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) (Jointly Administered)
Debtors.	**Re: D.I. 581** **Hearing Date: Nov. 14, 2024, at 1:30 p.m. (ET)** **Objections Due: Nov. 4, 2024, at 4:00 p.m. (ET)**

LIMITED OBJECTION OF THE UNITED STATES TRUSTEE
TO CONFIRMATION OF DEBTORS' CHAPTER 11 PLAN

Andrew R. Vara, the United States Trustee for Region Three (the "U.S. Trustee"), through his undersigned counsel, hereby objects to the *Joint Chapter 11 Plan of Vyaire Medical, Inc. and Its Debtor Affiliates* [D.I. 581] (the "Plan"),[2] and in support of his objection respectfully states:

PRELIMINARY STATEMENT

1. The U.S. Trustee objects to confirmation because the Plan would give the Debtors a partial discharge and a discharge injunction, despite the Debtors being ineligible for a discharge under Section 1141(d)(3). Because of this, the Plan does not satisfy Section 1129(a)(1) of the Bankruptcy Code.

[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] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Combined Plan.

JURISDICTION AND STANDING

2. This Court has jurisdiction to hear and determine final approval of the disclosure statement, confirmation of the Combined Plan and this Objection pursuant to: (i) 28 U.S.C. § 1334; (ii) applicable order(s) of the United States District Court of the District of Delaware issued pursuant to 28 U.S.C. § 157(a); and (iii) 28 U.S.C. § 157(b)(2).

3. Pursuant to 28 U.S.C. § 586, the U.S. Trustee is charged with overseeing the administration of chapter 11 cases filed in this judicial district. The duty is part of the U.S. Trustee's overarching responsibility to enforce the bankruptcy laws as written by Congress and interpreted by the Courts. *See Morgenstern v. Revco D.S., Inc. (In re Revco D.S., Inc.)*, 898 F.2d 498, 500 (6th Cir. 1990) (describing the U.S. Trustee as a "watchdog").

4. The U.S. Trustee has standing to be heard on the Plan and this objection pursuant to 11 U.S.C. § 307. *See United States Trustee v. Columbia Gas Sys., Inc. (In re Columbia Gas Sys., Inc.)*, 33 F.3d 294, 295-96 (3d Cir. 1994) (noting that U.S. Trustee has "public interest standing" under 11 U.S.C. § 307, which goes beyond mere pecuniary interest).

BACKGROUND

5. On June 9, 2024, the above-captioned debtors (collectively, the "Debtors") filed chapter 11 petitions in this Court.

6. On June 26, 2024, the U.S. Trustee appointed an official committee of unsecured creditors in the Debtors' cases. D.I. 121.

7. On September 11, 2024, the Debtors filed the original version of the Plan. D.I. 518.

8. On September 19, 2024, the U.S. Trustee's undersigned counsel sent the Debtors informal comments about the Plan. The vast majority of the U.S. Trustee's informal comments have been resolved.

9. On September 30, 2024, the Debtors filed the solicitation version of the Plan. The Debtors also filed the *Disclosure Statement for the Joint Chapter 11 Plan of Vyaire Medical, Inc. and Its Debtor Affiliates* [D.I. 582] (the "Disclosure Statement").

10. Article V.III of the Plan provides in relevant part:

> **In accordance with Bankruptcy Code section 1141(d)(3), the Plan does not discharge the Debtors. Bankruptcy Code section 1141(c) nevertheless provides, among other things, that the property dealt with by the Plan is free and clear of all Claims and Interests against the Debtors. Except as otherwise specifically provided in the Plan or for obligations issued or required to be paid pursuant to the Plan or the Confirmation Order, all Entities who have held, hold, or may hold Claims or Interests that have been released or are subject to exculpation pursuant to the Plan are permanently enjoined, from and after the Effective Date, from taking any of the following actions against, as applicable, the Debtors, the Wind-Down Debtors, the Exculpated Parties, or the Released Parties, and any successors, assigns or representatives of such Persons or Entities: (a) commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to any such Claims or Interests; (b) enforcing, attaching, collecting, or recovering by any manner or means any judgment, award, decree, or order against such Entities on account of or in connection with or with respect to any such Claims or Interests; (c) creating, perfecting, or enforcing any encumbrance of any kind against such Entities or the property or the estates of such Entities on account of or in connection with or with respect to any such Claims or Interests; (d) asserting any right of setoff, subrogation, or recoupment of any kind against any obligation due from such Entities or against the property of such Entities on account of or in connection with or with respect to any such Claims or Interests unless such Holder has Filed a motion requesting the right to perform such setoff on or before the Effective Date; and (e) commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to any such Claims or**

> **Interests released or settled pursuant to the Plan. Notwithstanding anything to the contrary in the foregoing, the injunction set forth above does not enjoin the enforcement of any obligations arising on or after the Effective Date of any Person or Entity under the Plan, any post-Effective Date transaction contemplated by the Restructuring Transactions, or any document, instrument, or agreement (including those set forth in the Plan Supplement) executed to implement the Plan.**

11. Plan § I.A.130 defines "Releasing Parties" to mean: "each of, and in each case, in their respective capacities as such: (a) the Debtors and the Wind-Down Debtors, as applicable; (b) the Plan Administrator; (c) each Consenting Stakeholder; (d) the Committee and its members; (e) the Purchasers; (f) the DIP Lenders; (g) the Agents; (h) all Holders of Claims who opt in to granting the releases set forth herein; (i) all Holders of Interests who opt in to granting the releases set forth herein; (j) each current and former Affiliate of each Entity in clause (a) through the following clause (k); and (k) each Related Party of each Entity in clause (a) through this clause (k), for which such Entity is legally entitled to bind such Related Party to the releases contained in the Plan under applicable law; *provided*, *however*, that in each case, an Entity shall not be Releasing Party if it timely objects to the releases set forth in Article VIIIC and such objection is not withdrawn or otherwise resolved before the Confirmation Order is entered."

12. Plan § I.A.129 defines "Released Parties" to mean: "each of, and in each case, in their respective capacities as such: (a) the Debtors and the Wind-Down Debtors, as applicable; (b) the Plan Administrator; (c) each Consenting Stakeholder; (d) the Committee and its members; (e) the Purchasers; (f) the DIP Lenders; (g) the Agents; (h) all Holders of Claims who opt in to granting the releases set forth herein; (i) all Holders of Interests who opt in to granting the releases set forth herein; (j) each current and former Affiliate of each Entity in clause (a) through the following clause (k); and (k) each Related Party of each Entity in clause (a) through this clause (k), each in their capacity as such; *provided* that, in each case, an Entity shall not be a

Released Party if it timely objects to the releases set forth in Article VIIIC and such objection is not withdrawn or otherwise resolved before the Confirmation Order is entered."

ARGUMENT

13. The Court should deny confirmation because the Plan does not satisfy Section 1141(d)(3), and by extension Section 1129(a)(1), of the Bankruptcy Code.

14. Section 1129(a)(1) of the Bankruptcy Code provides that the Court shall confirm a plan only if the plan "complies with the applicable provisions of" title 11. 11 U.S.C. § 1129(a)(1).

15. Section 1141(d)(3) of the Bankruptcy Code provides that:

> The confirmation of a plan does not discharge a debtor if—
>
> (A) the plan provides for the liquidation of all or substantially all of the property of the estate;
>
> (B) the debtor does not engage in business after consummation of the plan; and
>
> (C) the debtor would be denied a discharge under section 727(a) of this title if the case were a case under chapter 7 of this title.

11 U.S.C. § 1141(d)(3).

16. Here, the elements of Section 1141(d)(3) appear to be satisfied. First, the Plan provides for the liquidation of all or substantially all of the property of the estate. *See*, *e.g.*, Disclosure Statement at p. 3 ("Subsequent to the consummation of the Sale Transactions, subject to Bankruptcy Court approval, the Debtors propose to liquidate any remaining assets under chapter 11 of the Bankruptcy Code. . . . The consummation of going-concern sale transactions followed by an orderly liquidation of any assets not sold is the principal objective of these Chapter 11 Cases."); *id.* § III.Q ("The Debtors are liquidating under chapter 11 of the Bankruptcy Code."); *id.* § XI.B.2 ("All or substantially all of the assets of the Debtors' business will have been liquidated

through the Sale Transaction and the Plan effects a wind down of the Debtors' remaining assets not otherwise acquired in the Sale Transaction."); *id.* § XI.B.3 ("The Plan provides for the liquidation and distribution of the Debtors' assets.").

17. Second, the Debtors will not engage in business after consummation of the Plan. Plan § IV.C states in relevant part: "On the Effective Date, the Wind-Down Debtor Assets shall vest in the Wind-Down Debtors for the primary purpose of liquidating the Wind-Down Debtor Assets and winding down the Debtors' Estates, with no objective to continue or engage in the conduct of a trade or business, other than performance under any transition services agreement for the benefit of Zoll Medical or Trudell for the conduct and continuation of the and the Ventilation business and the Respiratory Diagnostics business." Here, the Zoll and Trudell asset sales were approved on September 4, 2024. *See* D.I. 496 & 497. The Zoll sale closed on October 11, 2024. *See* D.I. 626. What is clear is that, if any transition services remain to be performed, such services are incident to the liquidation of the Debtors' assets and are being provided purely to effectuate the approved sale(s). Such transition services to aid asset purchaser(s) do not constitute engaging in business.

18. Third, the Debtors, as corporations, would not be eligible for a discharge if they were chapter 7 debtors pursuant to section 727(a)(1) of the Bankruptcy Code, which provides that the Court shall grant a debtor a discharge unless the debtor is not an individual. *See*, *e.g.*, *In re Flintkote Co.*, 486 B.R. 99, 129 n.80 (Bankr. D. Del. 2012) ("Section 1141(d)(3)(C) is always satisfied for corporate debtors, as they cannot receive discharges in chapter 7.").

19. For these reasons, the Debtors are not eligible for a discharge. Plan § VIII.E provides: "In accordance with Bankruptcy Code section 1141(d)(3), the Plan does not discharge the Debtors."

20. However, the Plan would give the Debtors a partial discharge in two ways.

21. First, Plan § VIII.E would give the Debtors a discharge injunction. A discharge, among other things, "operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect, recover or offset any []debt [discharged under section 1141] as a personal liability of the debtor, whether or not discharge of such debt is waived[.]" 11 U.S.C. § 524(a)(2). Here, Plan § VIII.E would enjoin all entities whose claims or interests are released or exculpated under the Plan from commencing or continuing any action against the Debtors or otherwise seeking to collect a debt from the Debtors on account of such claims or interests. This Plan provision contravenes Section 1141(d)(3).

22. The Court should deny confirmation unless Plan § VIII.E is revised:

> **Except as otherwise specifically provided in the Plan or for obligations issued or required to be paid pursuant to the Plan or the Confirmation Order, all Entities who have held, hold, or may hold Claims or Interests that have been released or are subject to exculpation pursuant to the Plan are permanently enjoined, from and after the Effective Date, from taking any of the following actions against, as applicable, ~~the Debtors, the Wind-Down Debtors,~~ the Exculpated Parties, or the Released Parties, and any successors, assigns or representatives of such Persons or Entities: (a) commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to any such Claims or Interests; (b) enforcing, attaching, collecting, or recovering by any manner or means any judgment, award, decree, or order against such Entities on account of or in connection with or with respect to any such Claims or Interests; (c) creating, perfecting, or enforcing any encumbrance of any kind against such Entities or the property or the estates of such Entities on account of or in connection with or with respect to any such Claims or Interests; (d) asserting any right of setoff, subrogation, or recoupment of any kind against any obligation due from such Entities or against the property of such Entities on account of or in connection with or with respect to any such Claims or Interests unless such Holder has Filed a motion requesting the right to perform such setoff on or before the Effective Date; and (e) commencing or continuing in any manner any action or other**

> **proceeding of any kind on account of or in connection with or with respect to any such Claims or Interests released or settled pursuant to the Plan.**

23. Second, the Debtors are included in the definition of "Released Parties." *See* Plan § I.A.129. This would give the Debtors a creeping discharge of claims by parties who opt in to the Plan's third-party releases. Under Section 1141(d)(3), the Debtors are not eligible for any discharge. "[A] bankruptcy discharge arises by operation of federal bankruptcy law, not by contractual consent of the creditors[.]" *First Fidelity Bank v. McAteer*, 985 F.2d 114, 118 (3d Cir. 1993) (quoting *Union Carbide Corp. v. Newbowles*, 686 F.2d 593, 595 (7th Cir. 1982)). Here, the Debtors' ineligibility for a discharge is a matter of federal bankruptcy law; it cannot be sidestepped through the consent of creditors. Therefore, the Debtors should be removed from the definition of Released Parties.

RESERVATION OF RIGHTS

24. The U.S. Trustee leaves the Debtors to their burden of proof and reserves any and all rights, remedies and obligations to, among other things, complement, supplement, augment, alter or modify this objection, file any appropriate motion, or conduct any and all discovery as may be deemed necessary or as may be required and to assert such other grounds as may become apparent upon further factual discovery.

WHEREFORE, the U.S. Trustee respectfully requests that the Court deny confirmation unless the issues identified above are addressed.

Dated: November 4, 2024

Respectfully submitted,

ANDREW R. VARA
UNITED STATES TRUSTEE
REGIONS 3 AND 9

By: */s/ Benjamin Hackman*

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