

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

In re:	)	
	)	Chapter 11
	)	
VYAIR MEDICAL, INC., <i>et al.</i> , ¹	)	Case No. 24-11217 (BLS)
	)	
Debtors.	)	(Jointly Administered)
	)	
	)	Hearing Date: December 11, 2024, at 11:00 a.m. (ET)
	)	Objection Deadline: November 29, 2024, at 4:00 p.m. (ET)

**SUMMARY OF FIRST INTERIM
FEE APPLICATION OF COLE SCHOTZ P.C., DELAWARE
CO-COUNSEL TO THE DEBTORS AND DEBTORS IN POSSESSION,
FOR ALLOWANCE OF COMPENSATION AND REIMBURSEMENT OF
EXPENSES FOR THE PERIOD FROM JUNE 9, 2024 THROUGH AUGUST 31, 2024**

Name of Applicant:	Cole Schotz, P.C.
Authorized to provide professional services to:	Vyaire Medical, Inc., <i>et al.</i>
Date of retention:	July 30, 2024 (Effective as of June 9, 2024) [Docket No. 333]
Period for which compensation and reimbursement is sought:	June 9, 2024 through August 31, 2024
Amount of compensation sought as actual, reasonable and necessary:	\$1,552,014.00 ²
Amount of expense reimbursement sought as actual, reasonable and necessary:	\$6,030.48
This is a(n):	<u> </u> monthly <u> X </u> interim <u> </u> final application
Prior Interim Applications:	None

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 Cole Schotz agreed to reduce its fees by an aggregate of \$204.50 during the Interim Fee Period, resulting in total fees in the amount of \$1,552,014.00.

SUMMARY OF FEES AND EXPENSES REQUESTED

Monthly Application		Requested Fees and Expense		Allowed Fees and Expenses		Unpaid Fees and Expenses	
Monthly Fee Period, Application Docket No., and Date Filed	CNO Docket No. and Date Filed	Total Fees Requested	Total Expenses Requested	Fees - Amount Allowed	Expenses - Amount Allowed	Unpaid Fees	Unpaid Expenses
06/09/24 – 06/30/24 Docket No. 355 08/08/24	Docket No. 488 08/30/24	\$649,315.00 ¹	\$3,085.71	\$519,615.60	\$3,085.71	\$129,699.40	\$0.00
07/01/24 – 07/31/24 Docket No. 510 09/06/24	Docket No. 594 10/01/24	\$489,621.00	\$1,494.81	\$391,696.80	\$1,494.81	\$97,924.20	\$0.00
08/01/24 – 08/31/24 Docket No. 568 09/24/24	Docket No. 639 10/17/24	\$413,078.00	\$1,449.96	\$330,462.40	\$1,449.96	\$82,615.60	\$0.00
Total		\$1,552,014.00	\$6,030.48	\$1,241,774.80	\$6,030.48	\$310,239.20	\$0.00

¹ Cole Schotz agreed to reduce its fees by an aggregate of \$204.50 during the Interim Fee Period, resulting in total fees in the amount of \$1,552,014.00.

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VYAIRE MEDICAL, INC., <i>et al.</i> , ¹	)	Case No. 24-11217 (BLS)
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Debtors.	)	(Jointly Administered)
	)	
	)	Hearing Date: December 11, 2024, at 11:00 a.m. (ET)
	)	Objection Deadline: [●] [●], 2024, at 4:00 p.m. (ET)

**FIRST INTERIM FEE
APPLICATION OF COLE SCHOTZ P.C., DELAWARE
CO-COUNSEL TO THE DEBTORS AND DEBTORS IN POSSESSION,
FOR ALLOWANCE OF COMPENSATION AND REIMBURSEMENT OF
EXPENSES FOR THE PERIOD FROM JUNE 9, 2024 THROUGH AUGUST 31, 2024**

Cole Schotz P.C. (the “Applicant” or “Cole Schotz”), Delaware co-counsel to Vyaire Medical, Inc. and certain of its subsidiaries, the debtors and debtors in possession in the above captioned cases (collectively, the “Debtors”), hereby submits this first interim fee application (the “Application”) pursuant to (i) sections 330 and 331 of title 11 of the United State Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”), (ii) Rule 2016 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), (iii) 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”), and (iv) the *Order (I) Establishing Procedures for Interim Compensation and Reimbursement of Expenses for Retained Professionals and (II) Granting Related Relief*

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.

[Docket No. 218] (the “Interim Compensation Order”)² for allowance of compensation for services rendered and reimbursement of expenses for the period from June 9, 2024 through August 31, 2024 (the “Interim Fee Period”). In support of this Application, Cole Schotz respectfully represents as follows:

Jurisdiction and Venue

1. The United States District Court for the District of Delaware has jurisdiction over this matter pursuant to 28 U.S.C. §1334, which was referred to the United States Bankruptcy Court for the District of Delaware (the “Court”) under 28 U.S.C. § 157 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012. The Debtors confirm their consent, pursuant to Local Rule 9013-1(f), to the entry of a final order by the Court in connection with this Application to the extent 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.

2. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The statutory bases for the relief sought herein are sections 330 and 331 of the Bankruptcy Code, Bankruptcy Rule 2016 and Local Rule 2016-2.

Background

A. The Chapter 11 Cases

4. On June 9, 2024 (the “Petition Date”), Vyair Medical, Inc. and certain of its subsidiaries filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code. The

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Interim Compensation Order.

Debtors are operating their business and managing their property as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

5. On June 11, 2024, the Court entered an order authorizing the procedural consolidation and joint administration of these chapter 11 cases pursuant to Bankruptcy Rule 1015(b) and Local Rule 1015-1. *See* Docket No. 84.

6. No request for the appointment of a trustee or examiner has been made in these chapter 11 cases.

7. On June 26, 2024, the Office of the United States Trustee for the District of Delaware (the “U.S. Trustee”) appointed the Official Committee of Unsecured Creditors (the “Committee”). *See* Docket No. 121.

8. A detailed description of the Debtors and their business, including the facts and circumstances giving rise to the Debtors’ chapter 11 cases, is set forth in the *Declaration of John Bibb, Group Chief Executive Officer of Vyair Medical, Inc., in Support of Chapter 11 Petitions and First Day Motions*. *See* Docket No. 15.

B. The Retention of Cole Schotz

9. On July 9, 2024, the Debtors applied to the Court for an order authorizing the retention and employment of Cole Schotz as Debtors’ Delaware co-counsel effective as of the Petition Date. *See* Docket No. 239. On July 30, 2024, the Court entered an order authorizing such retention. *See* Docket No. 333.

C. The Interim Compensation Order

10. The Interim Compensation Order sets forth the procedures for interim compensation and reimbursement of expenses in these chapter 11 cases. Specifically, the Interim Compensation Order provides that beginning with the period ending on August 31, 2024, and at

three-month intervals thereafter, each of the Professionals may file and serve on the Application Recipients an interim fee application (each, an “Interim Fee Application”) for compensation and reimbursement of expenses sought in the Monthly Fee Statements served during such period. *See* Interim Compensation Order ¶ 2(e). Application Recipients will have twenty-one (21) days after service of an Interim Fee Application to object thereto (the “Interim Fee Application Objection Deadline”). *Id.* Provided that no objection to an Interim Fee Application is filed by the Interim Fee Application Objection Deadline, the Court, in its discretion, may approve an uncontested Interim Fee Application without the need for a hearing upon the Professional’s filing of a certificate of no objection. *Id.* ¶ 2(f). Upon allowance by the Court of a Professional’s Interim Fee Application, the Debtors shall be authorized to promptly pay such Professional all allowed fees (including the 20% holdback) and expenses not previously paid. *Id.*

Relief Requested

11. Pursuant to the Interim Compensation Order and section 331 of the Bankruptcy Code, Cole Schotz is seeking compensation in the amount of \$1,552,014.00³ in fees for professional services rendered by Cole Schotz during the Interim Fee Period. This amount is derived solely from the applicable hourly billing rates of Cole Schotz personnel who rendered such services to the Debtors. In addition, Cole Schotz is seeking reimbursement of expenses incurred during the Interim Fee Period in the amount of \$6,030.48.

The Interim Fee Application and Compliance with Guidelines

12. This Interim Fee Application was prepared in accordance with (a) Local Rule 2016-2, (b) the United States Trustee *Guidelines for Reviewing Applications for Compensation and*

³ Cole Schotz agreed to reduce its fees by an aggregate of \$204.50 during the Interim Fee Period, resulting in total fees in the amount of \$1,552,014.00.

Reimbursement of Expenses Filed Under 11 U.S.C. § 330 by Attorneys in Larger Chapter 11 Cases, adopted on June 11, 2013 (the “UST Guidelines”), and (c) the Interim Compensation Order (collectively with Local Rule 2016-2 and the UST Guidelines, the “Guidelines”).

13. Annexed hereto are various schedules required by the Guidelines, as applicable.

14. Applicant provides the following responses to the questions set forth under ¶ C.5 of Appendix B of the UST Guidelines.

Question: Did you agree to any variations from, or alternatives to, your standard or customary billing rates, fees or terms for services pertaining to this engagement that were provided during the application period? If so, please explain.

Response: No.

Question: If the fees sought in this fee application as compared to the fees budgeted for the time period covered by this fee application are higher by 10% or more, did you discuss the reasons for the variation with the client?

Response: The fees sought in this Interim Fee Application are less than the amount budgeted for the Interim Fee Period.

Question: Have any of the professionals included in this fee application varied their hourly rates based on the geographic location of the bankruptcy case.

Response: No.

Question: Does the fee application include time or fees related to reviewing or revising time records or preparing, reviewing, or revising invoices? If so, please quantify by hours and fees.

Response: This Interim Fee Application does not include any fees dedicated to revising time records or preparing and revising invoices that would not normally be compensable outside of bankruptcy.

Question: Does this fee application include time or fees for reviewing time records to redact any privileged or

other confidential information? If so, please quantify by hours and fees.

Response: No.

Question: Does this fee application include rate increases since retention?

Response: No.

Reasonable and Necessary Services

15. The services for which Cole Schotz seeks compensation were, at the time rendered, necessary for, beneficial to and in the best interests of, the Debtors and the Debtors' estates. The services rendered were consistently performed in a timely manner commensurate with the complexity, importance and nature of the issues involved. In accordance with the factors enumerated in section 330 of the Bankruptcy Code, it is respectfully submitted that the amount requested by Applicant is fair and reasonable given (a) the complexity of these 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 this title.

Notice

16. Cole Schotz will provide notice and serve this Application on the Application Recipients (as defined and set forth in the Interim Compensation Order). In light of the nature of the relief requested in this Application, Cole Schotz submits that no other or further notice is required.

No Prior Request

17. No prior request for the relief sought in the Application has been made to this or any other court.

Certification of Compliance and Waiver

18. The undersigned representative of Cole Schotz 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, Cole Schotz believes that such deviations are not material and respectfully requests that any such requirements be waived.

Conclusion

WHEREFORE, Cole Schotz respectfully requests the Court enter an order (a) approving the Interim Fee Application; (b) awarding Cole Schotz compensation for the Interim Fee Period in the amount of \$1,552,014.00 and reimbursement for actual and necessary expenses in the amount of \$6,030.48; (c) authorizing the payment of such sums to Cole Schotz pursuant to the Interim Compensation Order; and (d) granting such other and further relief as the Court may deem just and proper.

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Dated: November 8, 2024
Wilmington, Delaware

/s/ Patrick J. Reilley

COLE SCHOTZ P.C.

Patrick J. Reilley (No. 4451)
500 Delaware Avenue, Suite 1410
Wilmington, Delaware 19801
Telephone: (302) 652-3131
Facsimile: (302) 652-3117
Email: preilley@coleschotz.com

- and -

Michael D. Sirota, Esq. (admitted *pro hac vice*)
Warren A. Usatine, Esq. (admitted *pro hac vice*)
Court Plaza North, 25 Main Street
Hackensack, New Jersey 07601
Telephone: (201) 489-3000
Facsimile: (201) 489-1536
Email: msirota@coleschotz.com
wusatine@coleschotz.com

*Co-Counsel to the Debtors
and Debtors in Possession*

KIRKLAND & ELLIS LLP

KIRKLAND & ELLIS INTERNATIONAL LLP

Joshua A. Sussberg, P.C. (admitted *pro hac vice*)
601 Lexington Ave
New York, New York 10022
Telephone: (212) 446-4800
Facsimile: (212) 446-4900
Email: joshua.sussberg@kirkland.com

- and -

Spencer A. Winters, P.C. (admitted *pro hac vice*)
Yusuf U. Salloum (admitted *pro hac vice*)
333 West Wolf Point Plaza
Chicago, Illinois 60654
Telephone: (312) 862-2000
Facsimile: (312) 862-2200
Email: spencer.winters@kirkland.com
yusuf.salloum@kirkland.com

*Co-Counsel to the Debtors
and Debtors in Possession*

VYAIR MEDICAL, INC., ET AL.**CUSTOMARY AND COMPARABLE COMPENSATION DISCLOSURES**

The aggregate hourly rate for all Cole Schotz Delaware, New Jersey and New York non-bankruptcy timekeepers (including both attorneys and paralegals) (the “Non-Bankruptcy Blended Rate”) for the year ending December 31, 2023 (the “Comparable Period”) was \$545.85 per hour, and the aggregate hourly rate for all Cole Schotz Delaware, New Jersey and New York bankruptcy timekeepers (including both attorneys and paralegals) (the “Bankruptcy Blended Rate”) for the Comparable Period was \$637.37 per hour.

The blended hourly rate for all Cole Schotz timekeepers (including both attorneys and paralegals) who provided services to the Debtors during the Interim Fee Period was approximately \$642.05 per hour.

Category of Timekeeper	2023 Bankruptcy Blended Rate	2023 Non-Bankruptcy Blended Rate	Interim Fee Period Blended Rate
Member	\$765.64	\$665.22	\$758.26
Special Counsel	N/A	\$673.65	587.24
Associate	\$475.36	\$421.60	\$479.84
Paralegal	\$356.74	\$335.20	\$380.12
Aggregate	\$637.37	\$545.85	\$642.05

VYAIRE MEDICAL, INC., ET AL.**BUDGET AND BILLING BY PROJECT CATEGORY
JUNE 9, 2024 THROUGH AUGUST 31, 2024**

Project Category	Budgeted Hours	Budgeted Fees	Total Hours	Total Fees
Asset Acquisitions/Business Combinations	5.0	\$3,175.00	0.7	\$1,032.50
Asset Dispositions, Sales, Uses, and Leases	200.0	\$127,000.00	195.6	\$111,063.00
Automatic Stay Matters/Litigation	15.0	\$9,525.00	0.2	\$161.00
Business Operations	5.0	\$3,175.00	3.6	\$2,105.00
Case Administration	160.0	\$101,600.00	157.9	\$101,176.50
Cash Collateral and DIP Financing	30.0	\$19,050.00	25.7	\$16,731.00
Claims Analysis, Administration and Objections	15.0	\$9,525.00	10.6	\$6,231.50
Committee Matters and Creditor Meetings	5.0	\$3,175.00	0.8	\$644.00
Creditor Inquiries	10.0	\$6,350.00	1.7	\$1,360.50
Disclosure Statement/Voting Issues	10.0	\$6,350.00	0.1	\$80.50
Document Review	5.0	\$3,175.00	0.8	\$920.00
Document Review/Committee Investigation	5.0	\$3,175.00	0.6	\$690.00
Employee Matters	10.0	\$6,350.00	3.0	\$1,949.50
Executory Contracts	25.0	\$15,875.00	17.1	\$9,676.00
Fee Application Matters/Objections	35.0	\$22,225.00	33.2	\$17,293.50
General	5.0	\$3,175.00	4.5	\$2,814.50
Leases (Real Property)	10.0	\$6,350.00	7.5	\$3,688.00
Litigation/Gen. (Except Automatic Stay)	40.0	\$25,400.00	38.7	\$30,660.50
Other Investigative Matters	1,500.0	\$952,500.00	1,498.6	\$1,003,538.50
Preparation for and Attendance at Hearings	125.0	\$79,375.00	122.7	\$69,619.00
Reorganization Plan	10.0	\$6,350.00	14.8	\$9,124.00
Reports, Statements and Schedules	45.0	\$28,575.00	41.7	\$27,684.00
Retention Matters	100.0	\$63,500.00	100.6	\$52,345.50
Rule 2004 Motions and Subpoenas	100.0	\$63,500.00	96.9	\$59,993.00
Tax/General	10.0	\$6,350.00	5.9	\$3,402.50
U.S. Trustee Matters and Meetings	30.0	\$19,050.00	25.6	\$12,388.50
Utilities/Sec. 366 Issues	10.0	\$6,350.00	3.7	\$2,242.00
Valuation	5.0	\$3,175.00	0.5	\$402.50
Vendor Matters	10.0	\$6,350.00	4.3	\$3,201.50
TOTAL	2,535.00	\$1,609,725.00	2,417.6	\$1,552,218.50
VOLUNTARY REDUCTION				\$204.50
TOTAL WITH VOLUNTARY REDUCTION				1,552,014.00

SUMMARY OF BILLING BY PROFESSIONAL
JUNE 9, 2024 THROUGH AUGUST 31, 2024

Attorney Name	Year Admitted	Position (Department)	Hourly Billing Rate	Total Hours Billed	Total Compensation
Michael D. Sirota	1986	Member (Bankruptcy)	\$1,475.00	6.4	\$9,440.00
Warren A. Usatine	1995	Member (Bankruptcy & Litigation)	\$1,150.00	10.4	\$11,960.00
Steven L. Klepper	1993	Member (Litigation)	\$875.00	20.1	\$17,587.50
J. Jeffrey Cash	2003	Member (Corporate)	\$875.00	0.7	\$612.50
Patrick J. Reilley	2003	Member (Bankruptcy)	\$805.00	72.9	\$58,684.50
Jason R. Melzer	2001	Member (Litigation)	\$800.00	51.0	\$40,800.00
Jamie Clare	1994	Member (Litigation)	\$780.00	33.4	\$26,052.00
Stacy L. Newman	2007	Member (Bankruptcy)	\$725.00	51.1	\$37,047.50
Rachel A. Mongiello	2010	Member (Litigation)	\$650.00	55.6	\$36,140.00
Megan B. Kilzy	2010	Member (Litigation)	\$625.00	3.8	\$2,375.00
H.C. Jones, III	2016	Member (Bankruptcy & Litigation)	\$540.00	6.6	\$3,564.00
Jamie A. Quick	2001	Special Counsel (Litigation)	\$620.00	30.7	\$19,034.00
Brandon M. Fierro	2012	Special Counsel (Litigation)	\$560.00	0.4	\$224.00
Andreas A. Apostolides	2013	Associate (Tax)	\$580.00	3.2	\$1,856.00
Ian R. Phillips	2015	Associate (Litigation)	\$550.00	34.7	\$19,085.00
Michael E. Fitzpatrick	2022	Associate (Bankruptcy)	\$500.00	124.6	\$62,300.00
Marian A. Bekheet	2015	Associate (Tax)	\$480.00	17.3	\$8,304.00
Arjun Padmanabhan	2022	Associate (Litigation)	\$385.00	17.5	\$6,737.50
Melissa M. Hartlipp	2022	Associate (Bankruptcy)	\$385.00	13.3	\$5,120.50
Dalila E. Haden	2023	Associate (Litigation)	\$350.00	19.2	\$6,720.00

Attorney Name	Year Admitted	Position (Department)	Hourly Billing Rate	Total Hours Billed	Total Compensation
Patt Feuerbach	N/A	Senior eDiscovery Analyst	\$435.00	11.2	\$4,872.00
VOLUNTARY REDUCTION				N/A	\$204.50
TOTAL				2,417.6	\$1,552,014.00

Total Requested Compensation (with voluntary reduction): **\$1,552,014.00**

Total Attorney Compensation: **\$1,473,194.00**

Blended Rate All Attorneys: **\$665.64**

Blended Rate All Timekeepers: **\$642.05**

VYAIR MEDICAL, INC., ET AL.**SUMMARY OF BILLING BY EXPENSE CATEGORY
JUNE 9, 2024 THROUGH AUGUST 31, 2024**

Expense Category	Service Provider (if applicable)	Total Expenses
Photocopying/Printing/Scanning (6,106 pages @ \$0.10 per page)		\$610.60
Outside Photocopying	Reliable/Parcels	\$2,004.02
Delivery/Couriers	Reliable/Parcels	\$696.46
Court Fees	PACER Service Center	\$790.60
Filing Fees	U.S. Bankruptcy Court; U.S. District Court	\$500.00
Datahost	Relativity	\$242.00
Luncheon/Dinner Conferences for Hearings		\$390.75
Transcripts	Reliable/Parcels	\$620.05
Online Research	Westlaw/LexisNexis	\$176.00
TOTAL		\$6,030.48

VYAIR MEDICAL, INC., ET AL.

**STAFFING PLAN FOR COLE SCHOTZ P.C.
JUNE 9, 2024 – AUGUST 31, 2024**

ALL FIGURES ARE ESTIMATES

Category of Timekeeper	Estimated Number of Timekeepers Expected to Work on Matters During the Budget Period	Average Hourly Rate
Members & Special Counsel	14	\$740.00
Associates	8	\$480.00
Paralegals	1	\$380.00
	Estimated Blended Hourly Rate:	\$635.00

SUMMARY OF INTERIM FEE APPLICATION	
Name of Applicant	Cole Schotz P.C.
Name of Client	Vyaire Medical, Inc., <i>et al.</i>
Fee period covered by Interim Fee Application	June 9, 2024 through August 31, 2024
Total compensation sought during Interim Period	\$1,552,014.00 ¹
Total expenses sought during Interim Period	\$6,030.48e
Petition Date	June 9, 2024
Retention Date	June 9, 2024
Date of order approving employment	July 30, 2024
Total compensation approved by interim order to date	\$0.00
Total expenses approved by interim order to date	\$0.00
Total allowed compensation paid to date	\$1,241,774.80
Total allowed expenses paid to date	\$6,030.48
Blended rate in Interim Fee Application for all Attorneys	\$665.64
Blended rate in Interim Fee Application for all Timekeepers	\$642.05
Compensation sought in this Interim Fee Application already paid pursuant to a monthly compensation order but not yet allowed	\$1,241,774.80
Expenses sought in this Interim Fee Application already paid pursuant to a monthly compensation order but not yet allowed	\$6,030.48
Number of professionals included in this Interim Fee Application	28
If applicable, number of professionals in this Interim Fee Application not included in staffing plan	N/A
If applicable, difference between fees budgeted and compensation sought for this Interim Fee Period	Budgeted: \$1,609,725.00 Difference: (\$57,711.00)
Number of professionals billing fewer than 15 hours to the case during this Interim Fee Period:	7
Are any rates higher than those approved or disclosed at retention? If yes, calculate and disclose the total compensation sought in this Interim Fee Application using the rates originally disclosed in the retention application:	No

¹ Cole Schotz agreed to reduce its fees by an aggregate of \$204.50 during the Interim Fee Period, resulting in total fees in the amount of \$1,552,014.00.