

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

|                                                    |   |                                                 |
|----------------------------------------------------|---|-------------------------------------------------|
| In re:                                             | ) | Chapter 11                                      |
|                                                    | ) |                                                 |
| VYAIRE MEDICAL, INC., <i>et al.</i> , <sup>1</sup> | ) | Case No. 24-11217 (BLS)                         |
|                                                    | ) |                                                 |
| Debtors.                                           | ) | (Jointly Administered)                          |
|                                                    | ) |                                                 |
|                                                    | ) | Obj. Deadline: 11/21/24 at 4:00 p.m. (ET)       |
|                                                    | ) | Hrg. Date: <i>Only if an objection is filed</i> |

**SUMMARY OF THIRD MONTHLY FEE APPLICATION OF  
MCDERMOTT WILL & EMERY LLP, COUNSEL TO THE OFFICIAL  
COMMITTEE OF UNSECURED CREDITORS, FOR ALLOWANCE OF  
COMPENSATION AND REIMBURSEMENT OF EXPENSES FOR THE  
PERIOD FROM SEPTEMBER 1, 2024 THROUGH SEPTEMBER 30, 2024**

|                                                                      |                                                                                 |
|----------------------------------------------------------------------|---------------------------------------------------------------------------------|
| Name of Applicant:                                                   | MCDERMOTT WILL & EMERY LLP                                                      |
| Authorized to provide professional services to:                      | Official Committee of Unsecured Creditors of Vyair Medical, Inc., <i>et al.</i> |
| Date of retention:                                                   | July 30, 2024, effective June 28, 2024                                          |
| Period for which compensation and reimbursement are sought:          | September 1, 2024 through September 30, 2024                                    |
| Amount of compensation sought as actual, reasonable, and necessary:  | \$384,572.30 (80% of \$480,715.38)                                              |
| Amount of reimbursement sought as actual, reasonable, and necessary: | \$2,222.21                                                                      |
| This is a:                                                           | Monthly Fee Application                                                         |

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<sup>1</sup> 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.

**Prior Monthly Applications:**

| <b>MONTHLY FEE APPLICATION</b>        |                              |                     | <b>REQUESTED FEES AND EXPENSES</b> |                    | <b>APPROVED FEES AND EXPENSES</b> |                          | <b>HOLDBACK</b>     |
|---------------------------------------|------------------------------|---------------------|------------------------------------|--------------------|-----------------------------------|--------------------------|---------------------|
| Application Docket No.<br>Date Filed  | CNO Date Filed<br>Docket No. | Period Covered      | Requested Fees                     | Requested Expenses | Approved Fees (80%)               | Approved Expenses (100%) | Fees Holdback (20%) |
| First Monthly<br>D.I. 402<br>8/21/24  | 9/16/24<br>D.I. 525          | 6/28/24-<br>7/31/24 | \$738,990.00                       | \$3,295.01         | \$591,192.00                      | \$3,295.01               | \$147,798.00        |
| Second Monthly<br>D.I. 592<br>10/1/24 | 10/25/24<br>D.I. 679         | 8/1/24-<br>8/31/24  | \$536,880.40                       | \$1,664.69         | \$429,504.32                      | \$1,664.69               | \$107,376.08        |
| Total                                 |                              |                     | \$1,275,870.40                     | \$4,959.70         | \$1,020,696.32                    | \$4,959.70               | \$255,174.08        |

**OFFICIAL COMMITTEE OF UNSECURED  
CREDITORS OF VYAIRE MEDICAL, INC., *ET AL.*  
SUMMARY OF BILLING BY PROFESSIONAL  
SEPTEMBER 1, 2024 THROUGH SEPTEMBER 30, 2024**

| <b>Name of Professional Person</b> | <b>Date of Bar Admission</b> | <b>Position with the Applicant and Practice Area</b> | <b>Hourly Billing Rate<sup>2</sup></b> | <b>Total Billed Hours</b> | <b>Total Compensation</b> |
|------------------------------------|------------------------------|------------------------------------------------------|----------------------------------------|---------------------------|---------------------------|
| Joel C. Haims                      | 1994                         | Partner;<br>Trial                                    | \$1,830                                | 7.3                       | \$13,359.00               |
| Kristin K. Going                   | 2002                         | Partner;<br>Corporate Advisory                       | \$1,750                                | 39.4                      | \$68,950.00               |
| David R. Hurst                     | 1998                         | Partner;<br>Corporate Advisory                       | \$1,750                                | 20.8                      | \$36,400.00               |
| Darren Azman                       | 2011                         | Partner;<br>Corporate Advisory                       | \$1,650                                | 16.6                      | \$27,390.00               |
| Maris J. Kandestin                 | 2004                         | Partner;<br>Corporate Advisory                       | \$1,650                                | 78.3                      | \$129,195.00              |
| William Hadler                     | 2008                         | Partner;<br>Corporate Advisory                       | \$1,575                                | 1.0                       | \$1,575.00                |
| Kelly D. Newsome                   | 2015                         | Partner;<br>White Collar & Securities                | \$1,525                                | 38.5                      | \$58,712.50               |
| Riley Orloff                       | 2015                         | Partner;<br>Corporate Advisory                       | \$1,525                                | 0.4                       | \$610.00                  |
| Carole Wurzelbacher                | 2015                         | Associate;<br>Corporate Advisory                     | \$1,245                                | 64.6                      | \$80,427.00               |
| Kristin E. Schwam                  | 2020                         | Associate;<br>White Collar & Securities              | \$1,200                                | 49.8                      | \$59,760.00               |
| Elizabeth H. Shereff               | 2022                         | Associate;<br>Trial                                  | \$1,040                                | 30.0                      | \$31,200.00               |

<sup>2</sup> Except as set forth below, the rate represents the current standard hourly rate of each McDermott attorney and paralegal who rendered legal services.

| <b>Name of Professional Person</b>               | <b>Date of Bar Admission</b> | <b>Position with the Applicant and Practice Area</b> | <b>Hourly Billing Rate<sup>2</sup></b> | <b>Total Billed Hours</b> | <b>Total Compensation</b> |
|--------------------------------------------------|------------------------------|------------------------------------------------------|----------------------------------------|---------------------------|---------------------------|
| Rebecca E. Trickey                               | 2022                         | Associate; Corporate Advisory                        | \$925                                  | 43.5                      | \$40,237.50               |
| Matthew G. Gibson                                | N/A                          | Law Clerk; Trial                                     | \$805                                  | 17.3                      | \$13,926.50               |
| Edward Y. Kwon                                   | N/A                          | Technology Project Manager                           | \$570                                  | 2.5                       | \$1,425.00                |
| Nolley M. Rainey                                 | N/A                          | Paralegal; Corporate Advisory                        | \$500                                  | 4.2                       | \$2,100.00                |
| Daniel Valentino                                 | N/A                          | Litigation Technology Data Analyst                   | \$280                                  | 1.0                       | \$280.00                  |
| <b>Total</b>                                     |                              |                                                      |                                        | <b>415.2</b>              | <b>\$565,547.50</b>       |
| <b>Less 15% Client Accommodation<sup>3</sup></b> |                              |                                                      |                                        |                           | <b>\$84,832.13</b>        |
| <b>ADJUSTED TOTAL</b>                            |                              |                                                      |                                        |                           | <b>\$480,715.38</b>       |

**Blended Rate: \$1,157.79<sup>4</sup>**

<sup>3</sup> As an accommodation to the Committee, McDermott has agreed to discount the amount of its monthly invoices by an amount equal to 15% of the aggregate fees requested in each such invoice.

<sup>4</sup> The blended rate was calculated by dividing the adjusted total fees sought by the aggregate number of hours worked by McDermott Professionals.

**OFFICIAL COMMITTEE OF UNSECURED  
CREDITORS OF VYAIRE MEDICAL, INC., *ET AL.*  
SUMMARY OF FEES BY PROJECT CATEGORY  
SEPTEMBER 1, 2024 THROUGH SEPTEMBER 30, 2024**

| <b>Project Category</b>                          | <b>Total Hours</b> | <b>Total Fees</b>   |
|--------------------------------------------------|--------------------|---------------------|
| Case Administration                              | 3.6                | \$2,800.00          |
| Asset Disposition                                | 12.3               | \$20,815.00         |
| Meetings and Communications with Creditors       | 47.8               | \$67,891.00         |
| Fee and Employment Applications                  | 13.2               | \$20,112.50         |
| Contested and Litigation-Related Matters         | 152.1              | \$187,858.00        |
| Financing/Cash Collateral                        | 0.8                | \$1,310.00          |
| Plan/Disclosure Statement                        | 185.4              | \$264,761.00        |
| <b>Total</b>                                     | <b>415.2</b>       | <b>\$565,547.50</b> |
| <b>Less 15% Client Accommodation<sup>5</sup></b> |                    | <b>\$84,832.13</b>  |
| <b>ADJUSTED TOTAL</b>                            |                    | <b>\$480,715.38</b> |

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<sup>5</sup> As an accommodation to the Committee, McDermott has agreed to discount the amount of its monthly invoices by an amount equal to 15% of the aggregate fees requested in each such invoice.

**OFFICIAL COMMITTEE OF UNSECURED  
CREDITORS OF VYAIRE MEDICAL, INC., *ET AL.*  
SUMMARY OF EXPENSES  
SEPTEMBER 1, 2024 THROUGH SEPTEMBER 30, 2024**

| <b>Expense Category</b> | <b>Service Provider<br/>(if applicable)</b> | <b>Total Expenses</b> |
|-------------------------|---------------------------------------------|-----------------------|
| Outside Service         | Reliable                                    | \$2,072.36            |
| Transcripts             | Reliable                                    | \$149.85              |
| <b>TOTAL</b>            |                                             | <b>\$2,222.21</b>     |

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FOR THE DISTRICT OF DELAWARE**

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| In re:                                             | ) | Chapter 11                                      |
|                                                    | ) |                                                 |
| VYAIRE MEDICAL, INC., <i>et al.</i> , <sup>1</sup> | ) | Case No. 24-11217 (BLS)                         |
|                                                    | ) |                                                 |
| Debtors.                                           | ) | (Jointly Administered)                          |
|                                                    | ) | Obj. Deadline: 11/21/24 at 4:00 p.m. (ET)       |
|                                                    | ) | Hrg. Date: <i>Only if an objection is filed</i> |

**THIRD MONTHLY FEE APPLICATION OF MCDERMOTT  
WILL & EMERY LLP, COUNSEL TO THE OFFICIAL COMMITTEE OF  
UNSECURED CREDITORS, FOR ALLOWANCE OF COMPENSATION  
AND REIMBURSEMENT OF EXPENSES FOR THE PERIOD FROM  
SEPTEMBER 1, 2024 THROUGH SEPTEMBER 30, 2024**

McDermott Will & Emery LLP (the “Applicant” or “McDermott”), counsel to the Official Committee of Unsecured Creditors (the “Committee”) of Vyair Medical, Inc., *et al.*, the debtors and debtors in possession (collectively, the “Debtors”) in the above-captioned chapter 11 cases (the “Chapter 11 Cases”), hereby applies (the “Application”), pursuant to sections 330 and 331 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”), Rule 2016 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rule 2016-2 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), for allowance of compensation for services rendered and expenses incurred for the period from September 1, 2024 through September 30, 2024 (the “Application Period”), and respectfully represents as follows:

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<sup>1</sup> 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.

## **JURISDICTION AND VENUE**

1. The Court has jurisdiction to consider the Application pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012. This is a core proceeding under 28 U.S.C. § 157(b). Venue of these cases and the Application in this District is proper under 28 U.S.C. §§ 1408 and 1409.

2. The legal predicates for the relief requested herein are Bankruptcy Code sections 330 and 331, Bankruptcy Rule 2016, and Local Rule 2016-2.

3. McDermott confirms its consent, pursuant to Local Rule 9013-1(f), to the entry of a final order by the Court in connection with the Application in the event 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.

## **BACKGROUND**

### **A. The Chapter 11 Cases**

4. On June 9, 2024 (the “Petition Date”), the Debtors commenced the Chapter 11 Cases by filing petitions for relief under chapter 11 of the Bankruptcy Code with the Court. The Debtors continue to operate their business and manage their properties as debtors and debtors in possession under sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in the Chapter 11 Cases.

5. On June 26, 2024, the Office of the United States Trustee for the District of Delaware (the “U.S. Trustee”) appointed the Committee under section 1102(a)(1) of the Bankruptcy Code. *See* Docket No. 121.

**B. The Committee's Retention of McDermott**

6. On July 9, 2024, the Committee applied [Docket No. 215] to the Court for an order authorizing the Committee to retain and employ McDermott as its counsel, effective as of June 28, 2024. On July 30, 2024, the Court entered an order [Docket No. 336] authorizing such retention.

**C. The Interim Compensation Order**

7. On July 9, 2024, the Court entered the *Order (I) Establishing Procedures for Interim Compensation and Reimbursement of Expenses for Retained Professionals and (II) Granting Related Relief* [Docket No. 218] (the “Interim Compensation Order”),<sup>2</sup> which sets forth the procedures for interim compensation and reimbursement of expenses in the Chapter 11 Cases. Specifically, the Interim Compensation Order provides that a retained professional may file and serve a Monthly Fee Statement on or after the twenty-first (21st) day of each month following the month for which compensation is sought. Provided that there are no objections to the Monthly Fee Statement filed within twenty-one (21) days after the service of a Monthly Fee Statement, the professional may file a certificate of no objection with the Court, after which the Debtors are authorized to pay such professional eighty percent (80%) of the fees and one-hundred percent (100%) of the expenses requested in such Monthly Fee Statement.

**RELIEF REQUESTED**

8. By this Application, McDermott requests the allowance of \$384,572.30, which is equal to eighty percent (80%) of the \$480,715.38 in fees for professional services rendered by

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<sup>2</sup> Capitalized terms used but not defined herein shall have the meanings ascribed to such items in the Interim Compensation Order.

McDermott during the Application Period.<sup>3</sup> McDermott also requests reimbursement of \$2,222.21 in expenses incurred during the Application Period in connection with its engagement by the Committee.

### **DESCRIPTION OF SERVICES RENDERED**

9. During the Application Period, McDermott professionals, including attorneys and paraprofessionals (collectively, the “McDermott Professionals”), devoted 415.2 hours to, among other things, plan and disclosure statement matters, contested and litigation-related matters, communications with the Committee and other creditors, sale matters, and preparation of professional fee applications. McDermott Professionals’ most significant work in these matter categories is summarized below, and all work performed by McDermott Professionals is described in detail in **Exhibit A** hereto, which provides a detailed itemization, by project category, of all services performed by McDermott Professionals with respect to the Chapter 11 Cases during the Application Period. This detailed itemization complies with Local Rule 2016-2(d) in that each time entry contains a separate time allotment, a description of the type of activity, and the subject matter of the activity, all time is billed in increments of one-tenth of an hour, time entries are presented chronologically in categories, and all meetings or hearings are individually identified.

**A. Plan/Disclosure Statement**  
**Amount Sought: \$264,761.00**

10. During the Application Period, McDermott Professionals devoted substantial time to reviewing the Debtors’ proposed chapter 11 plan [Docket No. 518] and disclosure statement [Docket No. 519]. Among other things, McDermott Professionals (i) reviewed and commented

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<sup>3</sup> These figures reflect a 15% voluntary fee reduction provided by McDermott to the Committee as a client accommodation.

on the plan, disclosure statement, and solicitation materials; (ii) conducted research relating to, among other things, the releases in the proposed plan; (iii) met with the Debtors' advisors regarding the plan and disclosure statement; and (iv) drafted and filed a reservation of rights to the conditional approval of the disclosure statement [Docket No. 578].

11. McDermott Professionals devoted a total of 185.4 hours to plan and disclosure statement matters during the Application Period, for which compensation in the amount of \$264,761.00 is sought.

**B. Contested and Litigation-Related Matters**  
**Amount Sought: \$187,858.00**

12. During the Application Period, McDermott Professionals continued their investigation into potential claims and causes of action. Among other things, McDermott Professionals (i) prepared presentation materials for the Committee regarding the investigation, (ii) reviewed materials produced in connection with the discovery requests, in addition other publicly available information, (iii) drafted interrogatories and other discovery requests and provided the same to the Debtors and the lender parties, (iv) met and conferred with the discovery parties as appropriate to better coordinate production of discovery, and (v) coordinated with the Committee's other professionals regarding the on-going investigation.

13. McDermott Professionals devoted a total of 152.1 hours to contested and litigation-related matters during the Application Period, for which compensation in the amount of \$187,858.00 is sought.

**C. Meetings and Communications with Creditors**  
**Amount Sought: \$67,891.00**

14. During the Application Period, McDermott Professionals prepared for and conducted regular Committee meetings and communicated with the Committee members and their counsel both as a group and on an individual basis. Among other things, McDermott

Professionals provided recommendations to the Committee regarding various requests of the Debtors and other parties in interest, counseled the Committee in connection with the Committee's responses to the Debtors' pleadings, and delivered email updates regarding case updates and various outstanding matters. McDermott Professionals also coordinated with the Committee's financial advisor to prepare for weekly Committee calls by preparing, discussing, and reviewing Committee presentations on topics such as the Debtors' operations and finances and case strategy.

15. McDermott Professionals devoted a total of 47.8 hours to communications with the Committee and other creditors (and related tasks) during the Application Period, for which compensation in the amount of \$67,891.00 is sought.

**D. Asset Disposition**  
**Amount Sought: \$20,815.00**

16. During the Application Period, McDermott Professionals devoted time to, among other things, reviewing the asset purchase agreements and other documents related to the sale of the Debtors' assets. In addition, McDermott Professionals conferred with the Committee's financial advisor and the Debtors' counsel regarding the closing of sales, the status thereof, and issues related thereto.

17. McDermott Professionals devoted a total of 12.3 hours to sale matters during the Application Period, for which compensation in the amount of \$20,815.00 is sought.

**E. Fee and Employment Applications**  
**Amount Sought: \$20,112.50**

18. During the Application Period, McDermott Professionals drafted and revised McDermott's second monthly fee application, and assisted the Committee's financial advisor with the filing and service of its first monthly fee application.

19. McDermott Professionals devoted a total of 13.2 hours to the preparation of professional fee and retention applications during the Application Period, for which compensation in the amount of \$20,112.50 is sought.

**DESCRIPTION OF ACTUAL, REASONABLE,  
AND NECESSARY EXPENSES INCURRED**

20. During the Application Period, McDermott incurred actual, reasonable, and necessary expenses in connection with its engagement by the Committee in the aggregate amount of \$2,222.21, for which McDermott seeks reimbursement. Attached hereto as **Exhibit B** are descriptions of the expenses actually incurred by McDermott in the performance of services rendered as counsel to the Committee. The expenses are broken down into categories of charges, including, among other things, the following charges: travel expenses, business meals, service and hearing binder expenses, and certain other non-ordinary expenses.<sup>4</sup>

**VALUATION OF SERVICES**

21. McDermott Professionals have expended a total of 415.2 hours in connection with this matter during the Application Period. The amount of time spent by each of the McDermott Professionals providing services to the Committee during the Application Period is set forth in **Exhibit A**. The rates reflected in this Application are McDermott's normal hourly rates of compensation for work of this character. The reasonable value of the services rendered by McDermott during the Application Period as counsel for the Committee in the Chapter 11 Cases is \$480,715.38.<sup>5</sup>

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<sup>4</sup> In accordance with Del. Bankr. L.R. 2016-2(e)(iii), McDermott does not charge more than \$0.10 per page for photocopies, does not charge for incoming facsimile transmissions, and does not charge more than \$0.25 per page for outgoing facsimiles.

<sup>5</sup> This figure reflects a 15% voluntary fee reduction provided by McDermott to the Committee as a client accommodation.

22. In accordance with the factors enumerated in Bankruptcy Code section 330, McDermott submits that the amount requested is fair and reasonable given (a) the complexity of the Chapter 11 Cases, (b) the time expended, (c) the nature and extent of the services rendered, (d) the value of such services, and (e) the costs of comparable services other than in a case under the Bankruptcy Code.

**NO PRIOR REQUEST**

23. No prior request for the relief requested in this Application has been made to this Court or any other court.

**CERTIFICATE OF COMPLIANCE AND REQUEST FOR WAIVER**

24. The undersigned representative of McDermott certifies that he has reviewed the requirements of Local Rule 2016-2 and that the Application substantially complies with that Local Rule. To the extent that the Application does not comply in all respects with the requirements of Local Rule 2016-2, McDermott believes that such deviations are not material and respectfully requests that any such requirement be waived.

*[Remainder of Page Intentionally Left Blank]*

WHEREFORE, McDermott respectfully requests that it (a) be allowed (i) compensation in the amount of \$384,572.30 (80% of the \$480,715.38) for necessary professional services rendered to the Committee during the Application Period, and (ii) reimbursement of actual and necessary expenses in the amount of \$2,222.21 incurred during that period, and (b) be granted such other and further relief as the Court deems just and proper.

Dated: Wilmington, Delaware  
October 31, 2024

**MCDERMOTT WILL & EMERY LLP**

/s/ David R. Hurst

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