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)**
	)	**Obj Deadline: July 23, 2024 at 4:00 p.m. (ET)**

APPLICATION OF DEBTORS FOR ENTRY OF AN ORDER AUTHORIZING DEBTORS TO EMPLOY AND RETAIN OMNI AGENT SOLUTIONS, INC. AS ADMINISTRATIVE AGENT EFFECTIVE AS OF THE PETITION DATE

The above-captioned debtors and debtors in possession (the "Debtors") in the above-captioned chapter 11 cases (the "Chapter 11 Cases") file this application (the "Application") for entry of an order, substantially in the form of **Exhibit A** hereto (the "Order"), granting the relief described below. This Application is supported by the *Declaration of John Bibb, Group Chief Executive Officer of Vyaire Medical, Inc., in Support of Debtors' Chapter 11 Petitions and First Day Motions* [Docket No. 15] (the "First Day Declaration"),[2] and the *Declaration of Paul H. Deutch in Support of the Application of Debtors for Entry of an Order (I) Authorizing and Approving the Appointment of Omni Agent Solutions, Inc. as Claims and Noticing Agent and (II) Granting Related Relief* (the "Deutch Declaration"), which is attached hereto as **Exhibit B** and incorporated by reference herein. In further support of this Application, the Debtors respectfully represent as follows:

[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.

[2] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed in the First Day Declaration.

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. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). 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"), 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.

2. Venue of the Chapter 11 Cases and related proceedings is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The legal predicates for the relief requested herein are sections 327(a) and 328(a) of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (the "Bankruptcy Code"). The relief is also appropriate under Rules 2014(a) and 2016 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Local Rule 2014-1.

BACKGROUND

4. 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 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. On June 26, 2024, the United States Trustee for the District of Delaware (the "U.S. Trustee") appointed an official committee of unsecured creditors [Docket No. 121] (the "Committee"). No trustee or examiner has been appointed in these chapter 11 cases.

5. Additional factual background regarding the Debtors, including their business operations, their capital and debt structure, and the events leading to the filing of these Chapter 11 Cases, is set forth in the First Day Declaration, which is fully incorporated here by reference.

RELIEF REQUESTED

6. By this Application, pursuant to sections 327(a) and 328(a) of the Bankruptcy Code, Bankruptcy Rules 2014(a) and 2016, and Local Rule 2014-1, the Debtors request entry of an order (a) authorizing the Debtors to employ and retain Omni Agent Solutions, Inc. ("Omni") as administrative agent (the "Administrative Agent") in the Chapter 11 Cases effective as of the Petition Date pursuant to that certain engagement agreement (the "Engagement Agreement") by and between the Debtors and Omni, a copy of which is annexed as **Exhibit C** hereto; and (b) granting related relief. This Application supplements the Debtors' application, pursuant to 28 U.S.C. § 156(c) (the "Section 156(c) Application"), to retain Omni to serve as claims and noticing agent in the Chapter 11 Cases. This Application seeks approval for Omni to perform duties outside of the scope of 28 U.S.C. § 156(c).

OMNI'S QUALIFICATIONS

7. Omni is a chapter 11 administrator comprised of leading industry professionals with significant experience in the administrative aspects of large, complex chapter 11 cases. Omni's professionals have experience in noticing, claims administration, solicitation, balloting and facilitating other administrative aspects of chapter 11 cases and experience in matters of this size

and complexity. Omni's professionals have acted as debtors' claims and noticing agent and/or administrative agent in many large bankruptcy cases in this district and in other districts nationwide, including *In re Never Slip Holdings, Inc.*, No. 24-10663 (LSS) (Bankr. D. Del. Apr. 3, 2024); *In re Sunlight Fin. Holdings Inc.*, No. 23-11794 (MFW) (Bankr. D. Del. Nov. 1, 2023); *In re UpHealth Holdings, Inc.*, No. 23-11476 (LSS) (Bankr. D. Del. Oct. 24, 2023); *In re Desolation Holdings LLC,* No. 23-10597 (BLS) (Bankr. D. Del. May 10, 2023); *In re Lannett Co., Inc.*, No. 23-10559 (JKS) (Bankr. D. Del. May 5, 2023); *In re Lincoln Power, L.L.C.*, No. 23-10382 (LSS) (Bankr. D. Del. Apr. 3, 2023); *In re Indep. Pet Partners Holdings, LLC*, No. 23-10153 (LSS) (Bankr. D. Del. Feb. 7, 2023); *In re Performance Powersports Grp. Inv., LLC*, No. 23-10047 (LSS) (Bankr. D. Del. Jan. 18, 2023); *In re Vesta Holdings, LLC*, No. 22-11019 (LSS) (Bankr. D. Del. Nov. 1, 2022); *In re Kabbage, Inc. d/b/a KServicing*, No. 22-10951 (CTG) (Bankr. D. Del. Oct. 6, 2022); *In re Gold Standard Baking, LLC*, No. 22-10559 (JKS) (Bankr. D. Del. June 23, 2022).[3]

SERVICES TO BE PROVIDED

8. The Debtors propose to engage Omni to act as their Administrative Agent. The terms of retention and employment of Omni are set forth in the Engagement Agreement. Pursuant to the Engagement Agreement, the Debtors seek to retain Omni to provide, among other things, the following bankruptcy administration services (collectively, the "Administrative Services"), if and to the extent requested:

(a) Assist with, among other things, solicitation, balloting and tabulation of votes, and preparation of any related reports, as required in support of confirmation of a chapter 11 plan, and in connection with such services, process requests for documents from parties in interest, including, if applicable, brokerage firms, bank back-offices and institutional holders;

[3] Because of the voluminous nature of the orders cited herein, such orders have not been attached to this Application. Copies of these orders are available upon request to the Debtors' proposed counsel.

(b) Prepare an official ballot certification and, if necessary, testify in support of the ballot tabulation results;

(c) Assist with the preparation of the Debtors' schedules of assets and liabilities and statements of financial affairs and gather data in conjunction therewith;

(d) Provide a confidential data room, if requested;

(e) Manage and coordinate any distributions pursuant to a chapter 11 plan; and

(f) Provide such other processing, solicitation, balloting, and other administrative services described in the Engagement Agreement, but not included in the Section 156(c) Application, as may be requested from time to time by the Debtors, the Court, or the Office of the Clerk of the Bankruptcy Court (the "Clerk").

9. The Debtors chose Omni to perform the Administrative Services because of Omni's experience, reputation, familiarity with the Chapter 11 Cases, and the competitiveness of its fees. The Debtors submit that using Omni to provide the Administrative Services has provided, and will continue to provide, the most cost-effective and efficient administration of the Chapter 11 Cases. Further, retaining Omni to perform the Administrative Services has allowed, and will continue to allow, the Debtors and their other professionals to focus on key aspects of the Debtors' restructuring efforts. Accordingly, the Debtors believe that Omni is qualified to provide the Administrative Services and that Omni's retention in such capacity is in the best interests of the Debtors' estates and creditors.

PROFESSIONAL COMPENSATION

10. The fees Omni will charge in connection with providing services to the Debtors are set forth in the Engagement Agreement. The Debtors respectfully submit that Omni's rates are competitive and comparable to the rates its competitors charge for similar services. Indeed, the Debtors conducted a review and competitive comparison of other firms and reviewed the rates of other firms before selecting Omni as Administrative Agent. The Debtors believe Omni's rates are reasonable given the quality of Omni's services and Omni's bankruptcy expertise. Additionally,

Omni will seek reimbursement from the Debtors for reasonable expenses in accordance with the terms of the Engagement Agreement.

11. Omni intends to apply to the Court for allowance of compensation and reimbursement of expenses incurred after the Petition Date in connection with the services it provides as Administrative Agent pursuant to the Engagement Agreement. Omni will comply with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and any orders entered in these Chapter 11 Cases regarding professional compensation and reimbursement of expenses.

12. Additionally, under the terms of the Engagement Agreement, the Debtors have agreed to indemnify, defend and hold harmless Omni and its affiliates, members, directors, officers, employees, consultants, subcontractors, representatives and agents under certain circumstances specified in the Engagement Agreement, except in circumstances resulting solely from Omni's gross negligence or willful misconduct or as otherwise provided in the Engagement Agreement. The Debtors believe that such an indemnification obligation is customary, reasonable, and necessary to retain the services of an Administrative Agent in these Chapter 11 Cases.

OMNI'S DISINTERESTEDNESS

13. Omni has reviewed its electronic database to determine whether it has any relationships with the creditors and parties in interest provided by the Debtors, and, to the best of the Debtors' knowledge, information and belief, and except as disclosed in the Deutch Declaration, Omni 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 any interest materially adverse to the Debtors' estates in connection with any matter on which it would be employed.

14. Omni believes that it does not have any relationships with creditors or parties in interest that would present a disqualifying conflict of interest. Omni will supplement its disclosure to the Court if any facts or circumstances are discovered that would require such additional disclosure.

BASIS FOR RELIEF

A. Retention and Employment of Omni as Administrative Agent Is Permitted Under Sections 327 and 328 of the Bankruptcy Code.

15. Section 327(a) of the Bankruptcy Code provides that a debtor, subject to Court approval:

> [M]ay employ one or more attorneys, accountants, appraisers, auctioneers, or other professional persons, that do not hold or represent an interest adverse to the estate, and that are disinterested persons, to represent or assist the [debtor] in carrying out the [debtor]'s duties under this title.

11 U.S.C. § 327(a).

16. Bankruptcy Rule 2014(a) requires that an application for retention include:

> [S]pecific facts showing the necessity for the employment, the name of the [firm] to be employed, the reasons for the selection, the professional services to be rendered, any proposed arrangement for compensation, and, to the best of the applicant's knowledge, all of the [firm's] connections with the debtor, creditors, any other party in interest, their respective attorneys and accountants, the United States trustee, or any person employed in the office of the United States trustee.

Fed. R. Bankr. P. 2014.

17. In light of the size of the Chapter 11 Cases, the Debtors respectfully submit that retaining and employing Omni pursuant to the terms of the Engagement Agreement is necessary and in the best interests of the Debtors' estates and all parties in interest to the Chapter 11 Cases. The Debtors also believe that the terms and conditions of the Engagement Agreement are reasonable in light of the anticipated high volume of creditors and other parties in interest that will be involved in these cases.

18. Accordingly, to help manage administrative tasks with respect to the thousands of creditors and other parties in interest that are expected to be involved in the Debtors' Chapter 11 Cases, the Debtors respectfully request the Court enter an order appointing Omni as the Administrative Agent in the Chapter 11 Cases pursuant to sections 327(a), 330 and 331 of the Bankruptcy Code, Bankruptcy Rule 2014 and Local Rule 2014-1.

B. Nunc Pro Tunc Relief Is Appropriate.

19. Pursuant to the Debtors' request, Omni has agreed to serve as Administrative Agent on and after the Petition Date with assurances that the Debtors would seek approval of its employment and retention effective as of the Petition Date, so that Omni may be compensated for its pre-Application services. The Debtors believe that no party in interest will be prejudiced by the granting of the *nunc pro tunc* employment, as provided in this Application, because Omni has provided and continues to provide valuable services to the Debtors' estates in the interim period. The Local Rules empower courts in this district to approve *nunc pro tunc* employment, and the Debtors submit that such approval is justified here. *See, e.g.*, Local Rule 2014-1(b) ("If the retention motion is granted, the retention shall be effective as of the date the motion was filed, unless the Court orders otherwise.").

20. Courts in this jurisdiction have routinely approved *nunc pro tunc* employment, similar to that requested herein, in matters comparable to this matter. *See, e.g.*, *In re Nw. Hardwoods, Inc.*, Case No. 20-13005 (CSS) (Bankr. D. Del. Jan. 4, 2021); *In re Pa. Real Estate Inv. Tr.*, Case No. 20-12737 (KBO) (Bankr. D. Del. Nov. 23, 2020); *In re Chaparral Energy, Inc.*, Case No. 20-11947 (MFW) (Bankr. D. Del. Aug. 18, 2020); *In re Exide Holdings, Inc.*, No. 20-11157 (CSS) (Bankr. D. Del. May 21, 2020); *In re Art Van Furniture*, LLC, No. 20-10553 (CSS) (Bankr. D. Del. March 10, 2020); *In re RentPath Holdings, Inc.*, No. 20-10312 (BLS) (Bankr. D. Del. Feb. 13, 2020); *In re Bayou Steel BD Holdings, L.L.C.*, No. 19-12153 (KBO)

(Bankr. D. Del. Oct. 3, 2019); *In re VER Tech. Holdco LLC*, No. 18-10834 (KG) (Bankr. D. Del. April 6, 2018); *In re Rand Logistics, Inc.*, No. 18-10175 (BLS) (Bankr. D. Del. Jan. 31, 2018); *In re ExGen Tex. Power, LLC*, No. 17-12377 (BLS) (Bankr. D. Del. Nov. 8, 2017).

NOTICE

21. Notice of this Application will be given to: (a) the U.S. Trustee for the District of Delaware; (b) counsel to the Committee; (c) counsel to the lenders under the Debtors' postpetition financing facility; (d) the United States Attorney's Office for the District of Delaware; (e) the Internal Revenue Service; (f) the state attorneys general for all states in which the Debtors conduct business; and (g) any party that has requested notice pursuant to Bankruptcy Rule 2002. The Debtors submit that, under the circumstances, no other or further notice is required.

WHEREFORE, the Debtors respectfully request that the Court enter the order, substantially in the form annexed hereto as **Exhibit A**, granting the relief requested in the Application and such other and further relief as may be just and proper.

Dated: July 9, 2024
Wilmington, Delaware

/s/ Patrick J. Reilley
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