

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

VYAIRE MEDICAL, INC., *et al.*,¹

Debtors.

Chapter 11

Case No. 24-11217 (___)

(Jointly Administered)

Re: Docket No. 520

**ORDER (I) APPROVING THE ADEQUACY
OF THE DISCLOSURE STATEMENT ON AN INTERIM
BASIS, (II) SCHEDULING A COMBINED DISCLOSURE STATEMENT
APPROVAL AND PLAN CONFIRMATION HEARING, (III) APPROVING
THE SOLICITATION AND NOTICE PROCEDURES, (IV) APPROVING
THE COMBINED HEARING NOTICE, AND (V) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”)² of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for the entry of an order (this “Order”), (a) authorizing the Debtors to approve the adequacy of the Disclosure Statement on an interim basis, (b) schedule the Combined Hearing on the adequacy of the Disclosure Statement on a final basis and Confirmation of the Plan, (c) establish the Objection Deadline and approving related procedures, (d) approve the Solicitation Procedures, (e) approve the form and manner of the Combined Hearing Notice, and (f) granting related relief, all as more fully set forth in the Motion; and upon the First Day Declaration; and 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 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,

¹ The last four digits of Debtor Vyair 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/Vyair>. The location of Debtor Vyair 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 have the meanings ascribed to them in the Motion.

dated February 29, 2012; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court having found that this Court may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the relief requested in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and this Court having found that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Motion is granted to the extent set forth herein.

I. Interim Approval of the Disclosure Statement.

2. The Disclosure Statement, substantially in the form attached hereto as Exhibit 1, is hereby approved on an interim basis as providing Holders of Claims entitled to vote on the Plan with adequate information to make an informed decision as to whether to vote to accept or reject the Plan in accordance with sections 105 and 1125(a)(1) of the Bankruptcy Code and Bankruptcy Rule 3017.

3. The Disclosure Statement (including all applicable exhibits thereto) provides Holders of Claims or Interests, and other parties in interest with sufficient notice of the injunction, exculpation, and release provisions contained in Article VIII of the Plan, in satisfaction of the requirements of Bankruptcy Rule 3016(c).

II. Approval of the Solicitation and Voting Procedures.

4. The Debtors are authorized to solicit, receive, and tabulate votes to accept the Plan in accordance with the Solicitation and Voting Procedures, substantially in the form attached hereto as **Exhibit 2**, which are hereby approved in their entirety.

5. Any party wishing to file a motion under Bankruptcy Rule 3018(a) to temporarily allow a Claim or Interest solely for purposes of voting to accept or reject the Plan shall have until ten days from the later of (a) the distribution of the Combined Hearing Notice and (b) the filing of an objection to such Claim or Interest to file such a motion. The Debtors and other parties in interest shall have until November 4, 2024 as the deadline to file objections to any motion filed pursuant to Bankruptcy Rule 3018(a).

III. Approval of the Materials and Timeline for Soliciting Votes and the Procedures for Confirming the Plan.**A. Approval of Certain Dates and Deadlines with Respect to the Plan and Disclosure Statement.**

6. The following dates are hereby established (subject to modification as necessary) with respect to solicitation of votes on the Plan and Confirmation of the Plan:

Event	Date
Disclosure Statement Objection Deadline	September 25, 2024, at 4:00 p.m. (prevailing Eastern Time)
Voting Record Date	October 2, 2024
Disclosure Statement Hearing	October 2, 2024
Solicitation Launch	October 7, 2024
Plan Supplement Filing Date	October 28, 2024
Voting Deadline	November 4, 2024, at 4:00 p.m. (prevailing Eastern Time)
Confirmation Objection Deadline	November 4, 2024, at 4:00 p.m. (prevailing Eastern Time)
Voting Report Filing Deadline	November 7, 2024
Confirmation Brief Filing Deadline	November 11, 2024
Confirmation Hearing	November 14, 2024, at 1:30 p.m. (prevailing Eastern Time)

B. Approval of the Form of and Distribution of Solicitation Packages to Parties Entitled to Vote on the Plan.

7. In addition to a copy of this Order, the Solicitation Packages to be transmitted on or before the Solicitation Deadline to those Holders of Claims the Voting Classes entitled to vote on the Plan as of the Voting Record Date, shall include the following, the form of each of which is hereby approved:

- a. Ballots substantially in the forms attached hereto as **Exhibit 3A and 3B**, and, for those Ballots distributed by first-class mail, a pre-addressed, postage prepaid return envelope;³
- b. the Cover Letter, including instructions to obtain access, free of charge, to the Plan and Disclosure Statement and the Order (without exhibits, except the Solicitation and Voting Procedures), substantially in the form attached hereto as **Exhibit 7**; and
- c. the Combined Hearing Notice substantially in the form attached hereto as **Exhibit 8**.

8. The Solicitation Packages provide the Holders of Claims entitled to vote on the Plan with adequate information to make informed decisions with respect to voting on the Plan in accordance with Bankruptcy Rules 2002(b) and 3017(d), the Bankruptcy Code, and the Local Rules.

9. The Debtors shall distribute Solicitation Packages by email, where available, and otherwise by first-class U.S. mail, to all Holders of Claims entitled to vote on the Plan on or before the Solicitation Deadline. Such service shall satisfy the requirements of the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules.

³ The Debtors will use commercially reasonable efforts to ensure that any Holder of a Claim who has filed duplicate Claims against the Debtors (whether against the same or multiple Debtors) that are classified under the Plan in the same Voting Class receives no more than one Solicitation Package (and, therefore, one Ballot) on account of such Claim and with respect to that Class.

10. The Debtors are authorized, but not directed or required, to distribute the Plan and Disclosure Statement to Holders of Claims entitled to vote on the Plan by providing instructions as part of the Solicitation Package for accessing these documents through the Debtors' restructuring website (<https://omniagentsolutions.com/Vyaire>), and if requested, a hard copy or flash drive within three business days of receipt of such request. On or before the Solicitation Deadline, the Debtors shall provide (a) complete Solicitation Packages (other than Ballots) to the U.S. Trustee and (b) the Order (in electronic format) and the Combined Hearing Notice to all parties on the 2002 List as of the Voting Record Date.

11. Any party that would prefer to receive materials in paper format may contact the Notice and Claims Agent and request paper copies of the materials (to be provided at the Debtors' expense).

12. The Notice and Claims Agent is authorized to assist the Debtors in (a) distributing the Solicitation Package, (b) receiving, tabulating, and reporting on Ballots cast to accept or reject the Plan by Holders of Claims and Interests against the Debtors, (c) responding to inquiries from Holders of Claims and Interests and other parties in interest relating to the Disclosure Statement, the Plan, the Ballots, the Solicitation Package, and all other related documents and matters related thereto, including the procedures and requirements for voting to accept or reject the Plan and for objecting to the Plan, (d) soliciting votes on the Plan, and (e) if necessary, contacting creditors regarding the Plan.

13. The Notice and Claims Agent is also authorized to accept Ballots via electronic online transmission solely through a customized online balloting portal on the Debtors' case website. The encrypted ballot data and audit trail created by such electronic submission shall become part of the record of any Ballot submitted in this manner and the creditor's electronic

signature will be deemed to be immediately legally valid and effective. Ballots submitted via the customized online balloting portal shall be deemed to contain an original signature.

14. All votes to accept or reject the Plan must be cast by using the appropriate Ballot. All Ballots must be properly executed, completed, and delivered according to their applicable voting instructions by: (a) first class mail; (b) overnight courier; (c) personal delivery; or (d) via E-Ballot Portal, so that the Ballots are actually received by the Notice and Claims Agent no later than the Voting Deadline at the return address set forth in the applicable Ballot. Alternatively, Ballots may be submitted via an electronic Ballot through the Solicitation Agent's online electronic Ballot submission portal at <https://omniagentsolutions.com/Vyaire> by no later than the Voting Deadline. The Debtors are authorized to extend the Voting Deadline in their sole discretion and without further order of the Court.

C. Approval of the Combined Hearing Notice.

15. The Combined Hearing Notice constitutes adequate and sufficient notice of the hearing to consider approval of the Plan, the manner in which a copy of the Plan could be obtained, and the time fixed for filing objections thereto, in satisfaction of the requirements of the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules.

16. The Combined Hearing Notice, substantially in the form attached hereto as **Exhibit 8**, shall be filed by the Debtors and served, within three business days following entry of this Order, upon the Debtors' entire creditor matrix and all interest holders of record; *provided, however*, that in lieu of mailing a Combined Hearing Notice to such parties for whom the Debtors maintain active electronic mail addresses on record (meaning that such electronic mails do not respond that the message is undeliverable), the Debtors will cause the Combined Hearing Notice to be sent by electronic mail to such parties.

17. In addition, the Debtors shall publish the Combined Hearing Notice in a format modified for publication (the “Publication Notice”) one time, as soon as reasonably practicable after entry of this Order, in a nationally recognized and circulated news publication.

D. Approval of Notice of Filing of the Plan Supplement.

18. The Debtors are authorized to file and post the Plan Supplement on the Debtors’ restructuring website at <https://omniagentsolutions.com/Vyaire>, which will be filed and posted at least seven days prior to the Voting Deadline, substantially in the form attached hereto as **Exhibit 9**.

E. Approval of the Form of Notices to Non-Voting Classes.

19. Except to the extent the Debtors determine otherwise, the Debtors are not required to provide Solicitation Packages to Holders of Claims in Non-Voting Classes, as such Holders are not entitled to vote on the Plan. Instead, on or before the Solicitation Deadline, the Notice and Claims Agent shall distribute by email, where available, and otherwise by mail (first-class postage prepaid), a Non-Voting Status Notice in lieu of Solicitation Packages, the form of each of which is hereby approved, to those parties, outlined below, who are not entitled to vote on the Plan:

Class	Status	Treatment
Classes 1, 2 and 3	Unimpaired—Conclusively Presumed to Accept	Will receive a Non-Voting Status Notice, substantially in the form attached hereto as <u>Exhibit 4</u> in lieu of a Solicitation Package.
Classes 6, 7, 8, 9, and 10	Impaired—Deemed to Reject	Will receive a Non-Voting Status Notice, substantially in the forms attached hereto as <u>Exhibit 5</u> in lieu of a Solicitation Package.
N/A	Disputed Claims	Holders of Claims and Interests that are subject to a pending objection by the Debtors are not entitled to vote the disputed portion of their Claim. As such, Holders of such Claims will receive a notice, substantially in the forms attached hereto as <u>Exhibit 6</u> (which notice shall be served together with such objection).

20. The Debtors are not required to distribute Solicitation Packages or other solicitation materials to the following: (a) Holders of Claims that have already been paid in full during these Chapter 11 Cases or that are authorized to be paid in full in the ordinary course of business pursuant to an order previously entered by this Court; (b) any party to whom a notice of the hearing regarding the Court's interim approval of the Disclosure Statement was sent but was subsequently returned as undeliverable; or (c) Holders of Class 7 Intercompany Claims and Class 8 Intercompany Interests.

F. Approval of Assumption Notice.

21. The Debtors are authorized to distribute by email, where available, and otherwise by first-class U.S. mail, an Assumption Notice of any Executory Contracts or Unexpired Leases, substantially in the form attached hereto as **Exhibit 10**, to the applicable counterparties to Executory Contracts and Unexpired Leases that will be assumed pursuant to the Plan, within the time periods and any reservation of rights period specified in the Plan.

G. Approval of Rejection Notice.

22. The Debtors are authorized to distribute by email, where available, and otherwise by first-class U.S. mail, a Rejection Notice of any Executory Contracts or Unexpired Leases, substantially in the form attached hereto as **Exhibit 11**, to the applicable counterparties to Executory Contracts and Unexpired Leases that will be rejected pursuant to the Plan, within the time periods specified in the Plan. If certain, but not all, of a contract counterparty's Executory Contracts and Unexpired Leases are assumed pursuant to the Plan, the Confirmation Order will be a determination that such counterparty's Executory Contracts and Unexpired Leases that are being rejected pursuant to the Plan are severable agreements that are not integrated with those Executory Contracts and Unexpired Leases that are being assumed pursuant to the Plan. Parties seeking to contest this finding with respect to their Executory Contracts or Unexpired Leases must file a

timely objection by the Confirmation Objection Deadline on the grounds that their agreements are integrated and not severable.

H. Approval of the Procedures for Filing Objections to the Plan.

23. Objections to the Plan will not be considered by the Court unless such objections are timely filed and properly served in accordance with this Order. Additionally, all objections to Confirmation of the Plan or requests for modifications to the Plan, if any, must: (a) be in writing, (b) conform to the Bankruptcy Rules and the Local Rules, (c) state, with particularity, the legal and factual basis for the objection and, if practicable, a proposed modification to the Plan (or related materials) that would resolve such objection, and (d) be filed with the Court (contemporaneously with a proof of service) and served upon the notice parties identified in the Combined Hearing Notice on or before **November 4, 2024, at 4:00 p.m.**, prevailing Eastern Time. All objections to Confirmation of the Plan are fully reserved.

IV. Miscellaneous.

24. Notwithstanding anything in this Order or the Plan to the contrary, not later than 12:00 p.m. ET on the date that is three (3) business days prior to the deadline to object to the Plan, the Debtors shall serve upon counsel for Cigna (as defined in the *Objection of Cigna to Disclosure Statement for the Joint Chapter 11 Plan of Vyaire Medical, Inc. and Its Debtor Affiliates* [Docket No. 567] (“Cigna Objection”)) written notice (email will suffice) (“Cigna Notice”) of their irrevocable (conditioned on the Effective Date of the Plan) decision as to whether or not the Debtors propose to assume or reject (or otherwise terminate) the Employee Benefits Agreements (as defined in the Cigna Objection) pursuant to the Plan. If the Debtors propose to terminate the Employee Benefits Agreements, the Cigna Notice shall state whether the effective date of such termination shall be: (i) the Effective Date of the Plan; or (ii) such other date as the Debtors may propose, upon at least 30 days’ notice. If the Debtors propose to reject or otherwise terminate the

ASO Agreement (as defined in the Cigna Objection), the Cigna Notice shall also include the Debtors' decision as to whether: (i) the payment of employee healthcare claims that were incurred, but not submitted, processed and paid prior to the effective date of termination ("Run-Out Claims") will be funded by the Debtors (or a successor thereto) for the twelve (12) month period following such rejection, and the source of such funding; or (ii) the payment of Run-Out Claims will not be funded, in which case the Cigna Notice shall include (x) irrevocable notice to Cigna of Debtors' direction to not process Run-Out Claims after the effective date of termination, (y) confirmation that affected current and former employees of the Debtors ("Affected Employees") have been given notice that Run-Out Claims will not be funded, and (z) the name and contact information of a representative of the Debtors or their successor to whom Cigna can direct inquiries from Affected Employees whose healthcare claims will not be paid. This resolves the Cigna Objection.

25. The Debtors may make non-substantive changes to the Disclosure Statement, Plan, Combined Hearing Notice, Solicitation Packages, Non-Voting Status Notices, Ballots, Publication Notice, Cover Letter, Solicitation and Voting Procedures, Plan Supplement Notice, Assumption Notice, Rejection Notice, Voting and Tabulation Procedures, and related documents after the entry of this Order without further order of the Court, including changes to correct typographical and grammatical errors, if any, and to make conforming changes to the Disclosure Statement, the Plan, and any other materials in the Solicitation Packages before distribution.

26. The Debtors reserve the right to modify the Plan without further order of the Court in accordance with Article X of the Plan, including the right to withdraw the Plan as to any or all Debtors at any time before the Confirmation Date.

27. Nothing contained in the Motion or this Order, and no action taken pursuant to the relief requested or granted (including any payment made in accordance with this Order),

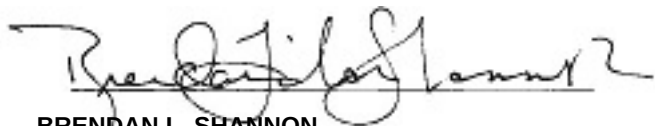
is intended as or shall be construed or deemed to be: (a) an admission as to the amount, validity or priority of, or basis for any claim against the Debtors under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of the Debtors' or any other party in interest's right to dispute any claim on any grounds; (c) a promise or requirement to pay any particular claim; (d) an implication, admission or finding that any particular claim is an administrative expense claim, other priority claim or otherwise of a type specified or defined in the Motion or this Order; (e) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) an admission as to the validity, priority, enforceability or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates; or (g) a waiver or limitation of any claims, causes of action or other rights of the Debtors or any other party in interest against any person or entity under the Bankruptcy Code or any other applicable law.

28. All time periods set forth in this Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

29. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by such notice.

30. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Order in accordance with the Motion.

31. This Court retains jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

A handwritten signature in black ink, appearing to read "Brendan L. Shannon", is written over a horizontal line.

BRENDAN L. SHANNON
UNITED STATES BANKRUPTCY JUDGE

Dated: October 2nd, 2024
Wilmington, Delaware