**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)

**REAL STAFFING GROUP'S APPLICATION FOR
ALLOWANCE AND PAYMENT OF ADMINISTRATIVE EXPENSE CLAIM**

Real Staffing Group, a trading division of Specialist Staffing Solutions, Inc. ("Real Staffing"), files this *Application for Allowance and Payment of Administrative Expense Claim* (the "Application"), in support of which Real Staffing further states as follows:

SUMMARY

1. Real Staffing provided employees to Vyaire Medical, Inc. ("Vyaire") under the parties' *Master Staffing Agreement* (as amended, the "MSA"). Post-petition invoices totaling $183,012.71 remain unpaid. Real Staffing therefore requests allowance and payment of an administrative expense claim under 11 U.S.C. § 503(b)(1)(A) in that amount.

JURISDICTION & VENUE

2. This Court has jurisdiction of this Application under 28 U.S.C. §§ 157 and 1334. This Application is a core proceeding under 28 U.S.C. §§ 157(b)(2). Venue in this Court is proper under 28 U.S.C. § 1409. This Application is based on 11 U.S.C. § 503(b)(1).

[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.

BACKGROUND

3. On June 9, 2024, (the "Petition Date"), the Debtors each filed a voluntary petition for relief pursuant to chapter 11 of the Bankruptcy Code.

4. Real Staffing and Vyaire are parties to the MSA, a copy of which is attached hereto as Exhibit A. Under the MSA, Real Staffing provides staffing and personnel placement related recruiting services to Vyaire. Neither party has terminated the MSA, and Real Staffing continued to provide employees to Vyaire under the MSA after the Petition Date.

5. On November 14, 2024, the Bankruptcy Court confirmed the *Second Amended Joint Chapter 11 Plan of Reorganization of Vyaire Medical, Inc. and Its Debtor Affiliates* (Dkt. No. 719, the "Plan"), which was attached as Exhibit A to the *Findings of Fact, Conclusions of Law, and Order Confirming the Second Amended Joint Chapter 11 Plan of Reorganization of Vyaire Medical, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* (Dkt. No. 745, the "Confirmation Order").

6. On November 27, 2024, the Debtors filed their *Notice of (I) Entry of Confirmation Order, (II) Occurrence of Effective Date, and (III) Related Bar Dates* (Dkt. No. 810), indicating that the Effective Date[2] the deadline for creditors to file requests for payment of Administrative Claims under the Plan and Confirmation Order is December 27, 2024.

7. The following invoices (the "Invoices") for post-Petition Date services remain unpaid as of the filing of this Application (copies of which are attached hereto as Exhibit B):

Invoice	Date	Due date	Service Period	Grand Total
CI-1102-00048518	11-Jun-24	10-Aug-24	10-Jun-24	3,360.00
CI-1102-00052858	04-Jul-24	02-Sep-24	10-Jun-24	3,382.00
CI-1102-00052860	04-Jul-24	02-Sep-24	30-Jun-24	2,848.00

[2] Capitalized terms not defined herein have the meaning attributed to them in the Plan and Confirmation Order.

Invoice	Date	Due date	Service Period	Grand Total
CI-1102-00052861	04-Jul-24	02-Sep-24	24-Jun-24	3,960.50
CI-1102-00052867	04-Jul-24	02-Sep-24	16-Jun-24	3,960.50
CI-1102-00053226	04-Jul-24	02-Sep-24	21-Jun-24	4,026.00
CI-1102-00053227	04-Jul-24	02-Sep-24	10-Jun-24	3,630.00
CI-1102-00053228	04-Jul-24	02-Sep-24	21-Jun-24	3,976.50
CI-1102-00053230	04-Jul-24	02-Sep-24	30-Jun-24	3,734.00
CI-1102-00053232	04-Jul-24	02-Sep-24	23-Jun-24	3,250.00
CI-1102-00054230	09-Jul-24	07-Sep-24	30-Jun-24	4,026.00
CI-1102-00054234	09-Jul-24	07-Sep-24	07-Jul-24	3,036.00
CI-1102-00054236	09-Jul-24	07-Sep-24	30-Jun-24	4,227.50
CI-1102-00054247	09-Jul-24	07-Sep-24	07-Jul-24	2,670.00
CI-1102-00054314	09-Jul-24	07-Sep-24	07-Jul-24	1,680.00
CI-1102-00054345	09-Jul-24	07-Sep-24	07-Jul-24	3,560.00
CI-1102-00055580	19-Jul-24	17-Sep-24	14-Jul-24	3,827.00
CI-1102-00055581	19-Jul-24	17-Sep-24	14-Jul-24	3,560.00
CI-1102-00055908	23-Jul-24	21-Sep-24	21-Jul-24	3,560.00
CI-1102-00056391	24-Jul-24	22-Sep-24	21-Jul-24	4,000.00
CI-1102-00056392	24-Jul-24	22-Sep-24	21-Jul-24	3,192.00
CI-1102-00056393	24-Jul-24	22-Sep-24	14-Jul-24	1,850.00
CI-1102-00057518	30-Jul-24	28-Sep-24	28-Jul-24	3,560.00
CI-1102-00057533	30-Jul-24	28-Sep-24	30-Jun-24	65.71
CI-1102-00057539	30-Jul-24	28-Sep-24	28-Jul-24	3,560.00
CI-1102-00057540	30-Jul-24	28-Sep-24	21-Jul-24	3,560.00
CI-1102-00057587	30-Jul-24	28-Sep-24	28-Jul-24	2,688.00
CI-1102-00057589	30-Jul-24	28-Sep-24	28-Jul-24	3,900.00
CI-1102-00059183	05-Aug-24	04-Oct-24	21-Jul-24	4,125.00
CI-1102-00059184	05-Aug-24	04-Oct-24	28-Jul-24	4,026.00
CI-1102-00059187	05-Aug-24	04-Oct-24	04-Aug-24	3,036.00
CI-1102-00059309	06-Aug-24	05-Oct-24	04-Aug-24	3,560.00
CI-1102-00059330	06-Aug-24	05-Oct-24	04-Aug-24	1,302.00
CI-1102-00059331	06-Aug-24	05-Oct-24	04-Aug-24	4,000.00

Invoice	Date	Due date	Service Period	Grand Total
CI-1102-00059333	06-Aug-24	05-Oct-24	04-Aug-24	672.00
CI-1102-00067015	09-Sep-24	08-Nov-24	01-Sep-24	2,268.00
CI-1102-00067085	09-Sep-24	08-Nov-24	08-Sep-24	2,136.00
CI-1102-00067187	10-Sep-24	09-Nov-24	11-Aug-24	2,640.00
CI-1102-00067752	10-Sep-24	09-Nov-24	08-Sep-24	3,560.00
CI-1102-00068617	16-Sep-24	15-Nov-24	15-Sep-24	3,560.00
CI-1102-00068618	16-Sep-24	15-Nov-24	25-Aug-24	5,478.00
CI-1102-00068685	16-Sep-24	15-Nov-24	15-Sep-24	6,400.00
CI-1102-00068701	16-Sep-24	15-Nov-24	15-Sep-24	3,560.00
CI-1102-00070640	23-Sep-24	22-Nov-24	22-Sep-24	3,560.00
CI-1102-00070724	23-Sep-24	22-Nov-24	22-Sep-24	3,560.00
CI-1102-00071179	24-Sep-24	23-Nov-24	22-Sep-24	4,000.00
CI-1102-00073042	30-Sep-24	29-Nov-24	29-Sep-24	4,272.00
CI-1102-00073676	01-Oct-24	30-Nov-24	29-Sep-24	4,000.00
CI-1102-00075531	07-Oct-24	06-Dec-24	06-Oct-24	4,272.00
CI-1102-00077858	14-Oct-24	13-Dec-24	13-Oct-24	6,408.00
CI-1102-00079265	21-Oct-24	20-Dec-24	20-Oct-24	3,560.00
CI-1102-00080910	29-Oct-24	28-Dec-24	08-Sep-24	3,560.00
CI-1102-00089392	29-Nov-24	28-Jan-25	08-Sep-24	2,848.00
				183,012.71

8. As the invoices illustrate, Real Staffing provided nine employees to Vyaire from the Petition Date through November 2024, all of whom actually provided services to or on behalf of Vyaire.

ARGUMENT AND AUTHORITIES

9. Administrative expense claims arise under section 503 of the Bankruptcy Code, which provides in relevant part as follows:

> After notice and a hearing, there shall be allowed administrative expenses, other than claims allowed under section 502(f) of this title, including—(1) (A)the actual, necessary costs and expenses of preserving the estate ….

11 U.S.C. § 503(b)(1)(A). "Thus, for a claim to be given priority as an administrative expense under this provision of the Code, it must be (1) a 'cost' or 'expense' that is (2) 'actual' and 'necessary' to (3) 'preserving the estate.'" *Pennsylvania Dep't of Env't Res. v. Tri-State Clinical Lab'ys, Inc.*, 178 F.3d 685, 689 (3d Cir. 1999). Put differently, "[a]n administrative expense claim is entitled to priority under Section 503(b)(1)(A) if: (1) there was a 'post-petition transaction between the claimant and the estate,' and (2) those expenses yielded a 'benefit to the estate.'" *In re Energy Future Holdings Corp.*, 990 F.3d 728, 741 (3d Cir. 2021) (quoting *In re Women First Healthcare, Inc.*, 332 B.R. 115, 121 (Bankr. D. Del. 2005)).

10. The first element is satisfied when the claimant renders services post-petition necessary for preserving the estate. *See id.* (citing *Former Employees of Builders Square Retail Stores v. Hechinger Inv. Co. of Del. (In re Hechinger Inv. Co. of Del.)*, 298 F.3d 219, 226 (3d Cir. 2002)). "In *Reading Co. v. Brown,* the Supreme Court concluded that 'the words 'preserving the estate' include the larger objective, common to arrangements, of operating the debtor's business with a view to rehabilitating it.'" *Pennsylvania Dep't of Env't Res. v. Tri-State Clinical Lab'ys, Inc.*, 178 F.3d at 689 (quoting *Reading Co. v. Brown*, 391 U.S. 471, 476–77, 88 S.Ct. 1759, 20 L.Ed.2d 751 (1968)). "The dictionary defines 'necessary' as 'absolutely required' or 'needed to bring about a certain effect or result.'" *Id.* (quoting Webster's II New Riverside University Dictionary 787 (1994)). "However, the Supreme Court has held that the concept of 'necessary costs' under the Code is somewhat broader than would be suggested by the dictionary definition." *Id.* "Thus, 'usual and necessary costs should include costs ordinarily incident to operation of a business, and not be limited to costs without which rehabilitation would be impossible.'" *Id.* (quoting *Reading,* 391 U.S. at 483, 88 S.Ct. 1759).

11. "The second requirement, that the claim applicant provided a benefit to the estate … does not itself appear in the text of Section 503(b)(1)(A)." *Energy Future Holdings Corp.*, 990 F.3d 7at 741. "Instead, it functions as 'merely a way of testing whether a particular expense was truly 'necessary' to the estate: If it was of no 'benefit,' it cannot have been 'necessary' within the meaning of § 503(b)(1)(A).'" *Id* (quoting *Matter of Whistler Energy II, L.L.C.*, 931 F.3d 432, 443 (5th Cir. 2019) (internal quotation marks and citation omitted)). "The benefit does not, however, 'have to be substantial' to qualify." *Id.* (quoting *In re Women First*, 332 B.R. at 121).

12. The Invoices represent actual costs ordinarily incident to the operation of Vyaire's business during the period after the Petition Date. Real Staffing provided nine employees to Vyaire during this time period, all of whom actually rendered services to or on behalf of Vyaire. Indeed, Real Staffing has provided employees to Vyaire under the MSA for more than six years. There was, therefore, a post-petition transaction between Vyaire and the estate. The employees whom Real Staffing provided to Vyaire actually performed work for Vyaire and therefore provided a benefit, meaning that the expense was necessary. As a result, the cost of providing these employees constitutes an administrative expense entitled to priority under 11 U.S.C. § 503(b)(1)(A).

RELIEF REQUESTED

WHEREFORE, PREMISES CONSIDERED, Real Staffing respectfully requests that the Court enter an order (1) granting this Application; (2) allowing Real Staffing's administrative expense claim in the amount of $183,012.71 and directing the Debtor to pay the same as required in the Plan and Confirmation Order; and (3) providing Real Staffing such other and further relief to which it may be entitled.

RESPECTFULLY SUBMITTED the 23rd day of December, 2024.

WOMBLE BOND DICKINSON (US) LLP

December 23, 2024
Wilmington, Delaware

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on December 23, 2024, he caused true and correct copies of this document to be served (i) via the Court's CM/ECF system on all parties entitled to such notice; and (ii) via email on the recipients listed below:

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