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)

MOTION OF DEBTORS FOR
AN ORDER GRANTING LEAVE AND PERMISSION TO FILE
A REPLY IN SUPPORT OF THE ENTRY OF THE PROPOSED SALE ORDERS

The above-captioned debtors and debtors in possession (collectively, the "Debtors" and, each, a "Debtor"), state as follows in support of this motion:[2]

Relief Requested

1. The Debtors seek entry of an order, substantially in the form attached hereto as **Exhibit A** (the "Proposed Order"), granting the Debtors leave to file their *Reply of Debtors in Support of Entry of the Proposed Sale Orders*, filed contemporaneously herewith (the "Reply").

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*

[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 not defined herein shall have the meanings ascribed to such terms in the First Day Declaration or the Bid Procedures Order, as defined herein.

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 motion 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 in this motion are section 105(a) of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the "Bankruptcy Code") and Local Rule 9006-1(d).

Background

5. On June 9, 2024 (the "Petition Date"), Vyaire Medical, Inc. and certain of its subsidiaries filed voluntary petitions 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. No request for the appointment of a trustee or examiner has been made in these chapter 11 cases.

6. On June 26, 2024, the Office of the United States Trustee for the District of Delaware (the "U.S. Trustee") appointed the Official Committee of Unsecured Creditors (the "Committee"). *See* Docket No. 121.

7. On July 11, 2024, the Court entered the *Order (I) Approving Bidding Procedures in Connection with the Sale of Substantially all of the Debtors' Assets, (II) Authorizing the Debtors to Enter Into a Stalking Horse Agreement and Provide Bid Protections, (III) Approving the Form and Manner of Notice Thereof, (IV) Scheduling an Auction and Sale Hearing, (V) Approving Procedures for the Assumption and Assignment of Contracts, (VI) Approving the Sale of the Debtors' Assets Free and Clear, and (VII) Granting Related Relief* [Docket No. 249] (the "Bid Procedures Order"). The Bid Procedures Order approved, among other things, the Bidding Procedures.

8. On August 15, 2024, the Debtors filed the *Notice of (I) Successful Bidder for the Sale of Certain of the Debtors' Ventilation Assets, (II) Proposed Purchase Agreement in Connection Therewith, and (III) Proposed Sale Order in Connection Therewith* [Docket No. 388].

9. On August 20, 2024, the Debtors file the *Notice of (I) Successful Bidder for the Sale of Certain of the Debtors' Respiratory Diagnostics Assets, (II) Proposed Purchase Agreement in Connection Therewith, and (III) Proposed Sale Order in Connection Therewith* [Docket No. 400].

10. Additionally on August 20, 2024, the Debtors filed the *Notice of Debtors' Proposed Order (I) Approving the Zoll Asset Purchase Agreement and Authorizing the Sale of Certain Ventilation Assets of the Debtors Outside the Ordinary Course of Business, (II) Authorizing the Sale of Assets Free and Clear of All Liens, Claims, Interests, and Encumbrances, (III) Authorizing the Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection Therewith, and (IV) Granting Related Relief* [Docket No. 399] and *Notice of Debtors' Proposed Order (I) Approving the Trudell Asset Purchase Agreement and Authorizing the Sale of Certain Respiratory Diagnostics Assets of the Debtors Outside the Ordinary Course of Business, (II) Authorizing the Sale of Assets Free and Clear of All Liens, Claims, Interests, and Encumbrances, (III) Authorizing the*

Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection Therewith, and (IV) Granting Related Relief [Docket No. 401].

11. Pursuant to the Bidding Procedures and *Fourth Notice of Extension of Certain Key Dates and Deadlines* [Docket No. 394], a hearing to consider the approval of the sale of the Debtors' Ventilation Assets and Respiratory Diagnostics Assets was scheduled by the Court for Monday, August 26, 2024, at 10:00 a.m. (prevailing Eastern Time) (the "Original Hearing").

12. On August 22, 2024, the Committee filed the *Reservation of Rights Filed by the Official Committee of Unsecured Creditors With Respect to the Sale of Assets* [Docket No. 437] (the "Reservation of Rights").

13. The Original Hearing was held and adjourned by the Court until August 30, 2024, at 10:30 a.m. (prevailing Eastern Time) (the "Rescheduled Hearing").

14. On August 27, 2024, the Debtors filed a revised proposed Ventilation Assets Sale Order [Docket No. 470] and revised proposed Respiratory Diagnostics Assets Sale Order [Docket No. 471] (collectively, the "Revised Proposed Sale Orders").

15. On August 29, 2024, the Committee filed an additional reservation of rights and limited objection to the proposed sales less than 24 hours before the start of the Rescheduled Hearing [Docket No. 480] (the "Objection").

16. The Debtors intend to seek approval of the Revised Proposed Sale Orders at the Rescheduled Hearing.

Basis for Relief

17. Pursuant to Local Rule 9006-1(d), "[r]eply papers by the movant, or any party that has joined the movant, may be filed by 4:00 p.m. prevailing Eastern Time the day prior to the deadline for filing the agenda." DEL. BANKR. L.R. 9006-1(d). The agenda for the Rescheduled Hearing was

due on August 28, 2024, at 12:00 p.m. (prevailing Eastern Time). *See Id.* 9029-3(a)(i). Accordingly, the deadline for the Debtors to file their reply to the Committee's initial Reservation of Rights was August 27, 2024, at 4:00 p.m. (prevailing Eastern Time).

18. Since the Committee filed its Reservation of Rights, Debtor and Committee advisors have had discussions about the sale of the Debtors' Ventilation Assets and Respiratory Diagnostics Assets in an attempt to consensually resolve the Committee's issues with the proposed sales.

19. Further, the Committee late-filed its Objection (without seeking leave of the Court) after the date on which the agenda was due, so the Debtors could not have possibly timely-filed any reply to the Objection absent leave of the Court.

20. Here, cause exists to allow the Debtors to file a Reply after the Reply Deadline. As described above, the parties were having discussions after the Reservation of Rights was filed in hopes of consensually resolving the Committee's issues. Further, because the Committee late-filed its Objection (without seeking leave of the Court) well after the date on which the agenda was due, the Debtors could only timely-file any Reply to the Objection with leave of the Court.

21. By this Motion for Leave, the Debtors respectfully request that the Court enter an order granting them leave and permission to file the Reply. The Reply addresses the issues raised in the Reservation of Rights and Objection and will assist the Court in its consideration of contested matters scheduled for the Rescheduled Hearing. The Debtors endeavored to complete the Reply in as timely a manner as possible under the circumstances (in mere hours after the Objection was filed), and the Debtors believe that the delay in filing the Reply after the deadline imposed under the Local Rules will not prejudice any party and, further, that the Debtors would potentially be prejudiced if it were left without the ability for the Court to consider their reply to the late-filed

Objection. Accordingly, the Debtors submit that leave is warranted under the circumstances and request entry of the Proposed Order.

Notice

22. 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) counsel to the 1L Ad Hoc Group; (d) the agent of the DIP Facility and counsel thereto; (e) the agent of the First Lien Credit Agreement and counsel thereto; (f) the Second Lien Credit Agreement Agent and counsel thereto; (g) the agent of the First Lien Notes and counsel thereto; (h) 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.

[*Remainder of Page Intentionally Left Blank*]

WHEREFORE, the Debtors respectfully request entry of the Proposed Order, substantially in the form attached hereto as **Exhibit A**, (a) granting the relief requested herein and (b) granting such other relief as the Court deems appropriate under the circumstances.

Dated: August 30, 2024
Wilmington, Delaware

<u>/s/ Patrick J. Reilley</u>
COLE SCHOTZ P.C.
Patrick J. Reilley, Esq. (No. 4451)
500 Delaware Avenue, Suite 1410
Wilmington, Delaware 19801
Telephone: (302) 652-3131
Facsimile:(302) 652-3117
Email: preilley@coleschotz.com

- and -

Michael D. Sirota, Esq. (admitted *pro hac vice*)
Warren A. Usatine, Esq (admitted *pro hac vice*)
Court Plaza North, 25 Main Street
Hackensack, New Jersey 07601
Telephone: (201) 489-3000
Facsimile: (201) 489-1536
Email: msirota@coleschotz.com
wusatine@coleschotz.com

Co-Counsel to the Debtors
and Debtors in Possession

KIRKLAND & ELLIS LLP
KIRKLAND & ELLIS INTERNATIONAL LLP
Joshua A. Sussberg, P.C. (admitted *pro hac vice*)
601 Lexington Ave
New York, New York 10022
Telephone: (212) 446-4800
Facsimile: (212) 446-4900
Email: joshua.sussberg@kirkland.com

- and -

Spencer A. Winters, P.C. (admitted *pro hac vice*)
Yusuf U. Salloum (admitted *pro hac vice*))
333 West Wolf Point Plaza
Chicago, Illinois 60654
Telephone: (312) 862-2000
Facsimile: (312) 862-2200
Email: spencer.winters@kirkland.com
yusuf.salloum@kirkland.com

Co-Counsel to the Debtors
and Debtors in Possession