

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

In re:

VYAIRE MEDICAL, INC., *et al.*,¹

Debtors.

)
) Chapter 11
)
) Case No. 24-11217 (BLS)
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)
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**FEE EXAMINER’S FINAL REPORT PERTAINING TO INTERIM FEE
APPLICATIONS OF CERTAIN RETAINED PROFESSIONALS**

David M. Klauder (the “Fee Examiner”), the Fee Examiner for the bankruptcy estates (the “Bankruptcy Estates”) of Vyair Medical, Inc., *et al.*, (the “Debtors”), hereby submits this Final Report (the “Final Report”) pursuant to the Court’s *Order Appointing Fee Examiner and Establishing Related Procedures for the Review of Fee Applications of Retained Professionals* [D.I. 690] (the “Fee Examiner Order”) in connection with applications for the allowance of compensation and reimbursement of expenses for the interim fee period (the “Interim Fee Applications”) of certain professionals retained in the above-referenced case (the “Retained Professionals”) as listed on **Exhibit A**. In support of this Final Report, the Fee Examiner respectfully represents as follows:

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.

BACKGROUND

1. On June 9, 2024 (the “Petition Date”), the Debtors filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) in this Court.

2. On October 30, 2024, David M. Klauder was appointed as the Fee Examiner in these cases.

3. As noted and set out in detail in the Fee Examiner Order, the Fee Examiner is tasked with reviewing the various fee applications filed by retained professionals in the case and recommending any reductions in fees or expenses sought in the fee applications. The Fee Examiner Order also sets out in detail the process for the Fee Examiner’s review, including issuance of initial reports, a consultation period with retained professionals, and the filing of this Final Report, which contains the Fee Examiner final recommendations to this Court with respect to the Interim Fee Applications.

4. The Fee Examiner reviewed the Interim Fee Applications for compliance with sections 330 and 331 of the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Bankruptcy Rules”), the *Order Establishing Procedures for Interim Compensations and Reimbursement of Expenses of Professionals*, dated July 9, 2024 [D.I. 218] (the “Interim Compensation Order”), and the Appendix B Guidelines for Reviewing Applications for Compensation & Reimbursement of Expenses filed under United States Code by Attorneys in Large Chapter 11 Cases (78 Fed. Reg. No. 116, page 36248 (June 17, 2013)) (the “UST Guidelines”). In addition, the Fee Examiner reviewed the Interim Fee Applications for general compliance with legal precedent established by

the District Courts and Bankruptcy Court for the District of Delaware, the Third Circuit Court of Appeals, and other applicable precedent.

5. Following that review, the Fee Examiner issued Interim Reports to the Retained Professionals regarding the Interim Fee Applications. The Interim Report set forth the legal and other standards governing the review and raised questions as to certain designated time entries or expenses. The Retained Professionals were invited to respond to the Interim Report, and they did so through email exchange and/or discussions with the Fee Examiner. Resolution was then reached between the Fee Examiner and each of the Retained Professionals as described below.

**THE FEE EXAMINER'S RECOMMENDATIONS
AS TO THE INTERIM FEE APPLICATIONS**

6. The Fee Examiner makes the following recommendations for the Interim Fee Applications. Attached as Exhibit A is the chart summarizing the fees and expenses sought by the Retained Professionals in the Interim Fee Applications along with the agreed-upon reductions between the Fee Examiner and the Retained Professionals.²

Professionals Retained by the Debtors

Kirkland & Ellis, LLP

First Interim Fee Application

7. Kirkland & Ellis, LLP (“K&E”) are attorneys for the Debtors. On November 13, 2024, K&E filed its *First Interim Fee Application* [D.I. 742] (the “K&E Fee Application”). In the K&E Fee Application, K&E requests approval of compensation in the amount of \$9,309,620.32

² I understand that the Retained Professionals and the Office of the United States Trustee have resolved issues with the First Interim Fee Applications by agreeing to additional fee and expense reductions. This Final Report only addresses the reductions and resolutions agreed to between the Fee Examiner and the Retained Professionals.

and reimbursement of expenses in the amount of \$65,000.23 for the period of June 9, 2024 through August 31, 2024.

8. The Fee Examiner reviewed the K&E Fee Application to ensure compliance with the applicable rules, orders and guidelines. Based on that review, the Fee Examiner generated an interim report that identified the following general issues with the K&E Fee Application:

- a. Transient Timekeepers;
- b. Multiple Billers at Hearings, Calls, Meetings;
- c. Excessive Internal Communications Among Professionals;
- d. Support Staff Billing; and
- e. Rental Expenses.

9. In response to the Fee Examiner's interim report, K&E and the Fee Examiner discussed the issues raised by the interim report. As a result of that discussion, K&E and the Fee Examiner have agreed to a recommended reduction of \$55,000.00 in compensation and \$5,142.16 in expenses. The Fee Examiner has no objection to this Court's approval of the K&E Fee Application, as modified.

Cole Schotz, P.C.

First Interim Fee Application

10. Cole Schotz, P.C. ("Cole Schotz") are co-counsel to the Debtors. On November 8, 2024, Cole Schotz filed its *First Interim Fee Application* [D.I. 715] (the "Cole Schotz Fee Application"). In the Cole Schotz Fee Application, Cole Schotz requests approval of compensation in the amount of \$1,552,014.00 and reimbursement of expenses in the amount of \$6,030.48 for the period of June 9, 2024 through August 31, 2024.

11. The Fee Examiner reviewed the Cole Schotz Fee Application to ensure compliance with the applicable rules, orders and guidelines. Based on that review, the Fee Examiner generated an interim report that identified the following general issues with the Cole Schotz Fee Application:

- a. Block Billing
- b. Multiple Billers at Hearings, Calls, Meetings;
- c. Internal Communications Among Professionals;
- d. Excessive Internal Communications;
- e. Questionable Time; and
- f. Meal Expenses.

12. In response to the Fee Examiner's interim report, Cole Schotz and the Fee Examiner discussed the issues raised by the interim report. As a result of that discussion, Cole Schotz and the Fee Examiner have agreed to a recommended reduction of **\$9,150.00** in compensation. The Fee Examiner has no objection to this Court's approval of the Cole Schotz Fee Application, as modified.

BDO USA P.C.

First Interim Fee Application

13. BDO USA P.C. ("BDO") are Tax Accountants to the Debtors. On October 31, 2024, BDO filed its *First Interim Fee Application* [D.I. 698] (the "BDO Fee Application"). In the BDO Fee Application, BDO requests approval of compensation in the amount of \$1,181,374.60 for the period of June 9, 2024 through August 31, 2024.

14. The Fee Examiner reviewed the BDO Fee Application to ensure compliance with the applicable rules, orders and guidelines. Based on that review, the Fee Examiner generated an interim report that identified the following general issues with the BDO Fee Application:

- a. Transient Timekeepers;
- b. Administrative Time; and
- c. Possible Internal Communications Among Professionals.

15. In response to the Fee Examiner's interim report, BDO and the Fee Examiner discussed the issues raised by the interim report. As a result of that discussion, BDO and the Fee Examiner have agreed to a recommended reduction of **\$35,116.56** in compensation. The Fee

Examiner has no objection to BDO's modified request and to this Court's approval of the BDO Fee Application, as modified.

PJT Partners LP

First Interim Fee Application

16. PJT Partners LP ("PJT") are investment bankers to the Debtors. On November 12, 2024, PJT filed its *First Interim Fee Application* [D.I. 734] (the "PJT Fee Application"). In the PJT Fee Application, PJT requests approval of compensation in the amount of \$1,228,333.33 and reimbursement of expenses in the amount of \$2,104.96 for the period of June 9, 2024 through August 31, 2024. The Fee Examiner reviewed the PJT Fee Application to ensure compliance with the applicable rules, orders and guidelines and no issues were noted.

17. The Fee Examiner has no objection to this Court's approval of the PJT Fee Application.

Professionals Retained by Official Committee of Unsecured Creditors

McDermott Will & Emery LLP

First Interim Fee Application

18. McDermott Will & Emery LLP ("MWE") are counsel to the Official Committee of Unsecured Creditors (the "Committee"). On October 11, 2024, MWE filed its *First Interim Fee Application* [D.I. 619] (the "MWE Fee Application"). In the MWE Fee Application, MWE requests approval of compensation in the amount of \$1,275,870.40 and reimbursement of expenses in the amount of \$4,959.70 for the period of June 28, 2024 through August 31, 2024.

19. The Fee Examiner reviewed the MWE Fee Application to ensure compliance with the applicable rules, orders and guidelines. Based on that review, the Fee Examiner

generated an interim report that identified the following general issues with the MWE Fee Application:

- a. Transient Timekeepers;
- b. Administrative Time; and
- c. Possible Excessive Internal Communications.

20. In response to the Fee Examiner's interim report, MWE and the Fee Examiner discussed the issues raised by the interim report. As a result of that discussion, MWE and the Fee Examiner have agreed to a recommended reduction of **\$22,500.00** in compensation. The Fee Examiner has no objection to MWE's modified request and to this Court's approval of the MWE Fee Application, as modified.

Berkeley Research Group, LLC

First Interim Fee Application

21. Berkeley Research Group, LLC ("**BRG**") are financial advisors to the Committee. On October 16, 2024, BRG filed its *First Interim Fee Application* [D.I. 633] (the "**BRG Fee Application**"). In the BRG Fee Application, BRG requests approval of compensation in the amount of \$935,753.00 for the period of June 28, 2024 through August 31, 2024.

22. The Fee Examiner reviewed the BRG Fee Application to ensure compliance with the applicable rules, orders and guidelines. Based on that review, the Fee Examiner generated an interim report that identified the following general issues with the BRG Fee Application:

- a. Transient Timekeepers; and
- b. Vague/Possibly Excessive Time.

23. In response to the Fee Examiner's interim report, BRG and the Fee Examiner discussed the issues raised by the interim report. As a result of that discussion, BRG and the Fee Examiner have agreed to a recommended reduction of **\$7,000.00** in compensation. The Fee

Examiner has no objection to BRG's modified request and to this Court's approval of the BRG Fee Application, as modified.

CONCLUSION

Accordingly, the Fee Examiner recommends that the compensation and expenses sought by the Retained Professionals in the Interim Fee Applications be allowed as modified, and for such other relief that this Court deems just and appropriate.

Respectfully submitted,

Dated: December 9, 2024
Wilmington, Delaware

BIELLI & KLAUDER, LLC

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Fee Examiner