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 p.m. (ET)**

MOTION OF DEBTORS FOR ENTRY OF AN ORDER (I) EXTENDING THE TIME WITHIN WHICH THE DEBTORS MUST ASSUME OR REJECT UNEXPIRED LEASES OF NONRESIDENTIAL REAL PROPERTY 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 deadline by which the Debtors must assume or reject unexpired leases of nonresidential real property (collectively, the "Unexpired Leases," and such deadline, the "365(d)(4) Deadline") by ninety days through and including January 6,

[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 Bidding Procedures Order, as defined herein.

2024[3], and (b) granting related relief. The Debtors seek this relief without prejudice to their rights to seek further extensions of the time to assume or reject the Unexpired Leases as contemplated under section 365(d)(4) of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the "Bankruptcy Code").

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 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 herein are section 365(d)(4) of the Bankruptcy Code, Rule 9006 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and Local Rule 9006-2.

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[3] Because 90 days from the current 365(d)(4) Deadline to assume or reject unexpired leases of nonresidential real property is January 5, 2025, which is a Sunday, the Debtors request an extension through and including January 6, 2025.

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

6. 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.

7. 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.

8. 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 "Bidding Procedures Order"). The Bidding Procedures Order approved, among other things, the Debtors' right to reject, and not assume and assign, any contract depending on the ultimate resolution of any cure amount in dispute; provided that, in the case of an unexpired lease of non-residential real property, such determination shall be prior to the expiration of the applicable deadline to assume or reject unexpired leases under section 365(d)(4) of the Bankruptcy Code. *See* Bidding Procedures Order at ¶ 24.

9. On August 12, 2024, the Debtors commenced an auction (the "Auction") for the sale of the Debtors' Ventilation Assets. *See* Docket No. 371. The Auction for the Debtors' Ventilation Assets formally ended on August 14, 2024, and Zoll Medical Corp. ("Zoll") was selected as the Successful Bidder. *See* Docket No. 388. On August 20, 2024, Trudell Medical Limited ("Trudell") was selected as the Successful Bidder for the Debtors' Respiratory Diagnostic Assets (together with Zoll, the "Purchasers"). *See* Docket No. 400. The sale of the Debtors' Ventilation Assets to Zoll and sale of the Debtors' Respiratory Diagnostics Assets to Trudell (collectively, the "Sale Transactions") concluded the sale of substantially all of the Debtors' assets pursuant to the Bidding Procedures Order.

10. On September 4, 2024, the Court entered an order approving the sale of the Debtors' Ventilation Assets to Zoll [Docket No. 496] (the "Zoll Sale Order") and the sale of the Debtors' Respiratory Diagnostics Assets to Trudell [Docket No. 497] (the "Trudell Sale Order," and collectively with the Zoll Sale Order, the "Sale Orders"). As part of closing each of the sale transactions, the Debtors' advisors are working through various consummation issues, including

negotiation and finalization of certain transition services agreements, making determinations regarding contract designation decisions, and receiving certain regulatory approvals. The Debtors currently anticipate that, at the earliest, the sale transaction with Zoll may be in a position to close in early October, with the sale transaction with Trudell happening later in October or in November.

The Unexpired Leases

11. One or more of the Debtors are, or may be, party to certain Unexpired Leases of nonresidential real property that are subject to potential assumption, assumption and assignment or rejection under section 365 of the Bankruptcy Code. While the Debtors, Purchasers, and their advisors have been diligently evaluating the Unexpired Leases since the Petition Date, the Debtors and the Purchasers have not yet completed their analysis or made final determinations as to which of their Unexpired Leases they will assume (and assign) or reject. As such, the Debtors seek a 90-day extension of the period (*i.e.*, through and including January 6, 2024) to continue to evaluate the Unexpired Leases. An extension of the 365(d)(4) Deadline is necessary to preserve the Debtors' ability to assume and assign the Unexpired Leases in accordance with the contract designation process provided for in the asset purchase agreements, which will in turn maximize value for the Debtors, their estates and other parties in interest, as well as facilitate the Debtors' performance under and compliance with the TSAs.

12. Following the closing of the Sale Transactions, the Debtors will be required to provide certain transition services to Zoll and Trudell, during which certain of the Debtors' operations will wind down as provided for in the Debtors' *Joint Chapter 11 Plan of Vyaire Medical, Inc. and Its Debtor Affiliates* [Docket No. 518] (as may be amended, supplemented or modified from time to time). Certain of the Debtors' Unexpired Leases may be necessary during

this transition period to ensure a smooth transition until such time as the Debtors are able to make a final determination as to the disposition of the Unexpired Leases.

13. The Debtors' decision to assume or reject any particular Unexpired Lease depends on a number of different factors, including, but not limited to, an assessment as to whether assumption or rejection of such Unexpired Lease is consistent with the Purchaser's acquired assets and exercise of their contract designation rights. The Debtors, the Purchasers, and their advisors will continue to analyze the Unexpired Leases that the Debtors may choose to assume, assume and assign or reject prior to the 365(d)(4) Deadline, but believe that a determination on the disposition of the Unexpired Leases at this time would be premature given the transition period and Zoll and Trudell's contract designation rights.

14. Accordingly, the Debtors seek an extension of the 365(d)(4) Deadline by an additional 90 days through and including January 6, 2025.

Basis for Relief

15. Section 365(d)(4) of the Bankruptcy Code provides that an unexpired lease of nonresidential real property under which a debtor is the lessee shall be deemed rejected if the debtor does not assume or reject such unexpired lease within 120 days after the petition date or before plan confirmation, whichever is earlier. A bankruptcy court may extend the period for 90 days on the motion of the debtor or lessor for cause. *See* 11 U.S.C. § 365(d)(4)(B). "Cause," as used in section 365(d)(4), is not defined by the Bankruptcy Code. Among other things, courts consider the following non-exhaustive factors in evaluating whether "cause" exists for purposes of section 365(d)(4) of the Bankruptcy Code:

(a) whether the lease is an important asset of the estate such that the decision to assume or reject would be central to any plan;

(b) whether the case is complex and involves large numbers of leases;

(c) whether the debtor has had insufficient time to intelligently appraise each lease's value to a plan; or

(d) the existence of any other facts indicating the lack of a reasonable time to decide whether to assume or reject.

In re Wedtech Corp., 72 B.R. 464, 471-72 (Bankr. S.D.N.Y. 1987); *see also S. St. Seaport L.P. v. Burger Boys Inc. (In re Burger Boys Inc.)*, 94 F.3d 755, 761 (2d Cir. 1996) (considering the complexity of the debtor's case, the number of leases the debtor must evaluate and the need for judicial determination of whether a lease exists); *Legacy, Ltd. v. Channel Home Ctrs., Inc. (In re Channel Home Ctrs., Inc.)*, 989 F.2d 682, 689 (3d Cir. 1993) ("[I]t is permissible for a bankruptcy court to consider a particular debtor's need for more time in order to analyze leases in light of the plan it is formulating.").

16. Courts in this district have recognized the benefits of granting additional time for a debtor to assume or reject leases of nonresidential real property under section 365(d)(4) of the Bankruptcy Code. *See, e.g., Channel Home Ctrs.*, 989 F.2d at 687-88; *In re GST Telecom Inc.*, 2001 WL 686971 (D. Del. June 8, 2001); *In re Rickel Home Ctrs.*, 1997 WL 538785 (D. Del. Aug. 13, 1997). As the Third Circuit has stated, "nothing prevents a bankruptcy court from granting an extension because a particular debtor needs additional time to determine whether the assumption or rejection of particular leases is called for by the plan . . . it is attempting to develop." *Channel Home Ctrs., Inc.*, 989 F.2d at 689; *see also Coleman Oil Co. v. Circle K Corp. (In re Circle K Corp.)*, 127 F.3d 904, 909 n.5 (9th Cir. 1997), *cert. denied*, 522 U.S. 1148 (1998) (noting that bankruptcy courts often grant debtors' requests for extensions).

17. Here, the factors courts analyze in deciding whether "cause" exists under section 365(d)(4) of the Bankruptcy Code weigh in favor of granting the Debtors' request for a 90-day extension in this case. ***First***, pending the Debtors' decision to assume (and assign) or reject the Unexpired Leases, the Debtors intend to perform in a timely fashion all of their undisputed

obligations arising from and after the Petition Date to the extent required by section 365(d)(3) of the Bankruptcy Code or orders of the Court. As such, the Debtors' requested extension of time to assume (and assign) or reject the Unexpired Leases will not prejudice or otherwise affect the substantive rights of the lessors under the Unexpired Leases. *See, e.g., In re Victoria Station Inc.*, 875 F.2d 1380, 1386 (9th Cir. 1989) ("[A]n order extending the time for a debtor to assume or reject a lease merely preserves the status quo."); *In re Bon Ton Rest. & Pastry Shop, Inc.*, 52 B.R. 850, 855 (Bankr. N.D. Ill. 1985) (concluding that a lessor who received continuing monthly rent payments was not prejudiced by an extension of the section 365(d)(4) deadline).

18. ***Second***, the Unexpired Leases are an important part of the Debtors' business, are valuable to the Debtors' estates, central to the Debtors' chapter 11 cases, and subject to the purchasers' contract designation rights under the applicable asset purchase agreement. A key part of the Debtors' restructuring is consummation of the Sale Transactions. As such, the Debtors and Zoll and Trudell, respectively, will enter into TSAs to ensure a smooth transition following the closing of the sales. Certain of the Debtors' Unexpired Leases are essential to the Debtors' operations during the transition period. Further, each purchaser bargained for certain contract designation rights that include the possibility of assuming and assigning contracts and leases to purchasers, so it is imperative that the Debtors be able to assume and assign agreements in accordance with the Bankruptcy Code. Under the currently anticipated timing, it is not likely that the Trudell sale transaction will close prior to the current lease rejection deadline, and it is not clear if the Zoll sale transaction will either.

19. ***Third,*** the Debtors have diligently pursued their chapter 11 strategy in an efficient and timely manner. The Debtors have focused on, among other things, stabilizing their ordinary course operations and executing their marketing and sale process postpetition. Given the Debtors'

pressing operational initiatives, including, but not limited to, consummating the Sale Transactions, the Debtors have not had the opportunity to fully to assess and review the assumption and rejection options with respect to the Unexpired Leases.

20. The 90-day extension requested herein is also consistent with the extensions granted by courts in this district under similar circumstances. *See, e.g., In re Express, Inc.*, No. 24-10831 (KBO) (Bankr. D. Del. Aug. 19, 2024) (extending the deadline to assume or reject unexpired leases of nonresidential real property by 90 days); *In re Mist Holdings, Inc.*, No. 24-10245 (JTD) (Bankr. D. Del. May 28, 2024) (same); *In re MVK FarmCo LLC*, No. 23-11721 (LSS) (Bankr. D. Del. Feb. 6, 2024) (same); *In re Yellow Corporation*, No. 23-11069 (CTG) (Bankr. D. Del. Nov. 13, 2023) (same); *In re PGX Holdings, Inc.* No. 23-10718 (CTG) (Bankr. D. Del. Sept. 13, 2023) (same). Similar relief is warranted in these chapter 11 cases.

Reservation of Rights

21. Nothing contained in this motion or any order granting the relief requested in this motion, and no action taken by the Debtors pursuant to the relief requested or granted (including any payment made in accordance with any such order), is intended as or shall be construed or deemed to be: (a) an admission as to the amount of, basis for, priority or validity of 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 rights 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 this motion or any order granting the relief requested by this motion; (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.

No Prior Request

22. No prior request for the relief sought in this motion has been made to this or any other court.

Notice

23. 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) counterparties to the Unexpired Leases; and (i) 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: September 11, 2024
Wilmington, Delaware

/s/ Patrick J. Reilley
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