<u>Exhibit 1</u>

(Revised Joint Stipulation)

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

In re:	)	Chapter 11
VYAIRE MEDICAL, INC., *et al.*,[1]	)	Case No. 24-11217 (BLS)
Debtors.	)	(Jointly Administered)

JOINT STIPULATION BETWEEN THE DEBTORS AND DELL-METTAWA, LLC REGARDING REJECTION OF LEASE IN CONNECTION WITH ZOLL SALE

The above captioned debtors, Vyaire Medical, Inc., *et al.*, (collectively, the "Debtors") and Dell-Mettawa, LLC ("Dell-Mettawa" and together with the Debtors, each a "Party" and collectively, the "Parties"), hereby stipulate as follows (this "Joint Stipulation"):

RECITALS

A. On June 9, 2024 (the "Petition Date"), the Debtors commenced voluntary cases (the "Bankruptcy Cases") under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court").

B. Dell-Mettawa and Debtor Vyaire Medical, Inc. ("Vyaire") are parties to that certain Office Lease dated November 3, 2016 (as amended by that certain First Amendment to Lease dated December 30, 2016, that certain Second Amendment to Lease dated January 19, 2022, and as otherwise modified the "Original Lease") for a portion of Dell-Mettawa's office building located at 26125 North Riverwoods Boulevard, Mettawa, IL.

[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.

C. On July 11, 2024, the Debtors filed the *First Notice to Contract Parties of Potentially Assumed and Assigned Executory Contracts and Unexpired Leases* [Docket No. 256] (the "First Notice"). On August 24, 2024, the Debtors filed the *First Supplemental Notice to Contract Parties of Potentially Assumed and Assigned Executory Contracts and Unexpired Leases* [Docket No. 462] (the "Second Notice" and together with the First Notice, the "Notices"). The Notices set forth a potential list of contracts that may be assumed and assigned to buyers in connection with certain sale transactions along with the Debtors' assertion of any outstanding cure amounts due to such contract counterparties. The Notices included the Original Lease.

D. On July 24, 2024, Dell-Mettawa filed the *Objection of Dell-Mettawa, LLC to First Notice to Contract Parties of Potentially Assumed and Assigned Executory Contracts and Unexpired Leases* [Docket No. 309] (the "Objection").

E. On September 4, 2024, the Bankruptcy Court entered the *Order (I) Approving the Zoll Asset Purchase Agreement and Authorizing the Sale of Certain Ventilation Assets of the Debtors Outside the Ordinary Course of Business, (II) Authorizing the Sale of Assets Free and Clear of All Liens, Claims, Interests, and Encumbrances, (III) Authorizing the Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection Therewith, and (IV) Granting Related Relief* [Docket No. 496] (the "Zoll Sale Order"), which among other things approved the entry into the asset purchase agreement (the "Zoll APA") between the Debtors and Zoll Medical Corporation ("Zoll").

F. Following entry of the Zoll Sale Order, and to facilitate the terms of the Zoll APA, the Debtors, Dell-Mettawa, and Zoll agreed to (i) negotiate the terms of a new lease agreement between Vyaire and Dell-Mettawa, and for which Zoll agreed to serve as a guarantor for Vyaire's obligations thereunder (the "New Lease") and (ii) the rejection of the Original Lease effective as of October 31, 2024.

G. As of the date of this Joint Stipulation, Dell-Mettawa asserts that it is owed $198,144.50 for June 9, 2024 through June 30, 2024 post-petition rent under the terms of the Lease (the "Administrative Claim").

H. On September 30, 2024, the Debtors filed the *Joint Chapter 11 Plan of Vyaire Medical, Inc. and Its Debtor Affiliates* [Docket No. 581] (as may be amended, modified, or supplemented from time to time, the "Plan").

I. The Parties have reached an agreement concerning the Notices, the Objection, the Original Lease, the Administrative Claim, and the New Lease, as provided in this Joint Stipulation.

NOW, THEREFORE, THE PARTIES STIPULATE AND AGREE AS FOLLOWS:

1. The recitals set forth above are hereby made an integral part of the Joint Stipulation and are incorporated herein.

2. This Joint Stipulation shall have no force or effect unless and until approved by order of the Bankruptcy Court (the date of entry of such order, the "Effective Date").

3. Upon the Effective Date, the Original Lease shall be deemed rejected pursuant to sections 105(a) and 365 of the Bankruptcy Code as of October 31, 2024 (the "Rejection Date"). If Dell-Mettawa wishes to assert a new proof of claim against the Debtors arising from the rejection of the Original Lease (which new proof of claim would be in addition to its Proof of Claim registered on the Debtors' claims register as Claim No. 105 arising from the breach of the Original Lease that it already filed (the "Existing Proof of Claim")), it must file such new proof of claim within thirty (30) days of the Effective Date. Nothing in this Joint Stipulation or the rejection of the Original Lease pursuant to it shall be deemed to prejudice, disallow, or otherwise affect the

Existing Proof of Claim, provided that the Debtors reserve their rights to assert any objection to the Existing Proof of Claim. The Existing Proof of Claim together with any new claim against the Debtors arising from the rejection of the Original Lease, as the same may be amended, are collectively referred to herein as the "Rejection Claim."

4. The Debtors shall remove all of their and their employees' and agents' property located on the premises leased under the Original Lease (the "Leased Premises") and return the Leased Premises and any areas related thereto to the condition required by Section 10.1 of the Original Lease on or before January 31, 2025. As soon as practicable, a representative of the Debtors and a representative of Dell-Mettawa shall tour the Leased Premises to coordinate the removal of the property and restoration of the Leased Premises. Unless otherwise agreed to between the Parties, all such removal and restoration, either by the Debtors or their agents or employees, shall be conducted (a) during the times of 9:00 a.m. through 5:00 p.m. (Central Time) on any day other than a weekend or holiday recognized by the State of Illinois, (b) pursuant to the rules of the building of the Leased Premises, (c) in such manner so as not otherwise disturb or disrupt the other tenants and people at the building of the Leased Premises and (d) in such manner so as not to damage the building of the Leased Premises. The Debtors shall make commercially reasonable efforts to sell the property removed from the Leased Premises, and all proceeds from such sales net the cost of sale shall be first applied to the cost associated with restoration of the Leased Premises with any remainder split 50/50 between the Debtors and Dell-Mettawa.

5. Dell-Mettawa acknowledges that as of the time of its signing of this Joint Stipulation, it has no actual knowledge of any event that would give rise to any further actual, non-contingent and liquidated post-petition claims against the Debtors' estates other than the Administrative Claim and the Rejection Claim, and that it shall be forever barred, estopped and

permanently enjoined from asserting any further actual, non-contingent and liquidated claims of which it has actual knowledge at the time it signs this Joint Stipulation against the Debtors other than the Administrative Claim and the Rejection Claim. For the avoidance of doubt and without limitation, if Dell-Mettawa discovers a fact or event that gives rise to a claim after it signs this Joint Stipulation including, without limitation, a claim based on personal injury or property damage, Dell-Mettawa shall not be barred, estopped, or enjoined from asserting such claim and the Debtors reserve all rights and defenses to any such claim.

6. Debtors for and on behalf of themselves, the estates of the Debtors and Debtors-in-possession, any wind-down Debtor (or similar entity), any Plan administrator (or similar entity), any other successor to any of the Debtors, the Debtors' assigns, any trustee who is appointed in the Bankruptcy Cases, Zoll, and each of the foregoing's members, partners, managers, officers, directors, employees, predecessors, successors, assigns, legal representatives, and affiliates, and any and all of each persons or entities claiming by, under or through any of the foregoing persons or entities (individually and collectively, the "Debtor Releasors") hereby knowingly and voluntarily agree to waive, release, relinquish, and forever discharge, and covenant not to sue or bring any other proceeding against, Dell-Mettawa and its respective employees, officers, directors, managers, members, shareholders, agents, servants, attorneys, subsidiaries, partners, affiliates, beneficiaries, fiduciaries, trustees, insurers, successors and assigns, and each of the foregoing's successors and assigns, each of which shall be a third-party beneficiary, from any and all claims, demands, suits, causes of action, and damages of whatever nature or source that could have been asserted from the beginning of the universe to the end of time, whether in law (including, without limitation, bankruptcy law) or equity, known or unknown, accrued or unaccrued, direct or indirect, contingent or determined, liquidated or unliquidated, including, but without limiting the generality

of the foregoing, any and all claims, demands, suits, or causes of action and damages relating to, arising out of or under, or pursuant to (a) the Original Lease, (b) any right under the Original Lease to a reconciliation of Expense Payments and Tax Payments (as the same are defined in the Original Lease), (c) the Bankruptcy Code or the Bankruptcy Cases, or (d) the "Retained Causes of Action" (as that term is defined in the Plan) as such Retained Causes of Action are listed as of the date of this Joint Stipulation or in the future. The Debtors represent and warrant that no claims, demands, suits, causes of action, or damages referenced in this section have been assigned.

7. Within three (3) days of the Effective Date, the Debtors shall file a notice of rejection pursuant to the Order Authorizing and Approving Procedures to Reject Executory Contracts and Unexpired Leases and (II) Granting Related Relief [Docket No. 250] rejected the Debtors' sublease with respect to certain portion of the Leased Premises.

8. The Administrative Claim shall be deemed an allowed claim against the Debtors' estates and, to the extent not already satisfied, be paid in accordance with the terms of the Plan.

9. Nothing contained in this Joint Stipulation, and no action taken pursuant to the relief requested or granted other than as set forth in paragraph 8, is intended as or shall be construed or deemed to be: (a) an admission as to the amount, validity or priority of, or basis for any claim against the Debtors under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of the Debtors' or any other party in interest's right to dispute any claim on any grounds; (c) a promise or requirement to pay any particular claim; (d) an implication, admission, or finding that any particular claim is an administrative expense claim or other priority claim; (e) an admission as to the validity, priority, enforceability, or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates; or (f) a waiver or limitation of any claims, causes of action, or other rights of the Debtors, Dell-Mettawa or any other party in interest

against any person or entity under the Bankruptcy Code or any other applicable law.

10. All rights and defenses of the Debtors and Dell-Mettawa are preserved, including all rights and defenses of the Debtors and Dell-Mettawa with respect to a claim for damages arising as a result of the Original Lease rejection, including any right to assert an offset, recoupment, counterclaim, or deduction.

11. Upon the Effective Date, the Debtors are authorized to enter into and perform under the New Lease attached hereto as **Exhibit A** pursuant to section 363 of the Bankruptcy Code.

12. Notwithstanding anything set forth in any agreement between the Debtors and Zoll, including but not limited to, the Zoll APA and Transition Services Agreement between the Debtors and Zoll (the "TSA"), the cancellation of any services by Zoll under the Zoll APA or TSA shall not relieve Zoll of, and Zoll shall be required to pay to the Debtors for all obligations guaranteed under the terms of the New Lease for the full term of the New Lease and any Extension Term (as defined in the New Lease).

13. This Joint Stipulation shall constitute the entire agreement and understanding of the Parties relating to the subject matter hereof and supersedes all prior agreements and understandings relating to the subject matter hereof.

14. The undersigned who execute this Joint Stipulation by or on behalf of each respective Party represents and warrants that he or she has been duly authorized and empowered to execute and deliver this Joint Stipulation on behalf of such Party and that this Joint Stipulation constitutes a valid, binding agreement in accordance with its terms.

15. This Joint Stipulation may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, and it

shall constitute sufficient proof of this Joint Stipulation to present any copies, electronic copies, or facsimiles signed by the Parties here to be charged.

16. This Joint Stipulation shall not be modified, altered, amended or vacated without the written consent of all Parties hereto or by further order of the Bankruptcy Court.

17. Each Party represents and warrants to the other Party that it: (i) made this Joint Stipulation freely and voluntarily and with full knowledge of its significance, and (ii) has been represented by counsel of its own choice in the negotiations preceding the execution of this Joint Stipulation and in connection with the preparation and execution of this Joint Stipulation.

18. This Joint Stipulation shall be binding upon and inure to the benefit of the Parties and their respective successors, administrators, and assigns (including any successors or administrators of the Debtors under the Plan). Without limiting the foregoing, and for the avoidance of doubt, all obligations, duties, liabilities, and agreements of the Debtors under this Joint Stipulation shall also be the obligations, duties, liabilities, and agreements of the estates of the Debtors and Debtors-in-possession, any wind-down Debtor (or similar entity), Plan administrator (or similar entity), other successor to any of the Debtors, the Debtors' assigns, or trustee who is appointed in the Bankruptcy Cases.

19. In the event that the Effective Date does not occur by December 3, 2024, all relief set forth herein shall be considered null and void and the Parties shall maintain all rights, remedies, and defenses.

20. The Bankruptcy Court shall retain jurisdiction to resolve any disputes or controversies arising from this Joint Stipulation.

[*Remainder of Page Intentionally Left Blank – Signatures to Follow*]

Dated: November 22, 2024

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Exhibit A

New Lease