

**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

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) Case No. 24-11217 (BLS)

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Hearing Date: December 11, 2024 at 11:00 a.m. (ET)

Objection Deadline: December 3, 2024 at 4:00 p.m. (ET)

**APPLICATION OF THE FEE EXAMINER, DAVID M. KLAUDER, FOR
AUTHORIZATION TO EMPLOY AND RETAIN BIELLI & KLAUDER, LLC AS
COUNSEL TO THE FEE EXAMINER, NUNC PRO TUNC TO OCTOBER 30, 2024**

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 applies (the “Application”) 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”), and to the extent applicable, Sections 327(a) and 328(a) of title 11 of the United States Code (the “Bankruptcy Code”) and Rule 2014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) for authority to employ and retain Bielli & Klauder, LLC (“BK”) as counsel to the Fee Examiner *nunc pro tunc* to October 30, 2024, and in support hereof, 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.

JURISDICTION

1. This Court has jurisdiction over this Application pursuant to 28 U.S.C. §§ 157 and 1334. Venue lies properly in this Court pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding pursuant to 28 U.S.C. § 157.

2. The relief sought by this Application is based upon sections 327(a), 327(c), 328, 330 and 1107 of title 11 of the Bankruptcy Code and has been filed in accordance with Rule 2014-1 of the Local Rules of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”).

BACKGROUND

3. On June 9, 2024, the Debtors each filed voluntary petitions of relief under chapter 11 the Bankruptcy Code in this Court.

4. On October 30, 2024, David M. Klauder was appointed as the Fee Examiner for this case.

THE FEE EXAMINER’S NEED FOR LEGAL SERVICES

5. By this Application, the Fee Examiner seeks to employ BK as his counsel to represent and assist him in carrying out his duties under the Fee Examiner Order and review and assessing requests for allowance of fees and expenses by certain retained professionals (the “Retained Professionals”) in this case. The Fee Examiner has determined that the volume of fee and expense applications (the “Fee Applications”) from the Retained Professionals warrants assistance from counsel who can contribute to the Fee Examiner’s analyses of such requests, assist in the preparation of required reports, and appear before the Court, if necessary, for or with him on all relevant matters and issues. Accordingly, the Fee Examiner has selected BK, the firm with which he has long been associated, as the best qualified and most cost-effective professional to

support the Fee Examiner in his review of fee and expense requests. In support of this Application, the Fee Examiner has contemporaneously filed the Declaration of David M. Klauder (the “Fee Examiner Declaration”), attached hereto as Exhibit A.

6. The professional services that BK will provide to the Fee Examiner include, but shall not be limited to, the following:

- a. Reviewing the Fee Applications and related invoices for compliance with:
 - i. Sections 328, 329, 330 and 331 of the Bankruptcy Code;
 - ii. Rule 2016 of the Bankruptcy Rules;
 - iii. Local Rule 2016-2 of the Local Rules;
 - iv. The United States Trustee Guidelines for Reviewing Applications for Compensation & Reimbursement of Expenses filed under 11 U.S.C. § 330 (28 C.F.R. Part 58, Appendix A) (the “UST Guidelines”); and
 - v. The Fee Examiner Order and together with the Local Rules and the UST Guidelines, the “Guidelines”;
- b. Assisting the Fee Examiner in any hearings or other proceedings before the Court to consider the Fee Applications including, without limitation, advocating positions asserted in the reports filed by the Fee Examiner and on behalf of the Fee Examiner;
- c. Assisting the Fee Examiner with legal issues raised by inquiries to and from the Retained Professionals and any other professional services provider retained by the Fee Examiner;
- d. Where necessary, attending meetings between the Fee Examiner and the Retained Professionals;
- e. Assisting the Fee Examiner with the preparation of preliminary and final reports regarding professional fees and expenses;
- f. Assisting the Fee Examiner in developing protocols and making reports and recommendations; and
- g. Providing such other services as the Fee Examiner may request.

STANDARDS FOR APPROVING EMPLOYMENT AND RETENTION OF COUNSEL

7. Section 327(a) of the Bankruptcy Code empowers the trustee, with the Court's approval, to employ attorneys "that do not hold or represent an interest adverse to the estate, and that are disinterested persons, to represent or assist the trustee in carrying out the trustee's duties under this title." 11 U.S.C. § 327(a). Section 327(c) provides that "a person is not disqualified for employment under this section solely because of such person's employment by or representation of a creditor, unless there is objection by another creditor or the United States trustee, in which case the court shall disapprove such employment if there is an actual conflict of interest." 11 U.S.C. § 327(c). While BK is not being directly retained by the trustee, or the Debtors in this instance, the Fee Examiner's retention of BK is akin to estate professional retention under section 327(a) of the Bankruptcy Code. As such, BK satisfies all of these standards, as set forth below.

CONNECTIONS WITH PARTIES IN INTEREST

8. To the best of the Fee Examiner's knowledge, BK has no connection with the Debtors, their creditors or any other party-in-interest in this case, their respective attorneys or accountants, or the United State Trustee, or any person employed in the office of the United States Trustee, except as may be described in the Declaration of Thomas D. Bielli (the "Bielli Declaration"), which is filed herewith as Exhibit B. The Fee Examiner is employed with BK as an attorney.

NO ADVERSE INTEREST AND DISINTERESTED PERSON

9. The Fee Examiner submits that BK represents no interest adverse to the Fee Examiner or the Debtors' Bankruptcy Estates in the matters upon which BK is to be engaged for the Fee Examiner.

10. The Fee Examiner further submits that BK is a "disinterested person" as that term is defined in section 101(14) of the Bankruptcy Code.

11. As set forth in more detail in the Bielli Declaration, BK completed a conflict check that compared, to the extent then known, the parties listed on the conflict checklist, which is attached to the Bielli Declaration as Exhibit 1.

12. As set forth in more detail in the Bielli Declaration, BK completed a check to determine if the firm had any connections to parties in interest. This checklist is attached to the Bielli Declaration as Exhibit 2.

13. To the best of the Fee Examiner's knowledge, based upon the Bielli Declaration, BK (a) does not hold or represent any interest adverse to the Fee Examiner or the Debtors' Bankruptcy Estates and (b) is a "disinterested person" as that term is defined under section 101(14) of the Bankruptcy Code.

PROFESSIONAL COMPENSATION

14. Section 328(a) of the Bankruptcy Code authorizes the employment of a professional person on any reasonable terms and conditions of employment, including on an hourly basis. BK intends to apply for compensation for professional services rendered in connection with this case subject to the approval of this Court and in compliance with applicable provisions of the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, the Local Rules and orders of this Court, on an hourly basis, plus reimbursement of actual, necessary expenses

and other charges incurred by BK. BK has advised the Fee Examiner that the current hourly rates applicable to the principal attorneys and paraprofessionals proposed to represent the Fee Examiner are:

- a. Thomas D. Bielli (Member) - \$490.00 per hour;
- b. Associates and of counsel- \$225.00 - \$425.00 per hour; and
- c. Paralegals, paraprofessionals and law clerks - \$195.00 - \$275.00 per hour.

15. The hourly rates set forth above are BK's 2024 standard hourly rates for work of this nature. These rates are set at a level designed to fairly compensate BK for its work and to cover fixed and routine overhead expenses. It is BK's policy to charge its clients in all areas of practice for all other expenses incurred in connection with the client's case. The expenses charged to clients include, among other things, telephone and telecopier charges, mail and express mail charges, special or hand delivery charges, document processing, photocopying charges, travel expenses, expenses for working meals, computerized research, and copying and mailing charges from outside vendors and transcription costs. BK will charge the Debtors' Bankruptcy Estates for these expenses in a manner and at rates consistent with charges made generally to BK's clients. BK intends to seek compensation for all time and expenses associated with its retention in accordance with sections 330 and 331 of the Bankruptcy Code and any orders of this Court, including the preparation of this Application, the Declarations, and related documents, as well as any monthly fee statements or interim or final fee applications.

16. In addition to the hourly compensation of its professionals, BK will incur a monthly expense of \$5,500 for the costs of Legal Decoder, Inc., whose fee data analytics software the Fee Examiner plans to use to assist in performing his analysis in this case. This monthly cost is directly attributable to this case and is based on the size of the case and the

number of professionals who fee applications are to be reviewed. BK will seek approval of this expense in all monthly, interim and final fee applications that it will file in this case.

17. BK was retained by the Fee Examiner on October 30, 2024. BK has received no compensation related to the Debtors or this case either before or after the Fee Examiner retained BK.

18. Other than as set forth herein, there is no proposed arrangement to compensate BK. BK has not shared, nor agreed to share (a) any compensation it has received or may receive with any other party or person, other than with the members, partners, counsel and associates of BK, or (b) any compensation another person or party has received or may receive.

BEST INTERESTS OF THE ESTATES

19. As set forth above, BK satisfies all the requirements for employment as attorneys for the Fee Examiner under sections 327(a), 327(c) and 1107 of the Bankruptcy Code.

20. The Fee Examiner asserts that the employment of BK as attorneys for the Fee Examiner is in the best interests of the Debtors' Bankruptcy Estates and is appropriate under 11 U.S.C. §§ 327 and 328.

NUNC PRO TUNC APPROVAL

21. The Fee Examiner requests that BK's retention be made effective, *nunc pro tunc*, as of October 30, 2024, in order to allow BK to be compensated for the work it has performed for the Fee Examiner since that date, but prior to the Court's consideration of this Application. BK has spent time becoming familiar with the facts of this case and discussing the case with the Fee Examiner. In addition, this Application is being filed very shortly after BK accepted this engagement and began performing work, so there is no prejudice on any party in interest if *nunc pro tunc* approval is granted. The Fee Examiner submits that under the circumstances,

retroactive approval of the Application to April 29, 2024 is warranted. *See F/S Airlease II, Inc. v. Simon*, 844 F.2d 99, 103 (3d Cir. 1988).

NOTICE

22. Notice of this Application has been given to counsel for the Debtors, the Office of the United States Trustee and all parties who have requested notice pursuant to Fed. R. Bankr. P. 2002. The Fee Examiner submits that no further notice is required.

23. No prior application for the relief requested herein has been made to this or any other court.

WHEREFORE, the Fee Examiner respectfully requests this Court's approval of the appointment of Bielli & Klauder, LLC as counsel for the Fee Examiner, *nunc pro tunc* to October 30, 2024, and granting such other and further relief as the Court deems just and proper.

Dated: November 19, 2024

Respectfully Submitted,

/s/ David M. Klauder

David M. Klauder, Fee Examiner