best of the Debtors' knowledge, information, and belief, other than as set forth below and in the Wilkes Declaration, BDO: (a) has no connection with the Debtors, their creditors, other parties in interest, the attorneys or accountants of any of the foregoing, or the U.S. Trustee or any person employed by the U.S. Trustee; (b) does not hold any interest adverse to the Debtors; and (c) believes it is a "disinterested person" as defined by section 101(14) of the Bankruptcy Code, as required by section 327(a) of the Bankruptcy Code.

23. Beginning in March of 2024, BDO Canada LLP (hereinafter "BDO Canada") engaged BDO as a subcontractor to prepare and file the corporate tax returns for Vyaire Medical Products ULC ("VMP" which is a Non-Debtor Affiliate) and Vyaire Medical ULC ("VMU" which BDO understands is an affiliate of VMP). BDO concluded this engagement in May of 2024 and no funds remain due and owing to BDO as of the Petition Date.

24. As further set forth in the Wilkes Declaration, BDO and BDO Canada are separate and independent firms, each a part of the BDO Global Network where each member practices under a common brand, but members of the network do not share profits, losses, or staff.

25. Accordingly, the Debtors believe that BDO is “disinterested” as such term is defined in section 101(14) of the Bankruptcy Code.

26. In addition, as set forth in the Wilkes Declaration, if any new material facts or relationships are discovered or arise, BDO will provide the Court with a supplemental declaration.

BASIS FOR RELIEF

I. The Debtors Should Be Permitted to Retain and Employ BDO on the Terms in the Services Agreement Pursuant to Sections 327(a), 328(a), and 330 of the Bankruptcy Code.

27. Section 327(a) of the Bankruptcy Code authorizes a debtor in possession to employ professionals that “do not hold or represent an interest adverse to the estate, and that are disinterested persons.” 11 U.S.C. § 327(a). Such employment may be based on “any reasonable terms and conditions of employment, including on a retainer, on an hourly basis, on fixed percentage fee basis, or on a contingent fee basis.” 11 U.S.C. § 328(a). As discussed above, BDO satisfies the disinterestedness standard of section 327(a). The Debtors also submit that the retention of BDO under the terms described herein is appropriate under section 330 of the Bankruptcy Code.

28. With respect to the Services, BDO intends to apply for allowance of compensation for professional services rendered on an hourly basis and reimbursement of expenses incurred in connection with the Chapter 11 Cases, subject to the Court’s approval and compliance with applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, guidelines established by the U.S. Trustee, and any other applicable procedures and orders of the Court.

BDO's hourly rates and corresponding rate structure for the Chapter 11 Cases are the same as BDO charges generally for accounting services, whether in court or otherwise.

29. The Court's approval of the Debtors' retention of BDO in accordance with the terms and conditions of the Services Agreement is warranted. As discussed above and in the Wilkes Declaration, BDO satisfies the disinterestedness standard in section 327(a) of the Bankruptcy Code, and retention of BDO pursuant to sections 327, 328(a), and 330 of the Bankruptcy Code is appropriate in these circumstances. Additionally, BDO's professional staff has extensive experience and an excellent reputation for providing high-quality services. Further, the Debtors believe that BDO is well-qualified to provide the Services to the Debtors in a cost-effective, efficient, and timely manner.

30. The Debtors, therefore, submit that the terms and conditions of BDO's retention as described herein, including the proposed compensation terms, are reasonable and in keeping with the terms and conditions typical for engagements of this size and character. Given the complexity of the work that must be completed, it is reasonable for the Debtors to seek to employ and retain BDO to serve on the terms and conditions set forth herein.

II. Employment and Retention of BDO Should Be Effective as of June 9, 2024.

31. The Debtors also believe that employment of BDO effective as of June 9, 2024, is warranted under the circumstances of the Chapter 11 Cases. BDO has provided, and will continue to provide, valuable services to the Debtors. The employment and retention of BDO and its professionals is a sound exercise of the Debtors' business judgment. The Debtors believe that BDO will provide services that benefit the Debtors' creditors. In light of the foregoing, the Debtors believe that retention of BDO and its professionals is appropriate and in the best interests of the Debtors and their creditors.

NOTICE

32. The Debtors will provide notice of this motion to: (a) the United States Trustee for the District of Delaware; (b) counsel to the Committee; (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; and (l) and 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.

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CONCLUSION

WHEREFORE the Debtors respectfully request that the Court enter an Order, substantially in the form attached hereto as **Exhibit A**, authorizing the Debtors to employ and retain BDO as tax accountant for the Debtors for the purposes set forth above, effective as of the Petition Date, waive certain time keeping requirements, and grant such further relief as is just and proper.

Dated: July 9, 2024

Respectfully submitted,

Vyaire Medical, Inc.
(and each of its debtor affiliates as Debtors and Debtors in Possession)

/s/ John Bibb
Name: John Bibb
Title: Group Chief Executive Officer