IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: VYAIRE MEDICAL, INC., *et al*., Debtors.[1]	Chapter 11 Case No. 24-11217 (BLS) (Jointly Administered) **Hearing Date**: **To Be Determined** **Objection Deadline**: **January 27, 2025 at 4:00 p.m.**

MOTION OF CLAYTON CONTROLS REQUESTING ALLOWANCE AND PAYMENT OF ADMINISTRATIVE EXPENSE CLAIM PURSUANT TO 11 U.S.C. § 503(B)(1)(A)

Clayton Controls[2], a creditor in the above-captioned, jointly administered bankruptcy cases, by and through its undersigned counsel, hereby requests allowance and payment of an administrative expense pursuant to 11 U.S.C. §§ 503(b)(1)(A) (the "Motion"), and in support thereof, respectfully states as follows:

JURISDICTION & VENUE

1. The Court has jurisdiction over the subject matter of the Motion pursuant to 28 U.S.C. §§ 157(b) and 1334(b) and the standing order of reference of the District Court. This is a core proceeding arising under Chapter 11 of the United States Bankruptcy Code, 11 U.S.C. §§ 101 et seq. (the "Bankruptcy Code"), that the Court has authority to hear and determine within

[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.

[2] Pursuant to Del. Bankr. L.R. 9013-1(f), Clayton Controls does consent to the entry of final orders or judgments by the Court with respect to the Motion if it is determined that the Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

the meaning of 28 U.S.C. § 157(b)(2)(8). The statutory predicate for the relief sought herein is 11 U.S.C. §§ 503(b)(1)(A) and 507(a)(2).

FACTUAL BACKGROUND

A. Pre-Petition Business Between Clayton Controls and the Debtor.

2. Clayton Controls is an industrial distributor in operation since 1967, servicing multiple industries. Clayton Controls has been serving Vyaire Medical, Inc. ("Debtor") for over 30 years, dating back to their previous names of Bird Products and Sensormedics. Clayton Controls has provided engineering services, contract manufacturing and components for Debtor's various medical products it manufactured both prior to and after Debtor filed bankruptcy. *See* Declaration of Chris Brown, attached hereto as Exhibit "A" (the "Brown Dec.") at ¶2.

B. Debtor's Bankruptcy Filing, Treatment of Clayton Controls as a "Critical Vendor", Post-petition Request for Product from Clayton Controls and Partial Payment for Such Product

3. On the June 9, 2024 (the "Petition Date"), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the "Court") and, thereby, commenced their individual chapter 11 cases (collectively, the "Bankruptcy Cases").

4. As of the Petition Date, Debtor owed Clayton Controls $342,690.83. Through counsel, Clayton Controls learned that it would be treated as a "critical vendor" pursuant to the *Interim Order (I) Authorizing Debtors to Pay Pre-Petition Claims of Certain Critical Vendors, Foreign Vendors, 503(B)(9) Claimants, and Lien Claimants, (II) Confirming Administrative Expense Priority to All Undisputed Obligations on Account of Outstanding Orders, and (III) Granting Related Relief* (D.I. 89). As a result, Clayton Controls was paid $342,690.83 in July 2024, which represented the full payment of all amounts owed as of the Petition Date. *See* Brown Dec., ¶ 3.

5. On a post-petition basis, Debtor continued to order and confirm orders for goods from Clayton Controls for which Clayton Controls was paid $382,307.68 between August through November 2024 for shipments made between July 16, 2024 through November 26, 2024.

6. One of the products that Debtor ordered from Clayton Controls and paid for post-petition is a custom "blender" assembly (the "Product") for one of Debtor's products called "PTV" (a name designated by the Debtor for a ventilator), which was ordered pre-petition. *See* Debtor Purchase Order dated November 16, 2021, Order #P34417-03, a true and correct copy of which is attached as **Exhibit "1"** to the Brown Dec.

7. Based on the multiple conversations between Clayton Controls' President/CEO and controller and Sachin Murthy of the Debtor, Debtor confirmed post-petition on numerous occasions that it continued to need the Product from Clayton Controls as Debtor considered it a "critical" part for Debtor's PTV such that Clayton Controls took the necessary steps to ensure the post-petition availability of these parts. Attached as **Exhibits "2", "3",** and **"4"** to the Brown Dec. are true and correct copies of emails/email strings from Patrick Surface and Sachin Murthy dated June 14, 2024, Sachin Murthy dated August 29, 2024, and Michael Hiller (with Sachin Murthy copied) dated September 5, 2024, respectively. *See* Brown Dec. ⁋ 4.

8. Although Debtor took post-petition delivery and paid post-petition (albeit late on post-petition payments due) for some of the Product that Debtor told Clayton Controls it needed, Debtor failed to pay Clayton Control for all the Product that Debtor represented post-petition to Clayton Controls that it needed. Attached to the Brown Dec. as **Exhibit "5"** is a true and correct copy of the outstanding invoice for $256,568.40 (the "Invoice") due to Clayton Controls from Debtor for some of the Product represented to Clayton Controls post-petition as critical to and

needed by the Debtor and confirmed post-petition by Debtor to Clayton Controls to deliver. *See* Brown Dec. ⁋ 4.

RELIEF REQUESTED AND REASONS THEREFOR

9. Clayton Controls respectfully requests that the Court enter an order compelling the payment of the Invoice owed under the open book account between Clayton Controls and the Debtor by a date certain for some of the Product requested post-petition by the Debtor, but only partially paid for.

10. Under § 503(b)(1)(A) of the Bankruptcy Code, "[a]n expense is administrative only if (1) it arises out of a transaction between the creditor and the bankrupt's trustee or debtor in possession, and (2) only to the extent that the consideration supporting the claimant's right to payment was both supplied to and beneficial to the debtor-in-possession in the operation of the business." *In re Bethlehem Steel Corp*., 479 F.3d 167, 172 (2d Cir. 2007); *see also In re Garden Ridge Corp*., 321 B.R. 669, 676 (Bankr. D. Del. 2005) (citing *In re Waste Systems Int'l, Inc*., 280 B.R. 824, 826 (Bankr. D. Del. 2002)). As to the second requirement, courts have held that an administrative expense payment should be afforded to those who either assist in the preservation and administration of the estate, or who aid the debtor's rehabilitation to the benefit of all creditors. *See In re Armorflite Precision, Inc.,* 43 B.R. 14 (Bankr. D. Me. 1984).

11. In the Third Circuit, section 503(b)(1)(A) "has been broadly interpreted to include 'actual, necessary costs and expenses' that benefit the debtor's estate both directly and indirectly." *Elsom v. Woodward & Lothrop, Inc*., 1997 WL 476091, *3 (E.D. Pa. 1997) (*citing, In re B. Cohen and Sons Caterers, Inc.,* 143 B.R. 27, 28 (E.D. Pa. 1992)). The policy behind section 503(b) is to facilitate the rehabilitation of insolvent debtors by encouraging third parties

to provide those debtors with necessary goods and services. *See, In re B. Cohen and Sons Caterers, Inc.,* 143 B.R. at 28 (citations omitted).

12. Administrative expenses can arise not only where the debtors have received a direct benefit, but where the acts of the debtors have, through post-petition conduct, harmed third parties and shifted costs that should be borne by the debtors onto such third parties. *See Reading Co. v. Brown,* 391 U.S. 471, 88 S. Ct. 1759, 20 L. Ed. 2d 751 (1968). Such claims may be entitled to administrative priority where a third party relies on the debtors' negligent misrepresentations, even in the absence of benefit to the estate. *E.g., In re Women First Healthcare, Inc.,* 2005 WL 2737436 (Bankr. D. Del. Oct. 21, 2005) (Walrath, J) (stalking horse bidder entitled to administrative expense claim for damages sustained based on its reasonable reliance on debtors' negligent misrepresentation that debtors had properly noticed a sale motion).

13. Here, due to Debtors' post-petition conduct, Clayton Controls was asked by Debtor post-petition (and confirmed such request on numerous occasions post-petition) to continue to supply the Product (that was "critical" to the production of Debtor's PTV product), but then refused to pay all of the Product that Debtor requested. Brown Dec. at ¶¶'s 3-5. It is incontrovertible that the Debtor's *post-petition* conduct of representing the intent to pay for all of the Product that Debtor confirmed it needed post-petition was reasonably relied upon by Clayton Controls post-petition to the detriment of Clayton Controls with the unpaid Invoice. Accordingly, the Debtor should be required to pay Clayton Controls the amount of the Invoice.

RESERVATION OF RIGHTS

14. Clayton Controls expressly reserves the right to amend or supplement this Motion with affidavits and other supporting documents and, if necessary, an evidentiary hearing, if a decision from the Court regarding the amount of Clayton Controls' administrative

expense claim becomes necessary. Moreover, nothing contained herein shall constitute a waiver of the Clayton Controls' right to file another Motion, as necessary.

NOTICE

15. Notice of this Motion has been provided to (i) the Debtors; (i) counsel to the Debtors; (ii) (former) counsel to the Official Committee of Unsecured Creditors; (iii) counsel to the Debtors' DIP Lenders; (iv) counsel to the Office of the United States Trustee; and (v) all parties who have noted their appearances electronically pursuant to Rule 2002 of the Federal Rules of Bankruptcy Procedure. Clayton Controls submits that no further or other notice is required.

CONCLUSION

16. Clayton Controls hereby asserts a claim for payment under 11 U.S.C. § 503(b)(1)(A). Accordingly, Clayton Controls respectfully requests allowance and payment of its administrative expense claim, including, *without limitation*, the Invoice ($256,568.40).

17. This request is filed without prejudice to any other claims Clayton Controls may have asserted, or may hereafter assert, against any of the Debtors in these consolidated cases.

WHEREFORE, Clayton Controls requests that the Court enter an Order: (i) allowing Clayton Controls an administrative expense including, *without limitation*, for the Invoice ($256,568.40), and any other post-petition claims that may have or may hereafter arise or become known; (ii) requiring immediate payment of Clayton Controls' allowed administrative expense; and (iii) granting such other and further relief in favor of Clayton Controls as the Court deems just and proper.

Dated: December 27, 2024

Wilmington, Delaware

Respectfully submitted,

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