

**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)

(Jointly Administered)

**DECLARATION OF KEVIN RAMIREZ IN SUPPORT OF THE
REQUEST FOR ALLOWANCE AND PAYMENT OF
ADMINISTRATIVE EXPENSE CLAIM OF SALESFORCE, INC.**

I, Kevin Ramirez, declare as follows:

1. I am the Manager, Global Bad Debt for Salesforce, Inc. (“Salesforce”), and I am authorized to execute this Declaration on behalf of Salesforce. If called to testify, I could and would competently testify to the facts set forth herein based on my personal knowledge of those facts, events and transactions.²

2. Salesforce is a Delaware corporation, and, among other activities, it provides on-demand customer relationship management and software application services (collectively, the “Salesforce Services”) to Salesforce’s business customers (individually, a “Salesforce Customer” and, collectively, “Salesforce Customers”).

3. This declaration is filed in support of the *Motion for Allowance and Payment of Administrative Expense Claim of Salesforce, Inc.* (the “Administrative Expense Request”) filed by Salesforce with respect to certain amounts due and owing, but unpaid, with respect to the post-

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, along with the last four digits of their U.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 Capitalized terms used in this Declaration, but which are not defined herein, shall have the meanings ascribed to them in the Administrative Expense Motion filed concurrently herewith unless indicated otherwise.

petition Salesforce Services provided by Salesforce to Vyair Medical, Inc. (the “Debtor”).

MAINTENANCE OF BUSINESS RECORDS

4. In my official capacity, I have personal knowledge of the method by which Salesforce maintains permanent records of its transactions (individually, a “Transaction” and, collectively, the “Transactions”) with its customers and, thereupon, I declare and state that Salesforce maintains permanent records of all Transactions in a computerized accounting system. All amounts due and owing to Salesforce with respect to any Transaction with a Salesforce Customer including, but not limited to, payments related to the Services, taxes, interest owed with respect to any Service or agreement, fees, and other charges (individually, an “Obligation” and, collectively, the “Obligations”) are entered in this accounting system at, or near, the time such Obligations are incurred. Likewise, all payments made by a Salesforce Customer with respect to any Obligation or Transaction, and all other credits and debits related to any Obligation or Transaction, are entered in this accounting system at, or near, the time such payment is received and/or such credit or debit is made or incurred. Each such entry is made in the regular course of business by employees of Salesforce who process these payments, receipts, credits, and debits. If necessary, Salesforce can print hard copies of all entries.

5. I have personal knowledge of the manner by which Salesforce maintains records of its written contracts, statements of work, schedules and any other documents related to such contracts, and all amendments to any contract, statement of work, schedule, and/or any other document (individually, a “Salesforce Agreement” and, collectively, the “Salesforce Agreements”) with its Customers. As a regular part of its business, Salesforce maintains permanent records of the Salesforce Agreements and these records are compiled at the time, or near the time, that a Salesforce Agreement is received or processed.

SALESFORCE CONTRACT

6. I have personally reviewed Salesforce’s records relating to the Debtor, including the Transactions, the Obligations, and the Salesforce Agreements, and I am personally familiar with the Debtor’s account with Salesforce.

7. Prior to the June 9, 2024, Salesforce and the Debtor entered into those certain Order Forms listed on the Administrative Expense Claim Summary³ (the “Order Forms”), which are governed by that certain *Master Subscription Agreement* (the “MSA”) (the MSA and the Order Forms, collectively, constitute the “Salesforce Contract”) as identified on Exhibit “A” attached hereto and incorporated by reference herein⁴.

8. Pursuant to the Salesforce Contract: (i) the Debtor ordered certain Salesforce Services and became obligated to pay in full the aggregate amounts due pursuant to this contract with respect to such services; (ii) Salesforce became obligated to provide the Salesforce Services to the Debtor; (iii) Salesforce has provided such services to the Debtor; and (iv) the Debtor accepted and utilized the Salesforce Services provided pursuant to the Salesforce Contract. Pursuant to the terms and conditions of the MSA, each Party to the Salesforce Contract is obligated to maintain the confidentiality of all Confidential Information including, without limitation, (i) the Debtor’s Data, (ii) Salesforce’s Confidential Information (including, without limitation, the Services and Content), (iii) the terms and conditions of MSA and all Order Forms (including pricing), and (iv) business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by a Party. Pursuant to Salesforce’s obligation to maintain the confidentiality of the Confidential Information, a copy of the Salesforce Contract is not attached hereto.⁵ However, upon request and subject to adequate procedures protecting the Confidential Information from disclosure in violation of the MSA, Salesforce will make available a copy of the Salesforce Contract to the Debtor or other appropriate representative of the Debtor’s estate.

³ The Administrative Expense Claim Summary is attached hereto as Exhibit A and is incorporated by reference here in as if fully set forth.

⁴ Due to the confidentiality provisions of the MSA, a copy of the Salesforce Contract and related invoices (the “Invoices”) are not attached to this Declaration. However, subject to appropriate non-disclosure protections, a copy of the Salesforce Contract and the Invoices will be made available to the Debtor in connection with the Administrative Expense Request.

⁵ The Capitalized Terms referenced in this paragraph not expressly defined shall have the meaning(s) as set forth in the MSA, respectively.

BANKRUPTCY CASE

9. Based upon information and belief, I am informed that, on June 9, 2024 (the “Petition Date”) the Debtor filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code in the United States Bankruptcy Court for the District of Delaware (the “Court”) and, thereby, commenced this case under chapter 11 (the “Bankruptcy Case”).

10. Based upon information and belief, I am informed that on or about November 27, 2024, the Debtor filed its *Notice of (I) Entry of Confirmation Order, (II) Occurrence of Effective Date, and (III) Related Bar Dates* [D.I. 810] (the “Notice of Effective Date”) listing the Effective Date, as defined in the Plan, as having occurred on November 27, 2024, and the deadline to file Administrative Claims as December 27, 2024 (the “Administrative Claims Bar Date”).

THE ADMINISTRATIVE EXPENSE CLAIM

11. Based upon my review of Salesforce’s books and records pertinent to the Debtor’s account, I declare and state that, from and after Petition Date, the Debtor knowingly accepted the Salesforce Services provided and that provision of such services was in the ordinary course of business of the parties.

12. Based upon my review of Salesforce’s books and records pertinent to the Debtor’s account, I declare and state that, from the commencement of the Salesforce Contract through the date of this Declaration, the Debtor has failed to pay all post-petition Fees due and owing pursuant to the Salesforce Contract and, more specifically, an amount of not less than **US \$207,783.78**, (the “Administrative Expense Claim”)⁶ remains due and owing to Salesforce pursuant to the Salesforce Contract for services arising on or after the Petition Date until the date that the Salesforce Contract is assumed or rejected by the Debtor.

⁶ See, the Administrative Expense Claim Summary which is attached hereto as Exhibit A and is incorporated by reference here in as if fully set forth.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 26
day of December 2024 at San Francisco, California

DocuSigned by:



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Kevin Ramirez

Petition Date:6/9/24

Contract No	Bill To	MSA/PSA	Order No.	TSA Contract	Date	Term	Invoice No.	Date	Due Date	Service Period	Balance Due	Administrative Expense Claim	Unbilled contract balance	Amount Paid
03436284	Vyaire Medical	MSA	Q-07842041 Q-07114790 Q-01787278				28925861B	3/1/24	4/15/2024	6/9/24 to 2/26/25	\$ 183,506.64	\$ 183,506.64		
03436284	Vyaire Medical	MSA	Q-07842041. Q-07114790, Q-07187278				28925861C	3/1/24	4/15/2024	3/27/25 to 3/30/25	\$ 24,277.14	\$ 24,277.14		
03561536	Vyaire Medical	MSA	Q-07416306	YES	7/28/23	7/31/23 to 1/30/26	TBD	TBD	1/31/2025	TBD	\$ 19,327.03		\$ 19,327.03	
											<u>\$ 227,110.81</u>	<u>\$ 207,783.78</u>	<u>\$ 19,327.03</u>	<u>\$ -</u>

Current Admin. Exp. Total \$ 207,783.78