

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

In re:

VYAIRE MEDICAL, INC., *et al.*,¹

Debtors.

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Chapter 11

Case No. 24-11217 (BLS)

(Jointly Administered)

**DECLARATION OF PAUL H. DEUTCH REGARDING
THE SOLICITATION AND TABULATION OF VOTES ON, AND
ELECTIONS TO OPT-IN TO THE THIRD-PARTY RELEASE IN, THE JOINT
CHAPTER 11 PLAN OF VYAIRE MEDICAL, INC. AND ITS DEBTOR AFFILIATES**

I, Paul H. Deutch, hereby declare under penalty of perjury as follows:

1. I am the Executive Vice President of Omni Agent Solutions, Inc. (“Omni”), located at 5955 De Soto Ave., Suite 100, Woodland Hills, California, 91367 and 1120 Avenue of the Americas, 4th Floor, New York, NY 11036. I am over the age of 18 years and not a party to the above-captioned action.

2. I submit this declaration (the “Declaration”) with respect to (i) the solicitation of votes and tabulation of ballots cast on the *Joint Chapter 11 Plan of Vyair Medical, Inc. and its Debtor Affiliates* [Docket No. 581] (as may be amended, supplemented or otherwise modified from time to time, the “Plan”)² and (ii) the solicitation and tabulation of elections to opt-in to the Third-Party Release contained in the Plan.

3. Prior to the commencement of these Chapter 11 Cases, Vyair Medical, Inc. and the other above-captioned debtors and debtors in possession (collectively, the “Debtors”) engaged

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 shall have the meanings ascribed to them in the Plan.

Omni as their claims, noticing, and solicitation agent (the “Solicitation Agent”) to assist with, among other things, (a) serving solicitation materials to the parties entitled to vote to accept or reject the Plan and (b) tabulating votes cast with respect thereto. Omni and its employees have considerable experience in soliciting and tabulating votes to accept or reject proposed chapter 11 plans. The Court authorized Omni’s retention (a) as claims and noticing agent to the Debtors on June 11, 2024 pursuant to the *Order (I) Authorizing and Approving the Appointment of Omni Agent Solutions, Inc. as Claims and Noticing Agent and (II) Granting Related Relief* [Docket No. 94] and (b) as administrative advisor to the Debtors on July 30, 2024 pursuant to the *Order Authorizing Debtors to Employ and Retain Omni Agent Solutions, Inc. as Administrative Agent Effective as of the Petition Date* [Docket No. 334].

4. Except as otherwise noted, all facts set forth herein are based on my personal knowledge, knowledge that I acquired from other employees of Omni or from the Debtors, and/or my review of the relevant documents. I am authorized to submit this Declaration on behalf of Omni. If I were called to testify, and if called as a witness, I could and would testify competently as to the facts set forth herein.

A. Service and Transmittal of the Solicitation Packages.

5. The Debtors established October 2, 2024 as the record date (the “Voting Record Date”) for determining which creditors were entitled to vote on the Plan. Pursuant to the Plan, only Holders of Claims in the Voting Classes as of the Voting Record Date were entitled to vote to accept or reject the Plan. No other classes were entitled to vote on the Plan.

6. On October 11, 2024 and October 16, 2024, Omni caused to be distributed via first-class mail and/or email to Holders of Class 4 First Lien Claims and Class 5 Second Lien Claims (collectively, the “Voting Classes”) as of the Voting Record Date: (a) the notice of hearing to be

held by the Court to consider Confirmation of the Plan (the “Combined Hearing Notice”); (b) a cover letter, including instructions to obtain access, free of charge, to the Plan and Disclosure Statement and the Scheduling Order (without exhibits, except the Solicitation Procedures) (the “Cover Letter”); and (c) the applicable Class 4 or Class 5 ballot (each a “Ballot,” and collectively, the “Ballots,” and collectively with the Combined Hearing Notice and Cover Letter, the “Solicitation Package”).

7. The Solicitation Packages were distributed in accordance with the solicitation procedures (the “Solicitation Procedures”) described in the *Motion of Debtors for Entry of an Order (I) Approving the Adequacy of the Disclosure Statement on an Interim and Final 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* [Docket No. 520] (the “Scheduling Motion”).

8. In accordance with the Solicitation Procedures, Omni worked closely with the Debtors and their advisors to identify the Holders in the Voting Classes as of the Voting Record Date that were entitled to vote and to coordinate the distribution of the Solicitation Packages to such Holders. An affidavit of service evidencing the service of the Solicitation Packages was filed with the Court on November 4, 2024 [Docket No. 707].

B. The Tabulation Process.

9. In accordance with the Solicitation Procedures, Omni reviewed, determined the validity of and tabulated the Ballots submitted to vote on the Plan. Each Ballot submitted to Omni was processed in accordance with Omni’s standard tabulation procedures and in compliance with the Solicitation Procedures. To be included in the tabulation results as valid, each Ballot must have been properly executed, completed, and delivered according to the applicable voting

instructions by: (a) first class mail; (b) overnight courier; (c) personal delivery; or (d) via E-Ballot Portal, so that each Ballot was actually received by Omni no later than the Voting Deadline at the return address set forth in the applicable Ballot. Alternatively, Ballots could be submitted electronically through the Solicitation Agent's E-Ballot Portal at <https://omniagentsolutions.com/Vyair> by no later than the Voting Deadline, unless the Debtors determine otherwise or as permitted by the Court. Omni completed its final tabulation of the Ballots on November 5, 2024, following a complete review and audit of all Ballots received.

10. Set forth below is a summary of the voting results with respect to the Voting Classes tabulated on a consolidated basis:

Total Ballots Received			
Accept		Reject	
Number (% of Number)	Amount (% of Amount)	Number (% of Number)	Amount (% of Amount)
Class 4 – First Lien Claims			
49 (100%)	\$146,189,713.20 (100%)	0 (0%)	0 (0%)
Class 5 – Second Lien Claims			
4 (100%)	\$117,549,742.14 (100%)	0 (0%)	0 (0%)

11. The final tabulation of votes cast by timely and properly completed Ballots received by Omni is attached hereto as **Exhibit A**.

C. Ballot Opt-In Election.

12. In addition, in accordance with the Solicitation Procedures, Omni reviewed and tabulated the elections recorded on the Ballots from Holders of Claims in the Voting Classes to

opt-in to the Plan's Third-Party Release. Each Ballot that Omni received from Holders of Claims in the Voting Classes checked the opt-in box on their Ballots.

D. Ballots That Were Not Counted.

13. Omni did not receive any Ballots that were not included in the tabulation above because they did not satisfy the requirements for a valid Ballot as set forth in the Scheduling Motion for the reasons described therein.

E. Notices of Non-Voting Status and Opt-In Forms.

14. On October 2, 2024, upon entry of the *Order (I) Approving the Adequacy of the Disclosure Statement on an Interim and Final 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* [Docket No. 596] (the "Scheduling Order"), Omni sent via first-class mail and/or email (i) the *Notice of Non-Voting Status and Opt In to Release for Holders of Unimpaired Claims or Interests Conclusively Presumed to Accept the Plan* to Holders of Claims in Classes 1, 2, and 3 and (ii) the *Notice of Non-Voting Status and Opt In to Release for Holders of Impaired Claims or Interests Conclusively Presumed to Reject the Plan* to Holders of Claims in Classes 6, 9, and 10.

15. All valid opt-in forms cast by Holders of Claims or Equity Interests in Class 1, Class 2, Class 3, Class 6, Class 9, and Class 10 received by Omni on or before the Voting Record Date were tabulated pursuant to the procedures set forth in the Scheduling Motion. Omni's tabulation of such valid opt-in forms is set forth in the report annexed hereto as **Exhibit B**.

16. Omni is in possession of the Ballots and opt-in forms received by it, and copies of the same are available for review and inspection by or submission to this Court.

To the best of my knowledge, information, and belief, the foregoing information concerning the distribution, submission, and tabulation of Ballots and opt-in forms in connection with the Plan is true and correct.

Dated: November 7, 2024

/s/ Paul H. Deutch

Paul H. Deutch
Executive Vice President
Omni Agent Solutions, Inc.

Exhibit A

Consolidated Ballot Report

Debtor: Vyaire Medical, Inc., et al.**Case No. 24-11217****Claims Ballot Detail Results****Class 4 - First Lien Claims****Class Summary****Voting Outcome:****Accepted**

	Total Received	Total Valid	Accepted	Rejected	Invalid
# Votes:	49	49	49	0	0
Vote %:			100.00%	0.00%	
Amt:		\$146,189,713.20	\$146,189,713.20	\$0.00	
Amt %:			100.00%	0.00%	

Creditor	Ballot #	Cm Sch	Date Received	Printed Ballot Amount	Tabulated Vote Amount	Vote	Opt In Election	Comment
ACM ASOF VII CAYMAN HOLDCO LP	34930		10/29/2024	\$34,907,847.57	\$34,907,847.57	Accept	☒	
ACM ASOF VIII SECONDARY C LP	34931		10/29/2024	\$20,186,256.32	\$20,186,256.32	Accept	☒	
ASG MERKEL I SARL	34951		11/5/2024	\$3,572,740.68	\$3,572,740.68	Accept	☒	
BENEFIT STREET PARTNERS CAPITAL OPPORTUNITY FUND II SPV 1 LP	34975		11/4/2024	\$508,280.75	\$508,280.75	Accept	☒	
BENEFIT STREET PARTNERS CAPITAL OPPORTUNITY FUND SPV LLC	34976		11/4/2024	\$532,657.59	\$532,657.59	Accept	☒	
BENEFIT STREET PARTNERS CLO II LTD	34977		11/4/2024	\$787,438.20	\$787,438.20	Accept	☒	
BENEFIT STREET PARTNERS CLO III LTD	34978		11/4/2024	\$562,080.12	\$562,080.12	Accept	☒	
BENEFIT STREET PARTNERS CLO IV LTD	34932		11/4/2024	\$252,842.79	\$252,842.79	Accept	☒	
BENEFIT STREET PARTNERS CLO IX LTD	34979		11/4/2024	\$998,320.98	\$998,320.98	Accept	☒	
BENEFIT STREET PARTNERS CLO V B LTD	34933		11/4/2024	\$593,403.30	\$593,403.30	Accept	☒	
BENEFIT STREET PARTNERS CLO VI B LTD	34934		11/4/2024	\$495,055.99	\$495,055.99	Accept	☒	
BENEFIT STREET PARTNERS CLO VIII LTD	34980		11/4/2024	\$1,147,984.70	\$1,147,984.70	Accept	☒	
BENEFIT STREET PARTNERS CLO X LTD	34981		11/4/2024	\$381,021.27	\$381,021.27	Accept	☒	
BENEFIT STREET PARTNERS CLO XI LTD	34982		11/4/2024	\$603,365.59	\$603,365.59	Accept	☒	
BENEFIT STREET PARTNERS CLO XII LTD	34983		11/4/2024	\$703,084.80	\$703,084.80	Accept	☒	
BENEFIT STREET PARTNERS CLO XIV LTD	34935		11/4/2024	\$835,463.24	\$835,463.24	Accept	☒	

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Debtor: Vyaire Medical, Inc., et al.**Case No. 24-11217****Claims Ballot Detail Results****Class 4 - First Lien Claims**

Creditor	Ballot #	Clm Sch	Date Received	Printed Ballot Amount	Tabulated Vote Amount	Vote	Opt In Election	Comment
BENEFIT STREET PARTNERS CLO XIX LTD	34936		11/4/2024	\$97,268.74	\$97,268.74	Accept	☒	
BENEFIT STREET PARTNERS CLO XV LTD	34937		11/4/2024	\$393,299.47	\$393,299.47	Accept	☒	
BENEFIT STREET PARTNERS CLO XVI LTD	34938		11/4/2024	\$455,789.06	\$455,789.06	Accept	☒	
BENEFIT STREET PARTNERS CLO XVII LTD	34939		11/4/2024	\$95,560.56	\$95,560.56	Accept	☒	
BENEFIT STREET PARTNERS CLO XX LTD	34940		11/4/2024	\$96,824.06	\$96,824.06	Accept	☒	
BENEFIT STREET PARTNERS DEBT FUND IV NON US SPV LP BENEFIT STREET PARTNERS DEBT FUND IV MASTER NON US LP	34984		11/4/2024	\$3,444,641.69	\$3,444,641.69	Accept	☒	
BENEFIT STREET PARTNERS DEBT FUND IV SPV LP BENEFIT STREET PARTNERS DEBT FUND IV LP	34941		11/4/2024	\$3,487,901.17	\$3,487,901.17	Accept	☒	
BENEFIT STREET PARTNERS SENIOR SECURED OPPORTUNITIES U MASTER FUND NON US LP	34942		11/4/2024	\$27,295.05	\$27,295.05	Accept	☒	
BENEFIT STREET PARTNERS SMA C SPV LP BENEFIT STREET PARTNERS SMA C LP	34985		11/4/2024	\$540,614.20	\$540,614.20	Accept	☒	
BENEFIT STREET PARTNERS SMA K SPV LP	34943		11/4/2024	\$439,798.08	\$439,798.08	Accept	☒	
BLACKROCK EMMPD II INVESTMENT SARL	34948		11/5/2024	\$9,297,760.56	\$9,297,760.56	Accept	☒	Claimant wrote claim amount of \$14,706,899.79, tabulated at voting amount.
BNP PARIBAS	34952		10/31/2024	\$10,651,726.48	\$10,651,726.48	Accept	☒	
BSP SENIOR SECURED DEBT FUND NON US SPV I LP	34944		11/4/2024	\$946,659.24	\$946,659.24	Accept	☒	
BSP SENIOR SECURED DEBT FUND SPV I LP BENEFIT STREET PARTNERS SENIOR SECURED OPPORTUNITIES FUND LP	34945		11/4/2024	\$810,821.16	\$810,821.16	Accept	☒	
BSP SMA T 2020 SPV LP	34946		11/4/2024	\$1,510,922.50	\$1,510,922.50	Accept	☒	
COMMONWEALTH LAND TITLE INSURANCE COMPANY	34970		10/23/2024	\$1,416,666.67	\$1,416,666.67	Accept	☒	
DIVERSIFIED LOAN FUND PRIVATE DEBT B SARL	34947		11/5/2024	\$1,185,516.59	\$1,185,516.59	Accept	☒	Claimant wrote claim amount of \$1,875,212.24, tabulated at voting amount.

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Debtor: Vyaire Medical, Inc., et al.**Case No. 24-11217****Claims Ballot Detail Results****Class 4 - First Lien Claims**

Creditor	Ballot #	Clm Sch	Date Received	Printed Ballot Amount	Tabulated Vote Amount	Vote	Opt In Election	Comment
EMMPD ASG SARL	34949		11/5/2024	\$2,044,851.72	\$2,044,851.72	Accept	☒	Claimant wrote claim amount of \$5,312,986.98, tabulated at voting amount.
EMMPD INVESTMENT SARL	34950		11/5/2024	\$11,726,325.79	\$11,726,325.79	Accept	☒	Claimant wrote claim amount of \$18,548,326.51, tabulated at voting amount.
EMPLOYEES AND AGENTS PENSION PLAN GWL AND A FINANCIAL INC	34957		10/23/2024	\$1,522,916.66	\$1,522,916.66	Accept	☒	
FIDELITY NATIONAL TITLE INSURANCE COMPANY	34971		10/23/2024	\$457,664.06	\$457,664.06	Accept	☒	
ING CAPITAL LLC	34967		11/4/2024	\$8,680,625.04	\$8,680,625.04	Accept	☒	
LANDMARK WALL SMA SPV LP LANDMARK WALL SMA LP	34986		11/4/2024	\$1,017,409.03	\$1,017,409.03	Accept	☒	
NEWPORT GLOBAL CREDIT FUND MASTER LP	34972		10/23/2024	\$623,724.79	\$623,724.79	Accept	☒	
PROVIDENCE DEBT FUND III NON US SPV LP PROVIDENCE DEBT FUND III MASTER	34987		11/4/2024	\$1,862,012.98	\$1,862,012.98	Accept	☒	
PROVIDENCE DEBT FUND III SPV LP PROVIDENCE DEBT FUND III LP	34988		11/4/2024	\$3,495,332.92	\$3,495,332.92	Accept	☒	
SEPARATE INVESTMENT ACCOUNT P3 DIVERSIFIED BOND I ACCOUNT OF MASSACHUSETTS MUTUAL LIFE INSURANCE COMPANY	34962		10/23/2024	\$2,299,071.00	\$2,299,071.00	Accept	☒	
SEPARATE INVESTMENT ACCOUNT P5 DIVERSIFIED BOND II ACCOUNT OF MASSACHUSETTS MUTUAL LIFE INSURANCE COMPANY	34963		10/23/2024	\$3,470,547.12	\$3,470,547.12	Accept	☒	
SHACKLETON 2014 V R CLO LTD	34925		11/4/2024	\$526,069.14	\$526,069.14	Accept	☒	
SHACKLETON 2019 XIV CLO LTD	34926		11/4/2024	\$568,362.90	\$568,362.90	Accept	☒	
SHACKLETON 2021 XVI CLO LTD	34927		11/4/2024	\$486,197.02	\$486,197.02	Accept	☒	
THE US BUSINESS OF THE CANADA LIFE ASSURANCE COMPANY	34959		10/23/2024	\$304,583.29	\$304,583.29	Accept	☒	
UBS AG STAMFORD BRANCH	35008		11/1/2024	\$5,137,110.57	\$5,137,110.57	Accept	☒	Claimant wrote amount of \$5,137,110.07, tabulated at voting amount.

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Debtor: Vyaire Medical, Inc., et al.**Case No. 24-11217****Claims Ballot Detail Results****Class 5 - Second Lien Claims****Class Summary**

Voting Outcome:

Accepted

	Total Received	Total Valid	Accepted	Rejected	Invalid
# Votes:	4	4	4	0	0
Vote %:			100.00%	0.00%	
Amt:		\$117,549,742.14	\$117,549,742.14	\$0.00	
Amt %:			100.00%	0.00%	

Creditor	Ballot #	Clm Sch	Date Received	Printed Ballot Amount	Tabulated Vote Amount	Vote	Opt In Election	Comment
ASG MERKEL I S.À R.L.	34921		11/5/2024	\$10,944,966.41	\$10,944,966.41	Accept	☒	
DIVERSIFIED LOAN FUND – PRIVATE DEBT B S.À .R.L.	34922		11/5/2024	\$8,783,124.23	\$8,783,124.23	Accept	☒	
EMMPD (ASG) S.A.R.L.	34923		11/5/2024	\$10,944,966.43	\$10,944,966.43	Accept	☒	
EMMPD (INVESTMENT) S.À R.L.	34924		11/5/2024	\$86,876,685.07	\$86,876,685.07	Accept	☒	

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Exhibit B

Opt-In Forms

Debtor: Vyaire Medical, Inc., et al.**Case No. 24-11217****Opt Out Detail Results****Non Voting Parties - Opt In Form Results**

Creditor	Date Received	Opt In Election	Comment
AMAZON WEB SERVICES, INC	11/4/2024	☒	
FISCHER USA, INC	11/4/2024	☒	
SUNMED GROUP HOLDINGS, LLC DBA AIRLIFE	10/23/2024	☒	
TRELLEBORG SEALING SOLUTIONS US INC	11/1/2024	☒	

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