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 18, 2024 at 4:00 p.m. (ET)**

MOTION OF DEBTORS FOR ENTRY OF AN ORDER (I) ENLARGING THE PERIOD WITHIN WHICH THE DEBTORS MAY REMOVE ACTIONS 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) enlarging the period of time (the "Removal Period") set forth in Rule 9027(a)(2)(A) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") during which the Debtors may seek removal of actions (collectively, the "Actions") pursuant to 28 U.S.C. § 1452 and Bankruptcy Rule 9027 by 120 days, up to and 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 not defined herein shall have the meanings ascribed to such terms in the First Day Declaration.

January 6, 2025,[3] without prejudice to the Debtors' right to seek additional extensions of the Removal Period; and (b) granting related relief.

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 28 U.S.C. § 1452, Bankruptcy Rules 9006 and 9027 and Local Rule 9006-2.

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

---

[3] Because 120 days from the current Removal Period deadline is January 5, 2025, which is a Sunday, the Debtors request an extension through and including January 6, 2025.

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.

The Actions

8. The Debtors are currently involved in certain civil actions commenced prepetition in various fora. The Debtors continue to review their books and records and are in the process of determining whether to remove any Actions pursuant to 28 U.S.C. § 1452. Since the Petition Date, the Debtors have worked diligently on a number of critical matters and have not yet decided which, if any, of the Actions they will seek to remove. Specifically, the Debtors and their professionals have been focused on, 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;

- continuing an extensive marketing and auction process to identify, develop and, subject to Court approval, consummate value-maximizing transactions for the Debtors' assets;

- obtaining entry of the Bidding Procedures Order [Docket No. 249];

- working with their advisors to implement and effectuate the sale of certain assets following entry of the sale orders, *see* Docket Nos. [●] and [●], to Zoll Medical Corp. and Trudell Medical Limited, respectively, including transition-related planning;

- addressing questions, concerns and issues raised by 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 and beginning the process of reconciling claims and interests as promptly and efficiently as possible, *see* Docket No. 227;

- obtaining entry of the contract rejection procedures order [Docket No. 250];

- responding to diligence requests from the Committee and other key stakeholder groups; and

- continuing significant negotiations with key stakeholders regarding the terms of a consensual resolution to these chapter 11 cases.

9. As a result of the Debtors' focus on other key matters associated with these chapter 11 cases to this point, the Debtors are not yet in a position to undertake a thorough analysis of the Actions or develop a strategy with respect to whether they should remove certain Actions.

10. It is also possible that the Debtors may become aware of Actions following their review of proofs of claim, at which point the Debtors will need to analyze such potential Actions to determine whether to remove any such Actions. Consequently, the Debtors are seeking an extension of the Removal Period to provide them with time to decide whether to remove any such Actions.

Basis for Relief

11. Section 1452 of title 28 of the United States Code and Bankruptcy Rule 9027 govern the removal of pending civil actions related to chapter 11 cases. Specifically, section 1452(a) provides:

> A party may remove any claim or cause of action in a civil action other than a proceeding before the United States Tax Court or a civil action by a governmental unit to enforce such government unit's police or regulatory power, to the district court for the district where such civil action is pending, if such district court has jurisdiction of such claim or cause of action under section 1334 of this title.

28 U.S.C. § 1452(a).

12. Bankruptcy Rule 9027 sets forth the time periods for filing notices to remove claims or causes of action. Specifically, Bankruptcy Rule 9027(a)(2) provides, in pertinent part:

> If the claim or cause of action in a civil action is pending when a case under the [Bankruptcy] Code is commenced, a notice of removal may be filed in the bankruptcy court only within the longest of (A) 90 days after the order for relief in the under the Code, (B) 30 days after entry of an order terminating a stay, if the claim or cause of action in a civil action has been stayed under § 362 of the Code, or (C) 30 days after a trustee qualifies in a chapter 11 reorganization case but not later than 180 days after the order for relief.

FED. R. BANKR. P. 9027(a)(2).

13. Bankruptcy Rule 9006 permits the Court to extend the period to remove actions provided by Bankruptcy Rule 9027. Specifically, Bankruptcy Rule 9006(b)(1) provides, in pertinent part:

> [W]hen an act is required or allowed to be done at or within a specified period by these rules or by a notice given thereunder or by order of court, the court for cause shown may at any time in its discretion . . . with or without motion or notice order the period enlarged if the request therefor is made before the expiration of the period originally prescribed or extended by a previous order . . . .

FED. R. BANKR. P. 9006(b)(1).

14. It is well-established that this Court has authority to extend the Removal Period. *See Pacor, Inc. v. Higgins*, 743 F.2d 984, 996 n.17 (3d Cir. 1984), overruled on other grounds by *Things Remembered, Inc. v. Petrarca*, 516 U.S. 124, 134-35 (1995) (holding the bankruptcy court's power to grant an extension of the removal period pursuant to Bankruptcy Rule 9006(b) is "clear"); *see also Caperton v. A.T. Massey Coal Co., Inc.*, 251 B.R. 322, 325 (S.D. W. Va. 2000) (explaining that Bankruptcy Rule 9006(b) provides authority to enlarge time periods for removing actions under Bankruptcy Rule 9027); *In re Jandous Elec. Constr. Corp.*, 106 B.R. 48 (Bankr. S.D.N.Y. 1989) (holding the period in which to file a motion to remove may be expanded pursuant to Bankruptcy Rule 9006); *In re World Fin. Servs. Ctr., Inc.*, 81 B.R. 33, 39 (Bankr. S.D. Cal. 1987) (explaining the United States Supreme Court intended to give bankruptcy judges the power to enlarge the filing periods under Bankruptcy Rule 9027(a), pursuant to Bankruptcy Rule 9006(b)); *Raff v. Gordon*, 58 B.R. 988, 990 (E.D. Pa. 1986) (holding an expansion of time to file notices of removal is authorized under the Bankruptcy Rules).

15. The Debtors are seeking to extend the Bankruptcy Rule 9027(a)(2)(A) deadline, which would otherwise expire on September 9, 2024,[4] to ensure the Debtors' right to remove is preserved and that creditors are on notice of such extended removal deadline. The Debtors believe they have additional time to remove the Actions under Bankruptcy Rule 9027(a)(2)(C) and, to the extent such Actions are subject to the automatic stay, Bankruptcy Rule 9027(a)(2)(B), but nevertheless seek entry of this motion out of an abundance of caution.

16. The Debtors' decision regarding whether to seek removal of any particular Action depends on a number of factors, including: (a) the importance of the Action to the expeditious resolution of these chapter 11 cases; (b) the time required to complete the Action in its current venue; (c) the presence of federal subject matter jurisdiction in the proceeding that may allow for one or more aspects thereof to be heard by a federal court; (d) the relationship between the Action and matters to be considered in connection with a chapter 11 plan, the claims allowance process and the assumption or rejection of executory contracts and unexpired leases; and (e) the progress made to date in the Action. To make the appropriate determination, the Debtors must analyze each Action (if any) in light of such factors.

17. Based on the nature of the scheduled Actions, as well as any other prepetition claims that may involve the assertion of a new Action (subject to relief from the stay being obtained), the Debtors need additional time to review and address the issues involved. To date, the Debtors have not yet had an opportunity to determine conclusively which Actions, if any, they may seek to remove. The Debtors believe that the extension requested herein will provide the

[4] Local Rule 9006-2 provides that "[u]nless otherwise provided in the [Bankruptcy] Code or in the [Bankruptcy Rules], if a motion to extend the time to take any action is filed before the expiration of the period prescribed by the [Bankruptcy] Code, the [Bankruptcy Rules], these Local Rules or Court order, the time shall automatically be extended until the Court acts on the motion, without the necessity for the entry of a bridge order." DEL. BANKR. L.R. 9006-2. Accordingly, under such circumstances, Local Rule 9006-2 would automatically extend the Removal Period until the Court acts on this motion.

Debtors with the ability to make fully informed decisions concerning the removal of any such Actions and will ensure that the Debtors' rights provided by 28 U.S.C. § 1452 can be exercised in an appropriate manner. Alternately, if such an extension is not granted, the Debtors may not become aware of Actions until after the Removal Period expires. Moreover, the rights of parties to the Actions will not be unduly prejudiced by the Debtors' requested extension of the Removal Period. If the Debtors ultimately seek to remove Actions pursuant to Bankruptcy Rule 9027, parties will retain their rights to have such Actions remanded pursuant to 28 U.S.C. § 1452(b). Accordingly, the Debtors submit that cause exists for the relief requested herein.

18. Further, the rights of any party to the Actions will not be unduly prejudiced by the Debtors' requested extension. Inasmuch as section 362(a) of the Bankruptcy Code automatically stays actions against the Debtors, most of the Actions will not proceed in their respective courts during these chapter 11 cases, even absent the relief requested herein.

19. Courts in this district have regularly granted the relief requested herein in other large chapter 11 cases. *See, e.g.*, *In re Yellow Corporation*, No. 23-11069 (CTG) (Bankr. D. Del. Nov. 8, 2023) (granting a 120-day extension, without prejudice to the debtors' ability to seek further extensions); *In re PGX Holdings, Inc.*, No. 23-10718 (CTG) (Bankr. D. Del. Sept. 13, 2023) (same); *In re Town Sports Int'l, LLC*, No. 20-12168 (CSS) (Bankr. D. Del. Dec. 16, 2021) (same); *In re Alex and Ani, LLC*, No. 21-10918 (CTG) (Bankr. D. Del. Sept. 20, 2021) (same); *In re Bluestem Brands, Inc.*, No. 20-10566 (MFW) (Bankr. D. Del. June 23, 2020) (same). The 120-day extension requested herein is consistent with the extensions granted by this and other courts in this district under similar circumstances. Accordingly, the Debtors' requested extension is reasonable and should be granted.

Reservation of Rights

20. Nothing contained in this motion or any actions taken pursuant to any order granting the relief requested by this motion is intended or should be construed as: (a) an admission as to the validity of any particular claim against the Debtors, (b) a waiver of the Debtors' rights to dispute any particular claim on any grounds, (c) a promise or requirement to pay any particular claim, (d) an implication or admission that any particular claim is of a type specified or defined in this motion or any order granting the relief requested by this motion, or (e) a waiver or limitation of the Debtors' rights under the Bankruptcy Code or any other applicable law.

No Prior Request

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

Notice

22. The Debtors will provide notice of this motion to: (a) the U.S. Trustee; (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) all parties to the Actions; 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.

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 4, 2024
Wilmington, Delaware

/s/ Patrick J. Reilley
COLE SCHOTZ P.C.
Patrick J. Reilley (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