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: October 2, 2024, at 1:30 p.m. (ET)**
	)	**Obj. Deadline: September 25, 2024, at 4:00 p.m. (ET)**

MOTION OF DEBTORS FOR ENTRY OF AN ORDER (I) EXTENDING THE DEBTORS' EXCLUSIVE PERIODS TO FILE A CHAPTER 11 PLAN AND SOLICIT ACCEPTANCES THEREOF PURSUANT TO SECTION 1121 OF THE BANKRUPTCY CODE AND (II) 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 motion:[2]

Relief Requested

1. The Debtors seek entry of an order, substantially in the form attached hereto as **Exhibit A** (the "Proposed Order"), (a) extending the Debtors' exclusive right to file a chapter 11 plan (the "Filing Exclusivity Period") by ninety days through and including January 6, 2025[3], and to solicit votes thereon (the "Solicitation Exclusivity Period" and, together with the Filing

[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 or Bidding Procedure Order, as applicable.

[3] Because 90 days from the current Filing Exclusivity Period deadline is January 5, 2025, which is a Sunday, the Debtors request an extension through and including January 6, 2025.

Exclusivity Period, the "Exclusivity Periods") by ninety days through and including March 6, 2025, in each case, without prejudice to the Debtors' rights to seek further extensions of each of the Exclusivity Periods, and (b) granting related relief. Absent the relief requested herein, the Filing Exclusivity Period will expire on October 7, 2024, and the Solicitation Exclusivity Period will expire on December 6, 2024.

Preliminary Statement

2. The Debtors request that the Court grant a 90-day extension of the Debtors' exclusive right to file and solicit a plan. Fewer than four months from the Petition Date, the Debtors have made substantial progress in these chapter 11 cases. In addition to customary "first day relief" on the Petition Date, the Debtors filed a motion, pursuant to section 363 of the Bankruptcy Code, seeking approval of certain proposed bidding procedures to conduct an expedited sale process for all or substantially all the Debtors' assets in their two business units, ventilation and respiratory diagnostics. The bidding procedures were approved by the Court on July 11, 2024 [Docket No. 249] (the "Bidding Procedures Order"). The Debtors' sale process resulted in two value-maximizing Sale Transactions (as defined below).

3. After the filing of these cases, the Debtors worked tirelessly to continue the marketing and sale process for the Debtors' Ventilation Assets and Respiratory Diagnostics Assets. After a full, fair and robust sale process, which included an auction for the Debtors' Ventilation Assets that lasted three days, the Debtors determined, in accordance with their business judgement and the Bidding Procedures Order, that (a) the asset purchase agreement by and among ZOLL Medical Corporation ("Zoll") and the Debtors constituted the highest and best offer for certain Ventilation Assets and (b) the asset purchase agreement by and among Trudell Medical Limited ("Trudell") and the Debtors constituted the highest and best offer for certain Respiratory

Diagnostics Assets. After notice and hearing, on September 4, 2024, the Court entered orders approving both sale transactions (the "Sale Transactions") [Docket Nos. 496-97] (together, the "Sale Orders"). Since entry of the Sale Orders, the Debtors and their advisors have been working diligently to effectuate and close each Sale Transaction, including identifying and finalizing transition needs and negotiating the terms of transition services agreements.

4. In parallel with, and now following, the marketing process, the Debtors are actively engaged with their stakeholders in an effort to build consensus surrounding the treatment of certain executory contracts and unexpired leases, including working to effectuate a smooth transition to Zoll and Trudell. The Debtors are also continuing to engage in good faith with the Official Committee of Unsecured Creditors appointed in these chapter 11 cases (the "Committee") in discussions and information-sharing related to the sale process and developing a value-maximizing chapter 11 plan.

5. Despite the Debtors' substantial progress to date, work remains to be done to bring these chapter 11 cases to a close. The Debtors remain focused on ensuring the success of the Sale Transactions by fulfilling their obligations under the asset purchase agreements, yet, at the same time, the Debtors have been discussing key terms of the Plan (as defined herein) with parties in interest in these chapter 11 cases. Contemporaneously herewith, the Debtors filed an initial version of their *Joint Chapter 11 Plan of Vyaire Medical, Inc. and Its Debtor Affiliates* [Docket No. 518] (as may be subsequently amended, supplemented, or modified from time to time, the "Plan") and *Disclosure Statement for the Joint Chapter 11 Plan of Vyaire Medical, Inc. and Its Debtor Affiliates* [Docket No. 519] (as may be subsequently amended, supplemented, or modified from time to time, the "Disclosure Statement"), along with a disclosure statement and solicitation procedures motion [Docket No. 520] (the "Disclosure Statement Motion"). The Debtors intend to

utilize the omnibus hearing currently set for October 2, 2024, *see* Docket No. 494, for, inter alia, the Court to consider approval of the Disclosure Statement and solicitation process on an interim or conditional basis in accordance with the local rules. Extension of each of the Exclusivity Periods is critical to the Debtors' efforts to obtain support of a value-maximizing plan without the risk of substantial disruption and additional costs that could stem from the introduction of new plans proposed by creditors seeking to advance their parochial interests. Indeed, without the relief requested herein, the current plan process would not be complete by the end of the current Filing Exclusivity Period (*i.e.*, October 7, 2024) based on the timeline set forth in the Disclosure Statement Motion, and the introduction of another plan midway would threaten to derail the current anticipated plan process, squandering the estate resources used in planning such process to-date. Accordingly, by this motion, the Debtors are seeking a 90-day extension of the Exclusivity Periods so that they may continue to diligently pursue an appropriate and value-maximizing resolution of these chapter 11 cases without the distraction and cost of an exclusivity dispute.

6. Furthermore, the Debtors have taken a number of key steps in these chapter 11 cases, including, among other things:

- obtaining relief that has enabled the Debtors to continue their operations and administration of these chapter 11 cases, including obtaining approval of "first day" motions, "second day" motions and retention applications;

- negotiating and obtaining final approval for the Debtors' debtor-in-possession financing facility and use of cash collateral to address the Debtors' liquidity needs in chapter 11;

- addressing questions, concerns and issues raised by numerous employees, vendors, utility companies and other parties in interest;

- obtaining entry of an order setting the claims bar date to facilitate the timely administration of their claims pool;

- obtaining entry of the contract rejection procedures order;
- continuing an extensive marketing process to identify, develop and consummate value-maximizing transactions for the Debtors' assets, including holding a three-day auction in connection with the sale of the Debtors' Ventilation Assets, which led to a significant increase in bid value to the benefit of the estates;
- obtaining entry of the Bidding Procedures Order;
- obtaining entry of each of the Sale Orders, which included certain modifications to the terms of the debtor in possession financing, after a contested evidentiary hearing on August 30, 2024;
- negotiating and finalizing asset purchase agreements with each of Zoll and Trudell;
- working with their advisors to implement and effectuate the Sale Transactions following entry of the Sale Orders, including ongoing work to confer with each buyer and parties in interest in connection with transition service needs and the contract designation process;
- responding to diligence requests from the Committee and other key stakeholder groups; and
- continuing discussions and negotiations with the Committee and other key stakeholders regarding the terms of a consensual resolution to these chapter 11 cases.

7. Based on the current posture of these chapter 11 cases, the Debtors believe sufficient cause exists to warrant an extension of the Exclusivity Periods. Given the complexities of these cases and the Debtors' need to continue moving the chapter 11 cases forward, the Debtors' ability to perform under the asset purchase agreements while building support for the terms of a Plan and negotiating and finalizing the documents required for the Plan would be seriously disrupted if another party were permitted to file a plan at this critical juncture. An extension of the Exclusivity Periods is in the best interests of the Debtors, their estates and all stakeholders, as it will allow the Debtors to procure the best recovery for their creditors and help to ensure a

successful conclusion to these chapter 11 cases. A ninety-day extension is therefore appropriate to protect the value and consensus fostered by the Debtors and their stakeholders and will not prejudice any parties in interest.

8. Accordingly, the Debtors seek a modest 90-day extension of the Exclusivity Periods to maintain the exclusive right to file a plan until January 6, 2025, and solicit votes thereon until March 6, 2025. For all of the foregoing reasons and those set forth below, the Debtors respectfully submit that a 90-day extension of exclusivity is appropriate in these circumstances, and request that the Court approve extension of the Exclusivity Periods.

Jurisdiction and Venue

9. 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 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.

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

11. The bases for the relief requested herein are section 1121(d) of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the "Bankruptcy Code"), Rule 9006 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and Local Rule 9006-2.

Background

12. 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, health centers and private practice facilities delivering life-enhancing products and services to patients every day.

13. 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 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.

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

Basis for Relief

15. Section 1121(d)(1) of the Bankruptcy Code permits a court to extend a debtor's exclusivity "for cause," subject to certain limitations not relevant here. Specifically, section 1121(d) of the Bankruptcy Code provides that "on request of a party in interest made within the respective periods . . . of this section and after notice and a hearing, the court may for cause reduce or increase the 120-day period or the 180-day period referred to in this section." 11 U.S.C. § 1121(d). Although the term "cause" is not defined by the Bankruptcy Code, such term should be viewed flexibly in this context "in order to allow the debtor to reach an agreement." H.R. Rep. No. 95, 95th Cong., 1st Sess. 232 (1997); *see also In re Public Serv. Co. of New Hampshire*, 88 B.R. 521, 533-34 (Bankr. D.N.H. 1988) ("legislative intent . . . [is] to promote maximum flexibility") (quoting *In re Lake in the Woods*, 10 B.R. 338, 340, 345 (E.D. Mich. 1981)). Simply put, a debtor should be given a reasonable opportunity to negotiate an acceptable plan with creditors and to prepare adequate financial and nonfinancial information concerning the ramifications of any proposed plan for disclosure to creditors. *See In re Texaco Inc.*, 76 B.R. 322, 327 (Bankr. S.D.N.Y. 1987).

16. Courts within the Third Circuit and in other jurisdictions have held that the decision to extend the Exclusivity Periods is left to the sound discretion of a bankruptcy court and should be based on the totality of circumstances in each case. *See, e.g., First Am. Bank of N.Y. v. Sw. Gloves & Safety Equip., Inc.*, 64 B.R. 963, 965 (D. Del. 1986); *In re Dow Corning Corp.*, 208 B.R. 661, 664 (Bankr. E.D. Mich. 1997); *In re Express One Int'l, Inc.*, 194 B.R. 98, 100 (Bankr. E.D. Tex. 1996); *In re McLean Indus., Inc.*, 87 B.R. 830, 834 (Bankr. S.D.N.Y. 1987). In particular, courts examine a number of factors to determine whether a debtor has had an adequate opportunity

to develop, negotiate and propose a chapter 11 plan and thus whether there is "cause" for extension of the Exclusivity Periods. These factors include the following:

a) the size and complexity of the case;

b) the existence of good-faith progress towards a plan;

c) the necessity of sufficient time to negotiate a plan and prepare adequate information to allow a creditor to determine whether to accept such plan;

d) whether the debtor is paying its debts as they become due;

e) whether the debtor has demonstrated reasonable prospects for filing a viable plan;

f) whether the debtor has made progress negotiating with creditors;

g) the length of time a case had been pending;

h) whether the debtor is seeking an extension to pressure creditors; and

i) whether or not unresolved contingencies exist.

See In re Cent. Jersey Airport Servs., LLC, 282 B.R. 176, 184 (Bankr. D.N.J. 2002); *McLean Indus.*, 87 B.R. at 834; *see also Dow Corning*, 208 B.R. at 664-65 (identifying the above factors and noting that courts generally rely on the same factors to determine whether exclusivity should be extended); *In re Friedman's Inc.*, 336 B.R. 884, 888 (Bankr. D. Ga. 2005) (same).

17. Not all of these factors are relevant to every case, and courts use only the relevant subset of the above factors to determine whether cause exists to grant an exclusivity extension in a particular chapter 11 case. *See, e.g.*, *Express One*, 194 B.R. at 100 (identifying four of the factors as relevant in determining whether "cause" exists to extend exclusivity); *In re United Press Int'l, Inc.*, 60 B.R. 265, 269 (Bankr. D.D.C. 1986) (finding that the debtor showed "cause" to extend exclusivity based upon three of the factors); *In re Pine Run Trust, Inc.*, 67 B.R. 432, 435 (Bankr. E.D. Pa. 1986) (relying on two of the factors in holding that cause existed to extend exclusivity). For example, both Congress and courts have recognized that the size and complexity of a debtor's

case alone may constitute cause for extension of a debtor's exclusive periods to file a plan and solicit acceptances of such a plan. H.R. No. 95-595, at 231-232, 406 (1978), *reprinted in* 1978 U.S.C.C.A.N. 5787, 6191 ("[I]f an unusually large company were to seek reorganization under chapter 11, the court would probably need to extend the time in order to allow the debtor to reach an agreement."); *see also Texaco*, 76 B.R. at 326 ("The large size of the debtor and the consequent difficulty in formulating a plan [] for a huge debtor with a complex financial structure are important factors which generally constitute cause for extending the exclusivity periods.").

18. As set forth below, the Debtors' chapter 11 cases satisfy the relevant factors and, thus, sufficient "cause" exists to extend the Exclusivity Periods as provided herein. There is ample precedent in this district and others for an initial extension of exclusivity as the Debtors seek here. *See, e.g.*, *In re Express, Inc.*, Case No. 24-10831 (KBO) (Bankr. D. Del. Aug. 7, 2024) (granting an initial extension of the exclusive periods by approximately 90 days); *In re Mist Holdings, Inc.*, No. 24-10245 (JTD) (Bankr. D. Del. Jun. 10, 2024) (same); *In re MVK FarmCo LLC*, No. 23-11721 (LSS) (Bankr. D. Del. Feb. 26, 2024) (same); *In re Yellow Corp.*, No. 23-11069 (CTG) (Bankr. D. Del. Nov. 8, 2023) (same); *In re PGX Holdings, Inc.*, No. 23-40718 (CTG) (Bankr. D. Del. Sept. 25, 2023) (same).

I. The Debtors' Chapter 11 Cases Are Large and Complex

19. These chapter 11 cases involve 28 affiliated-Debtor entities with approximately 950 full-time employees throughout the United States. The Debtors continue to operate their global company focused exclusively on supporting breathing through every stage of life and Vyaire's products are available in more than 100 countries. As of the Petition Date, the company operated two business segments: ventilation and respiratory diagnostics, and each segment offered customers certain products, services and related consumables. Additionally, the company held a

differentiated portfolio of valuable intellectual property related to its product offerings consisting of, among other things, over 700 U.S. patents. Moreover, the Debtors had approximately $533.6 million in total funded debt obligations as of the Petition Date.

20. Furthermore, the Debtors have a wide variety of parties in interest, from various vendors and contractual counterparties to local, state and federal agencies—many of whom have been active in these chapter 11 cases. The Debtors also have a myriad of reporting obligations with respect to local, state and federal taxing and regulatory agencies that the Debtors have continued to comply with, to the extent required by the Bankruptcy Code.

21. Accordingly, the size and complexity of these chapter 11 cases weigh in favor of extending the Exclusivity Periods.

II. The Debtors Have Made Good-Faith Progress Towards Exiting Chapter 11

22. During their short time in chapter 11, the Debtors have made significant progress in negotiating with their stakeholders and administering these chapter 11 cases. The Debtors have already satisfied several key milestones in these chapter 11 cases, including: (i) obtaining approval of the Bidding Procedures Order and negotiating and obtaining final approval for debtor-in-possession financing facility and use of cash collateral; (ii) actively engaging in a successful, comprehensive marketing process in accordance with the Bidding Procedures Order; (iii) signing and obtaining Court approval for the sale of substantially all of the Debtors' Ventilation Assets to a third-party strategic bidder for cash consideration of $37 million and the assumption of certain liabilities; (iv) signing and obtaining Court approval for the sale of substantially all of the Debtors' Respiratory Diagnostics Assets to a third-party strategic bidder for cash consideration in the amount of $53.5 million and the assumption of certain liabilities; and (v) actively engaging with stakeholders in an effort to build consensus surrounding the treatment of certain executory

contracts and unexpired leases. The Debtors will seek to obtain approval of the Disclosure Statement and launch a process to solicit votes on the Plan, while simultaneously working to close the Sale Transactions.

23. Further, the Debtors have engaged in good faith with the Committee. Since the Committee's formation, the Debtors have had extensive negotiations and shared information related to the marketing and sale process. The Debtors, at the Committee's request, are facilitating extensive and ongoing diligence and discovery and have thus far shared hundreds of documents with the Committee. The Debtors will continue to engage with the Committee as these chapter 11 cases progress.

24. Accordingly, the Debtors' substantial progress in administering these chapter 11 cases and good faith to resolve outstanding issues with the Committee and other parties-in-interest weigh in favor of extending the Exclusivity Periods.

III. The Debtors are Paying Their Bills as They Come Due

25. Since the Petition Date, the Debtors have generally paid their postpetition debts in the ordinary course of business or as otherwise provided by Court order.

IV. These Cases Are Fewer Than Four Months Old

26. The Debtors' request for an extension of the Exclusivity Periods is the Debtors' first such request and comes less than four months after the Petition Date. As discussed above, during this short time, the Debtors have accomplished a great deal and worked diligently toward a timely resolution of these chapter 11 cases.

V. An Extension of the Exclusivity Periods Will Not Pressure Creditors

27. The Debtors are not seeking an extension of the Exclusivity Periods to pressure or prejudice any of their stakeholders. The Debtors have been diligently moving these chapter 11

cases forward and the Court has already confirmed a sale of certain of the Debtors' Ventilation Assets and substantially all the Debtors' Respiratory Diagnostics Assets. Thus, the Debtors' request for an extension to the Exclusivity Periods is not requested for the impermissible purpose of pressuring creditors to agree to a plan. Accordingly, the relief requested herein is without prejudice to the Debtors' creditors and will benefit the Debtors' estates, their creditors and all other key parties in interest.

28. An objective analysis of the relevant factors demonstrates that the Debtors are doing everything that they should be doing as chapter 11 debtors to reach a successful conclusion to these chapter 11 cases. Accordingly, sufficient cause exists to extend the Exclusivity Periods as provided herein.

Notice

29. 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.

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WHEREFORE, the Debtors 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: September 11, 2024
Wilmington, Delaware

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