

**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)

**FEE EXAMINER'S FINAL REPORT PERTAINING TO SECOND INTERIM AND
FINAL FEE APPLICATIONS OF CERTAIN RETAINED PROFESSIONALS**

David M. Klauder (the “Fee Examiner”), the Fee Examiner for the bankruptcy estates (the “Bankruptcy Estates”) of Vyaire Medical, Inc., *et al.*, (the “Debtors”), hereby submits this Final Report (the “Final Report”) pursuant to the Court’s *Order Appointing Fee Examiner and Establishing Related Procedures for the Review of Fee Applications of Retained Professionals* [D.I. 690] (the “Fee Examiner Order”) in connection with applications for the allowance of compensation and reimbursement of expenses for the second interim and final fee period (the “Second Interim and Final Fee Applications”) of certain professionals retained in the above-referenced case (the “Retained Professionals”)² as listed on **Exhibit A**. In support of this Final Report, the Fee Examiner respectfully represents as follows:

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 The Fee Examiner previously reviewed the last interim and final fee applications for retained professionals
Kirkland & Ellis LLP and PJT Partners LP. Those professionals' fee applications were addressed in the Final
Report filed on January 21, 2025 [D.I. 938].

BACKGROUND

1. On June 9, 2024 (the “Petition Date”), the Debtors filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) in this Court.

2. On October 30, 2024, David M. Klauder was appointed as the Fee Examiner in these cases.

3. As noted and set out in detail in the Fee Examiner Order, the Fee Examiner is tasked with reviewing the various fee applications filed by retained professionals in the case and recommending any reductions in fees or expenses sought in the fee applications. The Fee Examiner Order also sets out in detail the process for the Fee Examiner’s review, including issuance of initial reports, a consultation period with retained professionals, and the filing of this Final Report, which contains the Fee Examiner final recommendations to this Court with respect to the Second Interim and Final Fee Applications.

4. The Fee Examiner reviewed the Second Interim and Final Fee Applications for compliance with sections 330 and 331 of the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Bankruptcy Rules”), the *Order Establishing Procedures for Interim Compensations and Reimbursement of Expenses of Professionals*, dated July 9, 2024 [D.I. 218] (the “Interim Compensation Order”), and the Appendix B Guidelines for Reviewing Applications for Compensation & Reimbursement of Expenses filed under United States Code by Attorneys in Large Chapter 11 Cases (78 Fed. Reg. No. 116, page 36248 (June 17, 2013)) (the “UST Guidelines”). In addition, the Fee Examiner reviewed the Second Interim and Final Fee Applications for general compliance with legal

precedent established by the District Courts and Bankruptcy Court for the District of Delaware, the Third Circuit Court of Appeals, and other applicable precedent.

5. Following that review, the Fee Examiner issued Interim Reports to the Retained Professionals regarding the Second Interim and Final Fee Applications. The Interim Report set forth the legal and other standards governing the review and raised questions as to certain designated time entries or expenses. The Retained Professionals were invited to respond to the Interim Report, and they did so through email exchange and/or discussions with the Fee Examiner. Resolution was then reached between the Fee Examiner and each of the Retained Professionals as described below.

**THE FEE EXAMINER'S RECOMMENDATIONS
AS TO THE SECOND INTERIM AND FINAL FEE APPLICATIONS**

6. The Fee Examiner makes the following recommendations for the Second Interim and Final Fee Applications. Attached as Exhibit A is the chart summarizing the fees and expenses sought by the Retained Professionals in the Second Interim and Final Fee Applications along with the agreed-upon reductions between the Fee Examiner and the Retained Professionals.

Professionals Retained by the Debtors

Cole Schotz, P.C.

Second Interim and Final Fee Application

7. Cole Schotz, P.C. ("Cole Schotz") are co-counsel to the Debtors. On January 15, 2025, Cole Schotz filed its *Second Interim and Final Fee Application* [D.I. 932] (the "Cole Schotz Fee Application"). In the Cole Schotz Fee Application, Cole Schotz requests approval of compensation in the amount of \$1,588,221.00 and reimbursement of expenses in the amount of \$10,571.51 for the interim period of September 1, 2024 through November 14, 2024 and

\$3,131,085.00 and reimbursement of expenses in the amount of \$16,601.99 for the final period of June 9, 2024 through November 14, 2024.

8. The Fee Examiner reviewed the Cole Schotz Fee Application to ensure compliance with the applicable rules, orders and guidelines. Based on that review, the Fee Examiner generated an interim report that identified the following general issues with the Cole Schotz Fee Application:

- a. Excessive Internal Communications; and
- b. Time Spent on Document Review.

9. In response to the Fee Examiner's interim report, Cole Schotz and the Fee Examiner discussed the issues raised by the interim report. As a result of that discussion, Cole Schotz and the Fee Examiner have agreed to a recommended reduction of **\$5,600.00** in compensation. The Fee Examiner has no objection to this Court's approval of the Cole Schotz Fee Application, as modified.

BDO USA P.C.

Second Interim and Final Fee Application

10. BDO USA P.C. ("BDO") are Tax Accountants to the Debtors. On January 15, 2025, BDO filed its *Second Interim and Final Fee Application* [D.I. 933] (the "BDO Fee Application"). In the BDO Fee Application, BDO requests approval of compensation in the amount of \$359,071.60 for the interim period of September 1, 2024 through November 14, 2024 and \$1,505,329.64 for the final period of June 9, 2024 through November 14, 2024.

11. The Fee Examiner reviewed the BDO Fee Application to ensure compliance with the applicable rules, orders and guidelines. While the Fee Examiner raised several discreet issues with the BDO Fee Application, no fee or expense reductions were ultimately requested.

12. The Fee Examiner has no objection to this Court's approval of the BDO Fee Application.

Omni Agent Solutions, Inc.

First Interim and Final Fee Application

13. Omni Agent Solutions, Inc. ("Omni") are the administrative agent to the Debtors. On January 15, 2025, Omni filed its First Interim and Final Fee Application [D.I. 934] (the "Omni Fee Application"). In the Omni Fee Application, Omni requests approval of compensation in the amount of \$37,679.20 for the interim and final period of June 9, 2024 through November 14, 2024.

14. The Fee Examiner reviewed the Omni Fee Application to ensure compliance with the applicable rules, orders and guidelines and no issues were noted.

15. The Fee Examiner has no objection to this Court's approval of the Omni Fee Application.

Professionals Retained by Official Committee of Unsecured Creditors

McDermott Will & Emery LLP

Second Interim and Final Fee Application

16. McDermott Will & Emery LLP ("MWE") are counsel to the Official Committee of Unsecured Creditors (the "Committee"). On January 24, 2025, MWE filed its *Second Interim and Final Fee Application* [D.I. 972] (the "MWE Fee Application"). In the MWE Fee Application, MWE requests approval of compensation in the amount of \$922,735.78 and reimbursement of expenses in the amount of \$3,208.79 for the interim period of September 1, 2024 through November 14, 2024 and \$2,176,106.18 and reimbursement of expenses in the amount of \$3,208.79 for the final period of June 28, 2024 through November 14, 2024.

17. The Fee Examiner reviewed the MWE Fee Application to ensure compliance with the applicable rules, orders and guidelines. While the Fee Examiner raised several discreet issues with the MWE Fee Application, no fee or expense reductions were ultimately requested.

18. The Fee Examiner has no objection to this Court's approval of the MWE Fee Application.

Berkeley Research Group, LLC

Second Interim and Final Fee Application

19. Berkeley Research Group, LLC ("BRG") are financial advisors to the Committee. On January 24, 2025, BRG filed its *Second Interim and Final Fee Application* [D.I. 973] (the "BRG Fee Application"). In the BRG Fee Application, BRG requests approval of compensation in the amount of \$804,931.00 for the interim period of September 1, 2024 through November 14, 2024 and \$1,733,684.00 for the final period of June 28, 2024 through November 14, 2024.

20. The Fee Examiner reviewed the BRG Fee Application to ensure compliance with the applicable rules, orders and guidelines. While the Fee Examiner raised several discreet issues with the BRG Fee Application, no fee or expense reductions were ultimately requested.

21. The Fee Examiner has no objection to this Court's approval of the BRG Fee Application.

CONCLUSION

Accordingly, the Fee Examiner recommends that the compensation and expenses sought by the Retained Professionals in the Second Interim and Final Fee Applications be allowed as modified, and for such other relief that this Court deems just and appropriate.

Respectfully submitted,

Dated: February 25, 2025
Wilmington, Delaware

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Fee Examiner