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)**

APPLICATION OF DEBTORS FOR ENTRY OF AN ORDER (I) AUTHORIZING THE RETENTION AND EMPLOYMENT OF PJT PARTNERS LP AS INVESTMENT BANKER TO THE DEBTORS AND DEBTORS IN POSSESSION EFFECTIVE AS OF THE PETITION DATE, (II) WAIVING CERTAIN INFORMATION REQUIREMENTS PURSUANT TO LOCAL RULE 2016-2, AND (III) 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 application:[2]

Relief Requested

1. The Debtors seek entry of an order, substantially in the form attached hereto as **Exhibit A**, (a) authorizing the employment and retention of PJT Partners LP ("PJT") as investment banker for the Debtors, effective as of June 9, 2024 (the "Petition Date"), in accordance with the terms and conditions of that certain engagement letter dated as of April 25, 2024 (the "Engagement Letter"), attached hereto as **Exhibit B**, (b) approving the terms of PJT's employment, including

[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] 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 Vyaire 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.

the proposed compensation arrangements and the indemnification provisions set forth in the Engagement Letter, as modified by the Proposed Order, under section 328(a) of title 11 of the United States Code (the "Bankruptcy Code"), (c) modifying the time-keeping requirements of Rule 2016-2 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules") and the U.S. Trustee Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed Under 11 U.S.C. § 330 (Appendix A to 28 C.F.R. § 58) (the "U.S. Trustee Guidelines") established by the Office of the United States Trustee for the District of Delaware (the "U.S. Trustee") in connection with PJT's proposed engagement, and (d) granting related relief. In support of this Application, the Debtors rely on and incorporate by reference the *Declaration of Jamie Baird in Support of the Application of Debtors for Entry of an Order (I) Authorizing the Retention and Employment of PJT Partners LP as Investment Banker to the Debtors and Debtors in Possession Effective as of the Petition Date, (II) Waiving Certain Information Requirements Pursuant to Local Rule 2016-2, and (III) Granting Related Relief* (the "Baird Declaration"), attached hereto as **Exhibit C** and incorporated herein by reference.

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 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.

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

4. The statutory bases for the relief requested herein are sections 327(a) and 328(a) of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the "Bankruptcy Code"), rules 2014(a) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Local Rules 2014-1, 2016-2, and 9013-1(f).

Background

5. Vyaire Medical, Inc., together with its direct and indirect subsidiaries (collectively, "Vyaire" 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, Vyaire operates approximately 27 offices and manufacturing facilities, and employs approximately 950 individuals around the world. The Company has a global reach, and Vyaire products are available in more than 100 countries. Its customers are the hospitals, community centers, and private practice facilities delivering life-saving products and services to patients every day.

6. On 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 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. 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.

PJT's Qualifications

7. As detailed in the Baird Declaration, PJT's Restructuring and Special Situations Group ("RSSG") is one of the industry's leading advisors to companies and creditors in a variety of complex restructurings and bankruptcies. PJT was spun off from The Blackstone Group L.P. ("Blackstone"), effective October 1, 2015. Upon the consummation of the spinoff, Blackstone's Restructuring and Reorganization advisory group became a part of PJT, and Blackstone's restructuring professionals became employees of PJT. The former Blackstone restructuring professionals, in their capacity as PJT employees, have been conducting business and providing their clients with the same high-quality restructuring services that Blackstone had itself provided since the formation of its restructuring advisory practice approximately 33 years ago. PJT professionals have extensive experience working with financially troubled companies in complex financial restructurings. Since 1991, PJT professionals have advised on several hundreds of distressed situations, both in and out of court.

8. The partners and members of RSSG have assisted and advised in numerous chapter 11 cases. In particular, they have provided services to debtors, creditors' committees, and other constituencies in numerous chapter 11 cases, including, among others: AbitibiBowater Inc.; Aegean Marine Petroleum Network Inc.; Adelphia Communications Corporation; Allen Systems Group, Inc.; Ambac Financial Group, Inc.; Apex Silver Mines Ltd.; Arch Coal, Inc.; Arsenal Resources Development LLC; Ascent Resources Marcellus Holdings, LLC; The Bon-Ton Stores, Inc.; Careismatic Brands; Caesars Entertainment Operating Corporation; Cengage Learning, Inc.; Chaparral Energy LLC; CHC Group Ltd.; Cineworld Group plc; Cumulus Media Inc.; Delta Air

Lines, Inc.; Dixie Electric, LLC; Dynegy Inc.; Eastman Kodak Company; Edison Mission Energy; Energy Future Holdings Corporation; Energy XXI Ltd.; Endeavor International Corporation; Energy & Exploration Partners, Inc.; Enron Corporation; EP Energy Corporation; Excel Maritime Carriers, Ltd.; EXCO Resources, Inc.; FirstEnergy Solutions Corp.; Flag Telecom Holdings Limited; Flying J. Inc.; FullBeauty Brands Holding Corp.; Fusion Connect, Inc.; Genco Shipping & Trading Limited; General Motors Corporation; Global Crossing Ltd.; Hálcon Resources Corporation; Hawker Beechcraft, Inc.; Hercules Offshore, Inc.; Homer City Generation, L.P.; Hostess Brands, Inc.; Houghton Mifflin Harcourt Publishing Company; iHeartMedia, Inc.; Intelsat S.A.; J. Crew Group, Inc.; Lee Enterprises Inc.; Legend Parent Inc.; LightSquared Inc.; Los Angeles Dodgers LLC; LyondellBasell Industries; Magnetation LLC; Magnum Hunter Resources Corporation; Merisant Worldwide, Inc.; Mirant Corp.; New Gulf Resources, LLC; NewPage Corporation; NTK Holdings, Inc.; Paragon Offshore plc; Patriot Coal Corporation; Penn Virginia Corporation; Pennsylvania Real Estate Investment Trust; PES Holdings, LLC; PHI, Inc.; Purdue Pharma; Quicksilver Resources, Inc.; Relativity Fashion, LLC; Ruby Pipeline, L.L.C.; Sabine Oil & Gas Corp.; Samson Resources Corporation; SemGroup; Toisa Ltd.; TerreStar Networks Inc.; Triangle USA Petroleum Corporation; Trident Holding Company, LLC; Tribune Company; Ultra Petroleum Corp.; Venoco Inc.; VER Technologies Holdco LLC; Verso Corporation; Walter Energy, Inc.; Westinghouse Electric Company LLC; W.R. Grace & Co.; WeWork; Windstream Holdings, Inc.; and Winn-Dixie Stores, Inc. In addition, the restructuring group has provided general restructuring advice to major companies such as Clearwire Corporation, Ford Motor Company, The Goodyear Tire & Rubber Company, and Xerox Corporation.

9. The Debtors have selected PJT as their investment banker based upon the foregoing experience and, among other things: (a) the Debtors' need to retain a skilled investment banking firm to provide advice with respect to the Debtors' restructuring activities; (b) PJT's extensive experience and excellent reputation in providing investment banking services in complex chapter 11 cases such as these; and (c) PJT's extensive knowledge of the Debtors, as described more fully below. In light of the size and nature of these chapter 11 cases, PJT's resources, capabilities, and experience are crucial to the Debtors' successful restructuring. An experienced investment banker such as PJT fulfills a critical need that complements the services provided by the Debtors' other restructuring professionals. For these reasons, the Debtors require PJT's services in these chapter 11 cases.

10. In April 2023, the Debtors retained PJT as their investment banker to pursue balance sheet alternatives (such engagement letter, the "Prior Letter"). In April 2024, the Debtors expanded the scope of PJT's engagement to include investment banking services in connection with a potential capital raise, restructuring, and/or sale of the Debtors, in part or in full, through an in-court process, including assistance with the negotiation of the terms of debtor-in-possession financing and the restructuring support agreement in these chapter 11 cases. PJT has led efforts, in concert with other professionals, to prepare for and formally launch a marketing process in early May 2024 in connection with a potential sale of the assets of the Debtors' businesses. To that end, PJT worked with the Debtors' management to draft marketing materials and position the Company for a successful sale process. Throughout this period of advising the Debtors, PJT has become familiar with the Debtors' capital structure, liquidity needs, and business operations.

11. During PJT's representation of the Debtors, it has, among other things, provided advice on strategic transaction alternatives, restructuring options, and financings. PJT has

participated in negotiations between the Debtors and their creditors and other parties in interest. PJT also assisted the Debtors in reviewing the terms, conditions, and potential impact of various potential transactions, including comparing iterations of debtor-in-possession financing proposals. In addition, PJT has met with the Debtors' board of directors on numerous occasions throughout its engagement to discuss and advise on the above matters.

12. As a result of the work performed by PJT on behalf of the Debtors both pre- and postpetition, PJT has acquired significant knowledge of the Debtors' financial affairs, business operations, capital structure, assets, key stakeholders, financing documents, and other related material information. Likewise, in providing services to the Debtors, PJT's professionals have worked closely with the Debtors' personnel, board, and other advisors. If the Application is approved, several of PJT's professionals, all with substantial expertise in the areas discussed above, will continue to provide services to the Debtors and will work closely with the Debtors' personnel and other professionals throughout the reorganization process. Accordingly, as a result of PJT's representation of the Debtors prior to and after the commencement of these chapter 11 cases and PJT's extensive experience representing chapter 11 debtors, PJT is well-qualified to provide these services and represent the Debtors during these chapter 11 cases.

13. Indeed, if the Debtors were required to retain an investment banker other than PJT in connection with these chapter 11 cases, the Debtors, their estates, and other parties in interest would be unduly prejudiced by the time and expense necessary to familiarize another investment banker with the intricacies of the Debtors and their business operations.

Services Provided by PJT

14. The terms and conditions of the Engagement Letter[3] were the result of significant discussions and negotiations between PJT and the Debtors, and they reflect the parties' mutual agreement as to the substantial efforts that will be required by PJT in respect of this engagement. The employment of PJT also is necessary to enable the Debtors to execute their duties as debtors in possession and to realize their reorganization efforts.

15. Subject to further order of the Court, and consistent with the terms of the Engagement Letter, PJT's anticipated services in these chapter 11 cases, to the extent necessary, appropriate, feasible, and as may be requested by the Debtors, include the following:

a. assist in the evaluation of the Debtors' businesses and prospects;

b. assist in the review and development of the Debtors' long-term business plan and related financial projections;

c. assist in the development of financial data and presentations to the Debtors' board of directors, various creditors and/or third parties;

d. analyze the Debtors' financial liquidity and evaluate alternatives to improve such liquidity;

e. analyze various Restructuring scenarios and the potential impact of these scenarios on the recoveries of those stakeholders impacted by the Restructuring;[4]

f. provide strategic advice with regard to restructuring or refinancing the Debtors' Obligations;

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[3] The summary of the Engagement Letter in this Application is qualified in its entirety by reference to the provisions of the Engagement Letter. To the extent there is any discrepancy between the summary contained in this Application and the terms set forth in the Engagement Letter, the terms of the Engagement Letter shall govern.

[4] As used in the Engagement Letter, the term (a) "Restructuring" means "any restructuring, reorganization (whether or not pursuant to chapter 11 of the United States Bankruptcy Code ("Chapter 11")) and/or recapitalization of the [Debtors] affecting a material portion of its existing debt obligations or other claims against the [Debtors], including, without limitation, revolving credit facilities, term loans, any senior debt, junior debt, notes, trade claims, general unsecured claims (collectively, the "Obligations"), and/or (ii) a sale or other acquisition or disposition of a material portion of the assets and/or equity of the [Debtors], and/or (iii) any complete or partial repurchase, refinancing, extension or repayment by the [Debtors] of a material portion of the Obligations", and (b) "Capital Raise" means "any debt financing or capital raise arranged by PJT Partners at the request of the [Debtors]."

g. evaluate the Debtors' debt capacity and alternative capital structures;

h. participate in negotiations among the Debtors and their creditors, suppliers, lessors, and other interested parties and/or potential financing parties;

i. value securities offered by the Debtors in connection with a Restructuring;

j. provide financial and valuation advice and assistance to the Debtors in developing and seeking approval of an in-court Restructuring (including a Chapter 11 plan);

k. advise the Debtors and negotiate with lenders with respect to potential waivers or amendments of various credit facilities;

l. assist in arranging financing for the Debtors, as requested;

m. provide expert witness testimony concerning any of the subjects encompassed by the other investment banking services; and

n. provide such other advisory services as are customarily provided in connection with the analysis and negotiation of a transaction similar to a potential Restructuring and/or Capital Raise, as requested and mutually agreed.

Professional Compensation

16. PJT's decision to advise and assist the Debtors in connection with these chapter 11 cases is subject to its ability to be retained in accordance with the terms of the Engagement Letter pursuant to section 328(a), and not section 330, of the Bankruptcy Code.

17. In consideration of the services to be provided by PJT, and as more fully described in the Engagement Letter, subject to the Court's approval, the Debtors and PJT have agreed that PJT shall, in respect of its services, be compensated under the following fee structure (the "Fee Structure"):[5]

a. ***Monthly Fee***: The Debtors shall pay a monthly advisory fee (the "Monthly Fee") in the amount of $175,000. Fifty percent (50%) of the first $1,050,000 in Monthly Fees paid to PJT under the Engagement Letter and/or the Prior Letter shall be credited, once and without duplication,

[5] Capitalized terms used in the following subparagraphs shall have the meanings given in the Engagement Letter.

against any Restructuring and/or Capital Raising Fee, up to a maximum total aggregate credit against all such fees equal to $525,000.

b. ***Capital Raising Fee***: The Debtors shall pay a capital raising fee (the "Capital Raising Fee") for any Capital Raise, earned and payable upon the earlier of the receipt of a binding commitment letter and the closing of such Capital Raise. If access to the financing is limited by orders of the bankruptcy court, a proportionate fee shall be payable with respect to each available commitment (irrespective of availability blocks, borrowing base, or other similar restrictions). The Capital Raising Fee will be calculated as:

i. Secured Debt: One-and-a-half percent (1.5%) of the total issuance and/or committed amount of senior debt financing, excluding senior debt financing that is or may (or is anticipated in the future to) constitute a Structured Financing,[6]

ii. Unsecured Debt: Three-percent (3.0%) of the total issuance and/or committed amount of (A) Structured Financing, (B) junior debt financing, or (C) unsecured debt financing (including, without limitation, financing that is junior in right of payment, second lien, subordinated (structurally or otherwise) and unsecured debt), and

iii. Equity Financing: Five-percent (5.0%) of the issuance and/or committed amount of equity financing,

in each case, including by means of a back-stop commitment; provided that, (x) the minimum Capital Raise Fee in respect of any Capital Raise shall be $750,000, and (y) if any portion of the debt or equity financing is raised from Apax Partners, LLP or its affiliates (collectively, the "Sponsor"), then PJT Partners shall be entitled to receive 50% of the Capital Raising Fee (the "Sponsor Capital Raising Fee") to which it otherwise would have been entitled in respect of any debt or equity financing raised from the Sponsor.

c. ***Restructuring Fee***: The Debtors shall pay a fee in respect of a Restructuring (the "Restructuring Fee") equal to $7,000,000, earned and payable upon the consummation of a Restructuring.

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[6] As used in the Engagement Letter, "**Structured Financing**" means "senior debt (A) issued at (or intended to be moved to or owed or guaranteed by) a non-guarantor of the [Debtors'] funded debt and/or (B) issued at (or intended to be moved to or owed or guaranteed by) an unrestricted subsidiary of the [Debtors] and/or (C) issued at borrower entities in the restricted group as to which debt additional credit support is provided by an entity that was not previously (or is not expected to be going forward) a guarantor of the [Debtors'] funded debt and/or (D) as to which liens are granted in respect of additional collateral not already pledged for the benefit of the [Debtors'] funded debt."

d. ***Expense Reimbursements***: In addition to the fees described above, the Debtors agree to reimburse PJT for all reasonable and documented out-of-pocket expenses incurred during PJT's engagement, including, but not limited to, travel and lodging, direct identifiable data processing, document production, publishing services and communication charges, courier services, working meals, reasonable and documented fees and expenses of PJT's outside counsel (without the requirement that the retention of such counsel be approved by the court in any bankruptcy case), and other necessary expenditures, payable upon rendition of invoices setting forth in reasonable detail the nature and amount of such expenses. Further, in connection with the reimbursement, contribution and indemnification provisions set forth in the Engagement Letter and Attachment A to the Engagement Letter (the "Indemnification Agreement"), which is incorporated therein by reference and addressed further below, the Debtors agree to reimburse each PJT Party, for its legal and other expenses (including the cost of any investigation and preparation) as they are incurred in connection with any matter in any way relating to or referred to in the Engagement Letter or arising out of the matters contemplated by the Engagement Letter (including, without limitation, in enforcing the Engagement Letter), subject to certain exceptions, limitations, and requirements set forth in the Indemnification Agreement.

18. PJT will maintain records in support of any actual, necessary costs and expenses incurred in connection with the rendering of its services in these chapter 11 cases. However, because (a) it is not the general practice of investment banking firms such as PJT to keep detailed time records similar to those customarily kept by attorneys, (b) PJT does not ordinarily keep time records on a "project category" basis, and (c) PJT's compensation is based on a fixed Monthly Fee and certain fixed percentage and/or contingency based fees (namely the Restructuring Fee and Capital Raising Fees), the Debtors respectfully request that PJT's investment banking professionals be required to maintain records (in summary format) of the services rendered for the Debtors, including summary descriptions of those services, the approximate time expended in providing those services (in half-hour increments), and the identity of the professionals who provided those services. PJT will present such records to the Court in its fee application(s). Moreover, the Debtors respectfully request that PJT's professionals not be required to keep time records on a "project category" basis, that its non-investment banking professionals and personnel

in administrative departments (including legal) not be required to maintain any time records, and that it not be required to provide or conform to any schedule of hourly rates. To the extent that PJT would otherwise be required to submit more detailed time records for its professionals by the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, the U.S. Trustee Guidelines, or other applicable procedures and orders of the Court, the Debtors respectfully request that the Court waive such requirements.

19. The Debtors believe the Fee Structure is consistent with, and typical of, compensation arrangements entered into by PJT and other comparable firms in connection with the rendering of similar services under similar circumstances, both in and out of bankruptcy proceedings. The Debtors also believe that the Fee Structure reflects a balance between a fixed, monthly fee, and certain fixed percentage and/or contingency based fees, which are tied to the occurrence of certain transactions contemplated by the Debtors and PJT in the Engagement Letter. In determining the Fee Structure and the reasonableness of such compensation, the Debtors compared PJT's fee proposal to comparable precedents. After such comparison, followed by discussions and arm's-length negotiations, the Debtors believe that the Fee Structure is in fact reasonable, market-based, and designed to compensate PJT fairly for its work.

20. The Debtors request to pay PJT's fees and to reimburse PJT for its reasonable costs and expenses as provided in the Engagement Letter, including, but not limited to, in-sourced document production costs, travel costs, meals, and the fees, disbursements, and other charges of PJT's legal counsel (without the need for such legal counsel to be retained as a professional in these chapter 11 cases and without regard to whether such legal counsel's services satisfy section 330(a)(3)(C) of the Bankruptcy Code). In the event that PJT seeks reimbursement from the Debtors for attorneys' fees and expenses pursuant to this Application and the Engagement

Letter, PJT will include the invoices and supporting time records for the attorneys' fees and expenses in PJT's own applications, both interim and final, and these invoices and time records shall be subject to the U.S. Trustee Guidelines and the approval of the Court pursuant to sections 330 and 331 of the Bankruptcy Code, without regard to whether such attorneys have been retained under section 327 of the Bankruptcy Code and without regard to whether such attorneys' services satisfy section 330(a)(3)(C) of the Bankruptcy Code. PJT will not seek reimbursement of fees of its counsel incurred in defending any of PJT's fee applications in these chapter 11 cases.

21. PJT's strategic and financial expertise, as well as its capital markets knowledge, financing skills, mergers and acquisitions experience, and restructuring capabilities, some or all of which has and will be required by the Debtors during the term of PJT's engagement, were important factors to the Debtors in determining the Fee Structure. The Debtors believe that the ultimate benefits of PJT's services hereunder cannot be measured by reference to the number of hours to be expended by PJT's professionals in the performance of such services. The Debtors and PJT agreed upon the Fee Structure in anticipation that a substantial commitment of professional time and effort would be required of PJT and in light of the fact that (a) such commitment could have and may still foreclose other opportunities for PJT and (b) the actual time and commitment required of PJT and its professionals to perform the restructuring services may vary substantially from week to week and month to month creating "peak load issues" for PJT.

22. During the ninety (90)-day period before the Petition Date, the Debtors paid PJT $657,535.44 for fees earned and expenses incurred prior to the Petition Date. Prior to the Petition Date, PJT had also received advance payments from the Debtors in the aggregate amount of $153,333.33. Given the timing of the filing, PJT may not yet have accounted for all expenses it incurred before the Petition Date. In the event PJT subsequently becomes aware of additional

prepetition expenses incurred on behalf of the Debtors, PJT will reduce its advance by such amounts. To the extent that amounts paid by the Debtors to PJT prior to the Petition Date exceed amounts incurred by PJT prepetition, such excess will be held by PJT as security throughout these chapter 11 cases until PJT's fees and expenses are fully paid. As of the Petition Date, the Debtors were current on their obligations to PJT under the Engagement Letter.

Indemnification

23. As part of the overall compensation payable to PJT under the terms of the Engagement Letter, the Debtors have agreed to certain indemnification, contribution, and reimbursement obligations, set forth in the Indemnification Agreement. The Indemnification Agreement provides that the Debtors will indemnify and hold harmless the PJT Parties from and against Losses incurred by a PJT Party in connection with PJT's engagement, except for any Losses to the extent such Losses resulted solely from the bad faith, willful misconduct, or gross negligence of such PJT Party. The Debtors will reimburse such PJT Party for its legal and other expenses (including the cost of any investigation and preparation) as such expenses are incurred by such PJT Party in connection therewith.

24. The Engagement Letter's indemnification and contribution provisions were fully negotiated by the Debtors and PJT at arm's length and in good faith. The Debtors believe that the indemnification provisions in the Engagement Letter are appropriate and reasonable for investment banking engagements in chapter 11 cases and reflect the qualifications and limitations on indemnification provisions that are customary in the industry as previously determined in this District and other jurisdictions. As such, the Debtors believe that the indemnification provisions described in the Indemnification Agreement are appropriate under the circumstances and should be approved, subject to the modifications set forth in the Proposed Order.

No Duplication of Services

25. The services of PJT will complement and not duplicate the services rendered by any other professional retained in these chapter 11 cases. PJT understands that the Debtors have retained and may retain additional professionals during the term of the engagement and agrees to work cooperatively with such professionals to integrate any respective work conducted by the professionals on behalf of the Debtors. PJT is providing distinct and specific investment banking services as set forth in the Engagement Letter, and such services are not expected to duplicate those to be provided by any other consultants, legal advisors, or financial advisor.

PJT's Disinterestedness

26. PJT has reviewed the list of parties in interest provided by the Debtors. To the best of the Debtors' knowledge, information, and belief, and except to the extent disclosed herein or in the Baird Declaration, PJT: (a) is a "disinterested person" within the meaning of section 101(14) of the Bankruptcy Code; (b) does not hold or represent an interest materially adverse to the Debtors' estates; and (c) has no connection to the Debtors, their creditors, or related parties, except as disclosed in the Baird Declaration.

27. Given the large number of parties in interest in these chapter 11 cases, despite the efforts to identify and disclose PJT's relationships with parties in interest in these chapter 11 cases, PJT is unable to state with absolute certainty that every client relationship or other connection has been disclosed in the Baird Declaration. PJT will make continued inquiries following the filing of this Application, on a periodic basis, with additional disclosures to the Court if necessary or otherwise appropriate.

28. The Debtors are informed that PJT will not share any compensation to be paid by the Debtors, in connection with services to be performed after the Petition Date, with any other

person, other than principals and employees of PJT, to the extent permitted by section 504 of the Bankruptcy Code.

Basis for Relief Requested

I. The Debtors Should Be Permitted to Retain and Employ PJT in Accordance with the Terms of the Engagement Letter Pursuant to Sections 327(a), 328(a), and 1107(b) of the Bankruptcy Code.

29. The Debtors seek approval of the retention and employment of PJT under sections 327(a), 328(a), and 1107(b) of the Bankruptcy Code. Section 328(a) of the Bankruptcy Code provides, in relevant part, that a debtor in possession, "with the court's approval, may employ or authorize the employment of a professional person under section 327 . . . on any reasonable terms and conditions of employment, including on a retainer, on an hourly basis, on a fixed or percentage fee basis, or on a contingent fee basis." 11 U.S.C. § 328(a). Section 327(a) of the Bankruptcy Code, in turn, 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). Section 1107(b) of the Bankruptcy Code provides that "a person is not disqualified for employment under section 327 of the Bankruptcy Code by a debtor in possession solely because of such person's employment by or representation of the debtor before the commencement of the case." 11 U.S.C. § 1107(b).

30. Section 328 of the Bankruptcy Code permits the compensation of professionals, including financial advisors, on more flexible terms that reflect the nature of their services and market conditions. As the U.S. Court of Appeals for the Fifth Circuit recognized in *Donaldson Lufkin & Jenrette Secs. Corp. v. Nat'l Gypsum Co. (In re Nat'l Gypsum Co.)*, 123 F.3d 861 (5th Cir. 1997):

> Prior to 1978 the most able professionals were often unwilling to work for bankruptcy estates where their compensation would be subject to the uncertainties of what a judge thought the work was

> worth after it had been done. That uncertainty continues under the present § 330 of the Bankruptcy Code, which provides that the court award to professional consultants "reasonable compensation" based on relevant factors of time and comparable costs, etc. Under present § 328 the professional may avoid that uncertainty by obtaining court approval of compensation agreed to with the trustee (or debtor or committee).

123 F.3d at 862 (footnote omitted).

31. Additionally, Bankruptcy Rule 2016 and Local Rule 2016-2 require retained professionals to submit applications for payment of compensation in chapter 11 cases. Local Rule 2016-2(d) also requires retained professionals to submit detailed time entries that set forth, among other things, a detailed description of each activity performed, the amount of time spent on the activity (in tenth of an hour increments), the subject matter of the activity and the parties involved with the activity at issue. Local Rule 2016-2(h), however, allows a retained professional to request a waiver of these requirements for cause.

32. The Court's approval of the Debtors' retention of PJT in accordance with the terms and conditions of the Engagement Letter is warranted. First, as discussed above and in the Baird Declaration, PJT satisfies the disinterestedness standard in section 327(a) of the Bankruptcy Code.[7] PJT has already committed a significant amount of time and effort with respect to these chapter 11 cases. The Debtors require PJT to continue to assist with the Debtors' negotiations, as necessary, to provide expert advice and testimony regarding financial matters related to the

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[7] Bankruptcy Rule 2014(a) requires that an application must be made for retention of professionals pursuant to section 327 of Bankruptcy Code. Under Bankruptcy Rule 2014(a), such application must "state the specific facts showing the necessity for the employment, the name of the person 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 person'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." Additionally, the application "shall be accompanied by a verified statement of the person to be employed setting forth the person's connections" to the parties in interest list. FED. R. BANKR. P. 2014. Here, Bankruptcy Rule 2014 is satisfied by the contents of this Application and the Schlappig Declaration attached hereto.

proposed transactions, and to enable the Debtors to discharge their duties as debtors under the Bankruptcy Code. PJT has extensive experience and an excellent reputation in providing high-quality investment banking services to debtors and creditors in bankruptcy reorganizations, mergers and acquisitions, and other restructurings. PJT has become familiar with the Debtors' business operations, capital structure, financing documents, and other material information and is able to assist the Debtors in their restructuring efforts. The Debtors believe that PJT is well-qualified to provide its services to the Debtors in a cost-effective, efficient, and timely manner. Furthermore, as detailed herein and in the Baird Declaration, PJT does not hold or represent an interest adverse to the Debtors' estates and is disinterested.

33. In addition, the Debtors believe that the Fee Structure is market-based, fair, and reasonable under the standards set forth in section 328(a) of the Bankruptcy Code. The Fee Structure reflects PJT's commitment to the variable level of time and effort necessary to perform the restructuring and investment banking services, PJT's particular expertise, and the market prices for PJT's services for engagements of this nature both out of court and in a chapter 11 context. Indeed, the Debtors believe that the Fee Structure appropriately reflects: (a) the nature and scope of services to be provided by PJT; (b) PJT's substantial experience with respect to investment banking services; (c) the fee structures typically utilized by PJT and other leading investment bankers that do not bill their clients on an hourly basis; and (d) indemnification provisions typically utilized by PJT in restructuring transactions of this size.

34. Notwithstanding the foregoing, under the Proposed Order, the U.S. Trustee retains all rights to object to PJT's fee application (including expense reimbursement) pursuant to section 330 of the Bankruptcy Code.

35. As set forth above, and notwithstanding approval of the Engagement Letter under section 328 of the Bankruptcy Code, PJT intends to apply for compensation for professional services rendered and reimbursement of expenses incurred in connection with these chapter 11 cases, subject to the Court's approval and in compliance with applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, the U.S. Trustee Guidelines, and any other applicable procedures and orders of the Court, with certain limited modifications requested herein.

36. The Debtors request that the requirements of Local Rule 2016-2(d) and the U.S. Trustee Guidelines be tailored to appropriately reflect PJT's engagement and its compensation structure. PJT has requested, under section 328(a) of the Bankruptcy Code, payment of its fees on a fixed-rate, fixed-percentage and/or contingency basis. Additionally, it is not the general practice of investment banking firms to keep detailed time records similar to those customarily kept by attorneys. As discussed above, however, PJT's investment banking personnel will keep summary time records in half-hour increments describing their daily activities and the identity of persons who performed such tasks. Apart from the time recording practices described above, however, PJT's personnel do not maintain their time records on a "project category" basis. As such, the Debtors request modification of the requirements pursuant to Local Rule 2016-2(h).

37. Courts in this jurisdiction have approved relief similar to that requested in this Application. *See e.g.*, *In re Akorn, Inc.*, No. 20-11177 (KBO) (Bankr. D. Del. June 23, 2020) (authorizing retention of PJT as investment banker to the debtors); *In re High Ridge Brands Co.*, No. 19-12689 (BLS) (Bankr. D. Del. Jan. 24, 2020) (same); *In re Anna Holdings, Inc.*, No. 19-12551 (CSS) (Bankr. D. Del. Jan. 7, 2020) (same); *In re PES Holdings, LLC*, No. 19-11626

(LSS) (Bankr. D. Del. August 20, 2019) (same); *In re VER Tech. Holdco LLC*, No. 18-10834 (KG) (Bankr. D. Del. June 4, 2018) (same).

II. The Indemnification and Contribution Terms of the Engagement Letter Are Appropriate.

38. The indemnification provisions in the Engagement Letter, as modified by the Proposed Order, were fully negotiated between the Debtors and PJT at arm's length. The Debtors and PJT believe that the indemnification provisions in the Engagement Letter are customary and reasonable for financial advisory engagements both out-of-court and in chapter 11 cases, including investment banking engagements. *See United Artists Theatre Co. v. Walton* (*In re United Artists Theatre Co.*), 315 F.3d 217, 234 (3d Cir. 2003) (finding indemnification agreement between debtor and financial advisor reasonable under section 328 of the Bankruptcy Code). The Debtors seek approval of the modified indemnification provisions consistent with other orders of the Court where PJT has been retained. *See, e.g., In re Akorn, Inc.*, No. 20-11177 (KBO) (Bankr. D. Del. June 23, 2020); *In re High Ridge Brands Co.*, No. 19-12689 (BLS) (Bankr. D. Del. Jan. 24, 2020) (same); *In re Anna Holdings, Inc.*, No. 19-12551 (CSS) (Bankr. D. Del. Jan. 7, 2020); *In re PES Holdings, LLC*, No. 19-11626 (LSS) (Bankr. D. Del. August 20, 2019); *In re VER Tech. Holdco LLC*, No. 18-10834 (KG) (Bankr. D. Del. June 4, 2018).

39. Accordingly, the Debtors respectfully submit that the terms of the Engagement Letter, as modified by the Proposed Order, are reasonable and customary and should be approved in these chapter 11 cases.

III. The Debtors Should Be Permitted to Retain and Employ PJT Effective as of the Petition Date.

40. The Debtors also believe that employment of PJT effective as of the Petition Date is warranted under the circumstances of these chapter 11 cases. PJT has provided, and will continue to provide, valuable services to the Debtors regarding the contemplated restructuring

transactions. *See, e.g.*, *In re Arkansas Co. Inc.*, 798 F.2d 645, 648 (3d Cir. 1986) ("[T]he bankruptcy courts have the power to authorize retroactive employment of counsel and other professionals under their broad equity power." (collecting cases)); *see also* 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.").

41. Courts routinely grant retroactive relief in this jurisdiction. *See, e.g.*, *In re Akorn, Inc.*, No. 20-11177 (KBO) (Bankr. D. Del. June 23, 2020) (granting retroactive relief); *In re High Ridge Brands Co.*, No. 19-12689 (BLS) (Bankr. D. Del. Jan. 24, 2020) (same); *In re Anna Holdings, Inc.*, No. 19-12551 (CSS) (Bankr. D. Del. Jan. 7, 2020) (same); *In re VER Tech. Holdco LLC*, No. 18-10834 (KG) (Bankr. D. Del. June 4, 2018) (same); *In re PES Holdings, LLC*, No. 19-11626 (LSS) (Bankr. D. Del. August 20, 2019) (same).

IV. Retention of PJT Is Critical to the Debtors' Restructuring Efforts.

42. The Debtors submit that the retention of PJT is in the best interests of all parties in interest in these chapter 11 cases. PJT is a preeminent investment banking firm that is intimately familiar with the Debtors' business. Denial of the relief requested herein will deprive the Debtors of the assistance of uniquely qualified investment banking professionals who have significant historic knowledge of the Debtors' business and operations. Indeed, if the Debtors were forced to engage a new investment banker who lacks a thorough understanding of the Debtors' business and the initiatives that have been implemented over the course of PJT's extensive engagement, such change would mandate the commitment of significant resources to educate a replacement. As discussed above, based on services performed to date, PJT has been integral to preparing the Debtors for these chapter 11 cases.

43. Based on the foregoing, the Debtors submit that they have satisfied the requirements of the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules to support entry

of an order authorizing the Debtors to retain and employ PJT in these chapter 11 cases on the terms described herein and in the Engagement Letter.

Notice

44. The Debtors will provide notice of this application to: (a) the United States Trustee for the District of Delaware; (b) counsel to the Committee; (c) the holders of the 30 largest unsecured claims against the Debtors (on a consolidated basis); (d) the office of the attorney general for each of the states in which the Debtors operate; (e) the United States Attorney's Office for the District of Delaware; (f) the Internal Revenue Service; (h) the United States Securities and Exchange Commission; (h) the DIP Agent and counsel thereto; (i) First Lien Credit Agreement Agent and counsel thereto; (j) the Second Lien Credit Agreement Agent and counsel thereto; (k) First Lien Notes Agent and counsel thereto; (l) 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 respectfully request that the Court enter the Order, substantially in the form attached hereto as **Exhibit A**, granting the relief requested herein and granting such other relief as is just and proper.

Dated: July 9, 2024

/s/ John Bibb
John Bibb
Vyaire Medical, Inc.
Group Chief Executive Officer