

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

In re:

VYAIRE MEDICAL, INC.,

Liquidating Debtor.

Chapter 11

Case No. 24-11217 (BLS)

RE: D.I. 989 and 1046

**REPLY TO PLAN ADMINISTRATOR’S OBJECTION TO DATASITE LLC’S
AMENDED MOTION TO ALLOW LATE FILED ADMINISTRATIVE EXPENSE
CLAIM UNDER 11 U.S.C. §503(b)(1)(A) AND FOR ALLOWANCE AND IMMEDIATE
PAYMENT OF AN ADMINISTRATIVE EXPENSE CLAIM**

Datasite LLC (“Movant”), by and through undersigned counsel, hereby submits its reply to the Plan Administrator’s Objection (the “Objection”) to Movant’s Amended Motion to Allow Late Filed Administrative Expense Claim Under 11 U.S.C. submits this reply (the "Reply") to allow late filed Administrative Expense Claim under 11 U.S.C. §503(b)(1)(A) §503(b)(1)(A) and For Allowance and Immediate Payment of an Administrative Expense Claim (the “Motion”) and states as follows:

1. In its Objection, the Plan Administrator failed to acknowledge that Invoice Number INV-756688, dated January 17, 2025, in the amount of \$27,340.03, pertains to services rendered from November 19, 2024, to November 27, 2024. These services were clearly provided to Vyaire Medical Inc. (hereinafter referred to as, the “Debtor”) prior to the Effective Date of the Plan as per the Confirmation Order, i.e. November 27, 2024. Accordingly, this portion of the claim should undoubtedly be afforded administrative claims priority.

2. The remaining billed amounts under Invoice Number INV-752689, in the amount of \$91,133.43, for services rendered in December 2024, and Invoice Number INV-756657, in the

amount of \$52,916.14, for services rendered from January 1, 2025, to January 18, 2025, were incurred in the ordinary course of business of the Debtor going through the process of reorganization. Accordingly, these amounts should be afforded administrative priority, as the Debtors-in-Possession continued to benefit from the virtual data room remaining accessible to both the Debtor and the purchaser of its assets. The Debtor and its debtor and non-debtor affiliates derived a direct benefit from this access, as the virtual data room was critical to the sale process and continued to be utilized after the Effective Date. Furthermore, any access to the data in the virtual data room by the buyer indirectly benefitted the Debtor, as it was contractually obligated under Asset Purchase Agreements with buyers of Debtor's assets, Zoll Medical Corporation and Trudell Medical Limited, to provide the buyers with access to the files stored in the data room. Both Asset Purchase Agreements made reference to the data stored in the dataroom provided by Datasite. The Debtor made a conscious decision to not reject Datasite's executory contract and use Datasite's services during and after its sale process. Therefore, the services billed under the invoice forming Datasite's claim are actual, necessary costs and expenses of preserving the estate. Administrative claims will be allowed for "actual, necessary costs and expenses of preserving the estate...." 11 U.S.C. § 503(b)(1)(A). An expense may qualify for treatment under section 503(b) if "(1) the right to payment arose from a postpetition transaction with the debtor" and "(2) the consideration supporting the right to payment was beneficial to the estate of the debtor." *Woburn Assocs. v. Kahn (In re Hemingway Transp., Inc.)*, 954 F.2d 1, 5 (1st Cir.1992).

3. Datasite continued to provide these services until it did not close the dataroom, solely because it had not received any notice of the sale of assets, the voting on the Plan, the Plan Confirmation Order, or the rejection of its claim that could provide an intimation to Datasite that the contract would be rejected and its invoices would not be paid in the ordinary course of business.

The untimeliness of the claim filing is solely due to the fact that the notice of the rejection of the contract did not reach the appropriate personnel at Datasite. Had Datasite received timely notice, it would have promptly filed its claim before the deadline.

4. Additionally, no prior written notice was provided by the Debtor to Datasite when the Debtor transferred or granted virtual dataroom access to Zoll and Trudell. The e-mail communicated dated January 14, 2025 from Joel Amico, a representative of the Plan Administrator was the first notice regarding rejection of the executory contract that Datasite received after which Datasite promptly closed the virtual dataroom. Paragraph 9 (f) of the United States General Terms and Conditions (Revised July 31, 2023) which forms part of the Agreement between Datasite and Vyair required a written notice from the Debtor and states as follows:

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(f) Assignment. Upon providing written notice, either Party may assign its rights, interests, and/or obligations under this Agreement or any SOW to any parent, subsidiary, Affiliate, or to a successor of all its assets or stock. Notwithstanding the foregoing, Customer may not assign its rights, interests, and/or obligations under this Agreement or any SOW to any Datasite Competitor without Datasite's prior written consent. For purposes of this section, "Competitor" shall mean any entity which, either itself or has an Affiliate which, sells, licenses, or provides, any software, application service or system comprised of one or more electric or digital document repositories for facilitating transaction due diligence, mergers, acquisitions, divestiture, financing, investment, investor or government relations, research and development, clinical trials or other business processes in competition with any of the Services or other services Datasite provides. This Agreement is binding upon and inure to the benefit of the Parties and their respective successors and assigns.

5. The Debtor undeniably benefitted from Datasite's services in providing and maintaining the virtual data room, which was critical to the sale process and continued to provide value even after the sale of its assets. "A benefit to the estate can be found when there is some, actual purpose for retaining the property at issue." See *Kimzey, 2018 WL 1321971*, at *6. Although the Debtor has maintained that it did not use Datasite's services after the Effective Date, the use

of the services is not required to give rise to an administrative claim. See *id.* (finding that the debtor obtained a benefit from retention of equipment, even if it did not use the equipment, when the debtor decided it would benefit in some manner from the retention of the equipment). In the present case, the accessibility of the virtual data room facilitated the transaction by enabling the Debtor to fulfill its obligations to the buyers and ensuring a seamless transfer of information essential to the sale. Moreover, the continued access to the data room beyond the Effective Date has provided an ongoing benefit to the Debtor, as it remains a crucial repository of information required under the Zoll and Trudell Asset Purchase Agreements. Allowance of Datasite's claim under § 503(b) is supported by the record in these proceedings and aligns with the principle that services that substantially benefit the estate should be afforded administrative priority. Had Datasite not continued to provide these services, the Debtor's ability to complete the sale and comply with its contractual obligations would have been significantly impaired. Accordingly, Datasite has met its burden of demonstrating that its services were essential to the estate and that the corresponding claim should be granted administrative priority pursuant to Bankruptcy Code § 503(b).

WHEREFORE, Datasite requests that the Court overrule the Plan Administrator's objection to the Motion and grant such other relief as may be just and proper.

Dated: April 3, 2025

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