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)
	)	**Hearing Date: January 29, 2025, at 10:30 a.m. (ET)**
	)	**Objection Deadline: December 13, 2024, at 4:00 p.m. (ET)**
	)	**Re: Docket No. 338**

APPLICATION OF AP SERVICES, LLC FOR APPROVAL OF COMPLETION FEE

AP Services, LLC ("APS") hereby moves the Court by this application (the "Application"), for allowance and payment of a completion fee in the amount of $1,000,000 (the "Completion Fee") in accordance with the Engagement Letter (the "Engagement Letter") dated as of June 6, 2024, by and between the Debtors and APS. A copy of the Engagement Letter is attached hereto as Exhibit A. Charles Braley was engaged as the Debtors' Chief Restructuring Officer and together with the APS team were engaged provided experienced guidance, leadership and assistance with the company's sale processes in order to maximize value to the estate and avoid a complete liquidation. In furtherance of this Application, APS respectfully submits the *Declaration of Charles Braley in Support of the Application of AP Services, LLC for Approval of a Completion Fee*, attached hereto as Exhibit B, and further represents:

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.

Jurisdiction and Venue

1. The United States District Court for the District of Delaware has jurisdiction over this matter pursuant to 28 U.S.C. § 1334, which was referred to the United States Bankruptcy Court for the District of Delaware (the "Court") under 28 U.S.C. § 157 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012. The Debtors confirm their consent, pursuant to rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules"), to the entry of a final order by the Court in connection with this motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

2. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The statutory basis for the relief requested herein are sections 105, 330, and 363 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the "Bankruptcy Code"), rule 2016 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Local Rule 2016-2.

Background and Retention of APS

4. The Debtors and their non-debtor affiliates (collectively, the "Company") were (prior to the asset sales discussed herein) a global company which focused on supporting breathing through everyday stages of life. The Company manufactured, designed, and sold a broad range of products and services which are focused on respiratory health. The Company operated two business segments: ventilation and respiratory diagnostics. The ventilation business ("Ventilation") focuses on helping patients breathe by offering products and related services that mechanically pump air in and out of ailing lungs. The respiratory diagnostics business ("Respiratory Diagnostics") develops, manufactures and commercializes devices to diagnose

pulmonary and cardiopulmonary diseases. The Company previously operated a third consumables business ("Consumables") which provided leading airway management and operative care technology.

5. Prior to the Petition Date, the Company faced various obstacles which stressed its financial condition and ultimately necessitated a bankruptcy filing. Although the COVID-19 pandemic significantly increased demand for the Company's products and services given the need for life-saving technology, after the pandemic such demand substantially decreased, and additional post-pandemic macroeconomic challenges such as higher interest rates, inflationary pressures, and supply chain disruption forced the Company to reposition itself long-term. The Company subsequently initiated a financial and operational turnaround, and starting in summer 2023 through the early months of 2024, the Company negotiated with its stakeholders.

6. In April 2024, the board of directors formed a special committee comprised of disinterested directors to pursue a potential recapitalization, reorganization, sale or restructuring transaction. Under advisement of the special committee, the Company worked with its advisors to launch a sale process, filed these Chapter 11 Cases with support from its lenders and sponsor and negotiated what was originally a $45 million new money debtor-in-possession financing facility (the "DIP Facility") in order to provide additional liquidity and to support the Company's marketing and sales efforts. The total amount of new money provided for the DIP Facility was reduced to $40 million as $5 million of the new money was never drawn as a result of negotiations with the DIP Facility lenders.

7. As further discussed below, the aforementioned events and circumstances which harmed the Company's financial state necessitated specific needs for the protections and tools only available under the Bankruptcy Code. Accordingly, beginning in April 2024 and leading up to the

Petition Date (as defined below), the Company worked with its advisors to prepare for a chapter 11 filing and to begin marketing a sale process for each of the Ventilation and Respiratory Diagnostics businesses. The Debtors entered into that certain Restructuring Support Agreement (the "RSA") with certain of its first lien term lenders holding over 90% of the first lien term loan, second lien lenders holding 100% of the second lien term loan, and Apax, the controlling equity holder in Vyaire Intermediate HoldCo LP (together, the "RSA Parties"), to support such sale processes and ultimate resolution of the Debtors' Chapter 11 Cases.

8. As contemplated by the RSA, on June 9, 2024 (the "Petition Date"), the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code (the "Chapter 11 Cases") to pursue value maximizing sales for all or substantially all of the Debtors' assets. As of the Petition Date, the Debtors had approximately $533.6 million in total outstanding funded debt obligations.

9. On July 9, 2024, the Debtors filed the *Debtors' Application for Entry of an Order (I) Authorizing the (A) Retention of AP Services, LLC and (B) Designation of Charles Braley as Chief Restructuring Officer Effective as of the Petition Date and (II) Granting Related Relief* [Docket No. 241] (the "Retention Application").

10. This Court entered the *Order (I) Authorizing Debtors to (A) Retain AP Services, LLC, and (B) Designate Charles Braley as Chief Restructuring Officer Effective as of the Petition Date and (II) Granting Related Relief* [Docket No. 338] on July 30, 2024.

Completion Fee Terms

11. The Engagement Letter and Retention Application provide that in addition to regular hourly fees for which APS is paid, APS shall be compensated for its efforts by payment of a completion fee (the "Completion Fee") in the amount of $1,000,000 upon the earliest to occur

of any of the following: (i) completion of a restructuring through confirmation of a chapter 11 plan (which, for the avoidance of doubt, shall not include a plan of liquidation), (ii) the consummation of any material recapitalization or debt restructuring of the debtors, or (iii) consummation of one or more transactions, in any form, that effectively transfers a significant and material portion of the business as a going concern to another entity or entities, or that results in a change in structure of the board of directors. The Engagement Letter and Retention Application further provided that, for the avoidance of doubt, the Completion Fee shall be earned upon a sale or sales of all or substantially all the assets of the Debtors pursuant to section 363 of the Bankruptcy Code ("<u>Sale Transaction</u>"); provided, however, that (i) if the sale or sales of some, all, or substantially all assets of the Debtors does not result in an aggregate purchase price of in excess of the amount of "new money" debtor-in-possession financing actually funded, (ii) the Debtors' lenders elect to credit bid for such assets, or (iii) the Debtors confirm a chapter 11 plan of liquidation but do not complete any Sale Transaction, APS shall earn a Completion Fee of $750,000; provided further that if the Debtors convert these Chapter 11 Cases to chapter 7 cases prior to APS's earning of the Completion Fee, APS shall not be entitled to a Completion Fee. The Completion Fee shall be due and payable immediately when the objective or objectives determined as described above have been achieved.

12. The Completion Fee is intended to compensate and reward APS not only for taking a leadership role in these Chapter 11 Cases, but also in challenging circumstances extending prior to the prepetition period, driving the engagement successfully and preserving and maximizing the value of the Debtors' estates. The Completion Fee was negotiated as a part of the overall fee and expense structure agreed to in the Engagement Letter and as approved by this Court.

13. APS earned the Completion Fee according to condition (iii) described above upon closing the sales of its Ventilation and Respiratory Diagnostics businesses. APS was specifically entitled to $1 million Completion Fee because such sales transferred substantially all of the business as a going concern. APS earned a completion fee of $1 million and not $750,000 because the sales resulted in amounts which exceeded the amount of "new money" debtor-in-possession financing actually funded. As further discussed below, the Debtors sold the assets from their Ventilation business to Zoll (as defined below) for $43.1 million in cash consideration after required payments under the applicable sale order on account of the pay down of the DIP Facility, and the Debtors sold the assets from their Respiratory Diagnostics business to Trudell (as defined below) who paid $53.5 million in cash plus additional non-cash consideration, including certain cure costs and assumption of certain liability. APS also met the requirements to receive a completion fee of $1 million and not $750,000 because the company's lenders did not credit bid for any of the assets. Moreover, as set forth in further detail below, the APS team led the efforts in this matter in helping the Debtors to reach a favorable outcome in the face of challenging circumstances that resulted in maximizing value of the Debtors' estates and accordingly, granting the Completion Fee to APS is warranted.

Basis for Relief

14. APS performed substantial and necessary services both prior to and during these Chapter 11 Cases which were paramount to preventing further economic loss to the Debtors' bankruptcy estates, and providing meaningful recoveries to the Debtors' creditors through sale processes. As such, APS's efforts warrant an award of compensation beyond the amount that results from payment of hourly fees and simply application of the lodestar approach.

15. AlixPartners, LLP[2] ("AlixPartners") began advising the Company as the Company's financial advisor in late March 2024. At the time, the Company had already determined with its lenders that a sale was the likely option due to the Company's recent financial performance, additional funding requirements and a widely accepted view that a debt restructuring would not be successful. And due to the distinct nature of the businesses (including their geographical footprints), two separate sale processes were the likely path to a successful sale. The Company engaged APS because it needed leadership to help it seamlessly transition into a chapter 11 proceeding and implement the most value-maximizing sale process so that the Company could not only repay its creditors but also sustain its life-saving technology and preserve jobs. Mr. Braley and the AlixPartners team were initially focused on a variety of workstreams including liquidity management, creating cashflow forecasts, developing first day motions, implementing procedures for a filing, overseeing weekly disbursement runs, and assisting the Company with the development of a business plan to support the sale processes. In addition, they assisted the secured creditors with diligence to help them explore options in the corresponding sale process.

16. Mr. Braley and AlixPartners were acutely aware based on their forecasts that in order to enter into chapter 11 to implement the sale processes, the Company would need additional financing. The AlixPartners team assisted with the sizing and procurement of the DIP Facility. The DIP Facility initially included $45 million of new money provided by existing secured lenders along with a $135 million roll-up of the DIP Facility lender's prepetition first lien term loans, although as discussed above, only $40 million was ultimately drawn down. The team was involved in successfully negotiating the DIP Facility. Mr. Braley and AlixPartners prepared the cash flow forecast related to the DIP Facility. In doing so they worked directly with the Company's chief

[2] APS is an affiliate of AlixPartners.

financial officer and treasury teams—as the forecast was complex given two distinct operating businesses with certain shared costs as well as the number of international entities involved. The team also assisted with the business planning process utilized to size the DIP Facility and drove the due diligence process utilized by outside parties including the eventual DIP Facility provider.

17. Mr. Braley and AlixPartners also began working on the RSA which was a critical document in these Chapter 11 Cases because it outlined the terms for the Debtors' exit from chapter 11. The RSA provided for a continuation of the Company's prepetition process for the sale of the Respiratory Diagnostics and Ventilation businesses, and that if the sale process was terminated due to lack of sufficient indications of interest or qualified bids, then the Debtors would implement a wind-down pursuant to a plan of liquidation. Mr. Braley and AlixPartners were critical participants in bringing the RSA to fruition: they (i) coordinated with the Debtors' other advisors to determine the proper terms, (ii) negotiated its terms with the DIP Facility lender's advisors, (iii) coordinated all due diligence related to the RSA and (iv) drove the cash forecasting and business planning process related to the RSA.

18. Once the Debtors filed for chapter 11, Mr. Braley was appointed the Chief Restructuring Officer. Mr. Braley and APS assisted the Debtors in the negotiation of the sales of their Ventilation and Respiratory Diagnostics Businesses, pursuant to which the Debtors were able to generate substantial liquidity for the estate, and additionally, allowed the Debtors' businesses to continue as a going concern. But for APS's efforts, the Debtors would have had to liquidate those businesses, which would have resulted in significant job loss.

19. APS's services and involvement in the Debtors' vigorous pursuit of a value-maximizing transaction were essential to completing the sales. APS spent considerable time working alongside the Debtors' investment banker with the diligence of interested parties to ensure

the Debtors found the highest and best offer for each of the businesses. APS's assistance included regular communication with interested parties including attending calls with them, responding to due diligence requests, developing and then presenting the Debtors' business plan, and working with management to draft numerous analyses and provide financial information. APS also played a critical role in assisting the Debtors with their negotiations with parties interested in their assets, including advocating for buyers to assume certain liabilities and purchase certain non-debtor entities (serving to reduce wind down costs), and development of asset purchase agreements and sale disclosure schedules.

20. On August 12-14, 2024, the Debtors held an auction (the "Auction") for certain of the Debtors' Ventilation assets. The APS team, along with other Debtors' advisors, ran the Auction and the APS team was involved in evaluating the bids and engaging in discussions with the qualified bidders for such assets. The Auction included ten rounds of bidding over three days. The Auction concluded on August 14, 2024 after three days of competitive, lively, and arm's-length bidding, which resulted in the Debtors' selection of Zoll Medical Corporation ("Zoll") as the successful bidder for the Ventilation assets. Zoll's successful bid included cash consideration that was approximately $30 million greater than the starting leading bid and provided approximately $1.1 million greater value than the next-highest bid. The APS team played a critical role in the Auction through engaging with bidders, and the Debtors' management team and other advisors to drive consensus and increase the ultimate value paid. APS also engaged with a number of parties with respect to the Respiratory Diagnostics assets (the "RDx Assets"). While several parties expressed interest in the RDx Assets, the Debtors received a single actionable proposal from Trudell Medical Limited ("Trudell"). APS assisted in engaging with Trudell in extensive, arm's-length negotiations to improve the terms of Trudell's bid, including exchanging of several

rounds of draft asset purchase agreements and mark-ups. As a result of these discussions, on August 20, 2024, the Debtors selected Trudell as the successful bidder for the RDx Assets

21. The Court approved both sale processes on August 30, 2024.

22. The Sale Transaction with Zoll closed on October 11, 2024. The Debtors received approximately $43.1 million in cash consideration after required payments under the applicable sale order on account of the pay down of the DIP Facility. In exchange for the assets of the Respiratory Diagnostics business, Trudell paid $53.5 million in cash, plus additional non-cash consideration, including the payment of certain cure costs and the assumption of liabilities arising out of ownership of the RDx Assets.

23. In further effort to achieve consensus among their stakeholders, APS played a key role in negotiations with the official committee of unsecured creditors (the "Committee") to resolve the Committee's concerns regarding the Debtors' chapter 11 plan and the wind-down. Following these fruitful negotiations, the Debtors and the Committee reached a comprehensive settlement with the Official Committee of Unsecured Creditors, embodied in the chapter 11 plan (such committee, the "Committee" and such settlement the "Committee Settlement"). The Committee Settlement provides, among other things: (i) a reserve of approximately $3 million for payment of Allowed Administrative Claims (as defined in the plan); (ii) a "Residual GUC Recovery Pool"; (iii) the Debtors' release of preference claims pursuant to section 547 of the Bankruptcy Code; and (iv) treatment of the Debtors' vendors and service providers servicing Zoll and Trudell pursuant to the transition services agreement. APS engaged in numerous meetings with the Committee advisors to manage diligence sessions with a focus on the Debtors' near-term cash forecast and wind down budget.

24. Ultimately, all voting classes voted in favor of the chapter 11 plan, and the chapter 11 plan enjoys support across the Debtors' capital structure. This is the best outcome for the Debtors, their estates, and all constituencies affected by these Chapter 11 Cases: it allows the Debtors to continue supporting the distribution of life-saving medical devices and equipment through provision of transition services to Zoll and Trudell and provides a mechanism to wind-down the Debtors in an orderly, cost-efficient manner. Additionally, a substantial number of jobs were saved through the sales transactions, which jobs would not have existed but for the sales and as a result, the Debtors would have been forced to solely wind down their businesses. As noted above, Mr. Braley and the APS Team played an integral role in achieving two successful sales which transferred a material portion of the business as a going concern. But for both sales, the Debtors would have been forced to wind down. Instead—with the assistance of Mr. Braley and the team, both the Ventilation and Respiratory Diagnostics businesses will continue operating on a go-forward basis.

25. The quantitative results and value-accretive actions described above provide ample justification for allowance of the Completion Fee under the most rigorous of judicial standards. As a result of Mr. Braley and APS's efforts, the Debtors were able to complete two successful sale processes quickly. APS was instrumental in assisting the Debtors in achieving their success. There is no question that APS played a vital role in supporting and implementing the transaction that effectuated the market test of value and the eventual asset sales. As a result, the Completion Fee should be granted.

Legal Standard

26. Section 363(b)(1) provides, in relevant part, that the trustee or debtor in possession, "after notice and a hearing may use, sell, or lease, other than in the ordinary course of business

property of the estate…." 11 U.S.C. §363(b)(1). Furthermore, pursuant to section 105(a) of the Bankruptcy Code, the "court may issue any order, process, or judgement that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. §105(a). Under applicable case law, in this and other circuits, if a debtor's proposed use of its assets pursuant to section 363(b) of the Bankruptcy Code represents a reasonable business judgment on the part of the debtor, such use should be approved. *See, e.g., Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1070 (2d Cir. 1983) ("The rule we adopt requires that a judge determining a §363(b) application expressly find from the evidence presented before him at the hearing a good business reason to grant such an application."); *Comm. of Asbestos-Related Litigants v. Johns Manville Corp. (In re Johns-Manville Corp.)*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986) ("Where the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor's conduct").

27. The standard for reasonableness under section 330 of the Bankruptcy Code is measured by a marketplace comparison. *See In re Enron Corp.*, No. 01-16034 (AJG), 2006 WL 1030421, at *6 (Bankr. S.D.N.Y. Apr. 12, 2006) (stating that the standard for a success fee awarded to a chief restructuring officer or top management is "a reasonable amount as established by the relevant marketplace."); *see also* 11 U.S.C. §330(a)(3)(F) ("In determining the amount of reasonable compensation to be awarded to…[a] professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including…whether he compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.").

28. Completion fees are normal parts of compensation for turnaround firms and management restructuring consulting firms and are standard for APS's engagements of this type,

both inside and outside of bankruptcy courts.[3] Indeed, APS and other similar firms price their engagements to include completion fees as part of the total compensation packages for such engagements. Thus, APS and other turnaround and management restructuring firms rely upon and consider the negotiated completion fee when accepting engagements.

29. Completion fees are typical in restructuring cases because clients appreciate an approach which aligns the interests of the client with the interests of its advisor. In colloquial terms, completion fees demonstrate that a turnaround firm, such as APS, has “skin in the game” along with the company undergoing the turnaround. This alignment of interests inures to the overall benefit of a debtor, as well as its estate and creditors. Without that demonstrated alignment of interests, such a client might be reluctant to reach out for critical leadership and specialized guidance from seasoned turnaround and management restructuring firms like APS. As a result, the absence of specialized top-management leadership would decrease the likelihood of a successful outcome of that client’s bankruptcy. Similarly, completion fees are a vital and inseparable component of the overall compensation model for turnaround and crisis management firms like APS, and denial of such fees in cases such as these, where the concrete achievement of the stated goal outlined at the outset of APS’s engagement has occurred (the chapter 11 plan), would ill-serve restructurings generally and potentially produce undesirable results. Some firms would simply decline challenging engagements and others would adjust their compensation model by increasing their monthly and/or hourly fees.[4] In recognition of these realities, courts routinely

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[3] While completion fees for lawyers and accountants are rarely sought or granted, completion fees are a standard component of compensation for turnaround management, restructuring and consulting firms and investment banking firms. APS is neither a law firm nor an accounting firm. APS is, among other things, a firm that specializes in supplying senior executives on an interim basis to financially troubled companies. As such, payment of the Completion Fee to APS is consistent with industry practice in and out of bankruptcy cases.

[4] The former is not an acceptable result, as it would deny distressed companies the necessary services of firms like APS that specialize in supplying senior executives to financially troubled companies and that have earned a

authorize and approve the payment of completion fees upon a clear and demonstrable showing of management expertise that is transformative, in terms of business viability, capital structure fit and value generation. This reasoning is precisely applicable to the engagement of APS by the Debtors in these Chapter 11 Cases.

30. The marketplace ordinarily compensates restructuring advisors with both a salary component, based on hours worked, and a performance-based fee. As the Bankruptcy Court in the Southern District of Ohio held in *In re Cardinal Indus., Inc.*, 151 B.R. 843 (Bankr. S.D. Ohio 1993) (Chapter 11 operating trustee awarded APS a fee of $2.1 million plus an additional fee of 50,000 shares of stock):

> Performance-based or success-factor bonuses are a normal part of compensation arrangements for management restructure consultants and … such bonuses generally far exceed the time value of the consultant's services on a lodestar basis. Indeed, the time value component is referred to as the base salary, apparently payable to the consultant even if success is not achieved.

151 B.R. at 847. *See also, In re Busy Beaver Building Center, Inc.*, 19 F.3d 833 (3rd Cir. 1993) (explaining that the basis for requested compensation should be based on the market rate that professional would charge and collect from a client in a non-bankruptcy setting); *In re UDC Homes, Inc.*, 203 B.R. 218 (Bankr. D. Del. 1996) (same).

31. Courts review transaction fees or completion fees under the "reasonableness standard" of section 330 of the Bankruptcy Code. *In re Northwest Airlines Corporation*, 400 B.R. 393, 395 (Bankr. S.D.N.Y. 2009); *In re XO Communications, Inc.*, 398 B.R. 106, 110 (Bankr. S.D.N.Y. 2008). In considering a completion fee, courts consider (a) whether the financial

national and international reputation for their expertise in financial reorganizations and restructurings of troubled companies. The latter also is not a desirable result, as it would needlessly result in increased fees during the pendency of the case, without such fees being tied to performance-based criteria and the outcome of the case itself (measuring success against alternative outcomes and relative distributable value yields).

advisor's services were necessary and beneficial to the debtors' estates at the time the services were rendered; and (b) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases outside of bankruptcy. *XO Communications*, 398 B.R. at 113. In determining the reasonableness of a completion fee and whether the services were necessary and beneficial to the debtor's estate, courts will look "at the nexus between what was achieved, *i.e.*, the restructuring of the debt, and the impact of the advisor's effort in that regard." *Id*. at 116; *see also In re Residential Capital, LLC*, 504 B.R. 358, 367.

32. When Congress passed the Bankruptcy Reform Act of 1978, it decided to remove the "spirit of frugality" as a factor in bankruptcy fees. The standard is now the cost of comparable services in a non-bankruptcy setting. Inasmuch as completion fees or performance fees are a normal part of the fee structures of APS and other turnaround and management restructuring firms, both within and outside of bankruptcy, approval of the Completion Fee is appropriate to assure comparable compensation for comparable services.

33. Recent bankruptcy cases involving performance-based fees awarded to APS and AlixPartners serving as interim management include the following:

- <u>Cyxtera Techs., Inc.</u>, a chapter 11 case in the District of New Jersey before Judge John K. Sherwood. In 2024, AlixPartners was awarded a completion fee of $2,000,000 [Case No. 23-14853, Docket 944].
- <u>Cineworld Group plc</u>, a chapter 11 case in the Southern District of Texas before Judge Marvin Isgur. In 2023, AlixPartners was awarded a completion fee of $2,506,934 [Case No. 23-90267 (previously Case No. 23-90168), Docket 47].
- <u>Bed Bath & Beyond Inc</u>., a chapter 11 case in the District of New Jersey before Judge Vincent F. Papalia. In 2023, AlixPartners was awarded a completion fee of $750,000 [Case No. 23-13359, Docket 2411].
- <u>Avaya, Inc.</u>, a chapter 11 case in the Southern District of Texas before David R. Jones. In 2023, AlixPartners was awarded a completion fee of $2,875,000 [Case No. 23-90088, Docket No. 440].

- Carlson Travel, Inc., a chapter 11 case in the Southern District of Texas before Marvin Isgur. In 2022, AlixPartners was awarded a success fee of $500,000 [Case No. 21-90017, Docket No. 274].
- Southland Royalty Company LLC, a chapter 11 case in the District of Delaware before Karen B. Owens. In 2021, AlixPartners was awarded a success fee of $1,000,000 [Case No. 20-10158, Docket No. 1879].
- NPC International, Inc., a chapter 11 case in the Southern District of Texas before David R. Jones. In 2021, AlixPartners was awarded a restructuring fee of $1,500,000 [Case No. 20-33353, Docket No. 1655].
- Noble Corporation PLC, a chapter 11 case in the Southern District of Texas before David R. Jones. In 2021, AlixPartners was awarded a success fee of $1,750,000 [Case No. 20-33826, Docket No. 999].
- Tailored Brands, Inc., a chapter 11 case in the Southern District of Texas before Marvin Isgur. In 2021, AlixPartners was awarded a success fee of $500,000 [Case No. 20-33900, Docket No. 1648].
- PG&E Corporation, a chapter 11 case in the Northern District of California before Dennis Montali. In 2020, APS was awarded a success fee of $8,000,000 [Case No. 19-30088, Docket No. 9373].
- McDermott International, Inc., a chapter 11 case in the Southern District of Texas before David R. Jones. In 2020, APS was awarded a success fee of $5,000,000 [Case No. 20-30336, Docket No. 1022].
- Alta Mesa Resources, Inc., a chapter 11 case in the Southern District of Texas before Marvin Isgur. In 2020, APS was awarded a completion fee of $200,000 [Case No. 19-35133, Docket No. 2007].
- Aegerion Pharmaceuticals, Inc., a chapter 11 case in the Southern District of New York before Martin Glenn. In 2019, APS was awarded a success fee of $500,000 [Case No. 19-11632, Docket No. 406].
- Sungard Availability Capital Services, a chapter 11 case in the Southern District of New York before Robert D. Drain. In 2019, APS was awarded a success fee of $1,250,000 [Case No. 19-22915, Docket No. 115]
- Aceto Corporation, a chapter 11 case in the District of New Jersey before Judge Vincent F. Papalia. In 2019, APS was awarded a success fee of $1,000,000 [Case No. 19-13448, Docket No. 683]

34. In short, completion fees are a normal part of compensation for firms such as APS, which provided interim management services to the Debtors, and may be approved on that basis. The services provided by APS resulted in tangible, measurable and significant incremental value to the Debtors, their lenders and their estates.

35. The leadership and contributions of Mr. Braley and APS were key enablers of the outcome and recovery within these Chapter 11 Cases. As such, the amount of the Completion Fee in these cases is reasonable and should be approved.

Notice

36. The Debtors will provide notice of this Application to: (a) the Office of the United States Trustee for the District of Delaware; (b) counsel to the Committee; (c) counsel to the 1L Ad Hoc Group; (d) the agent of the DIP Facility and counsel thereto; (e) the agent of the First Lien Credit Agreement and counsel thereto; (f) the Second Lien Credit Agreement Agent and counsel thereto; (g) the agent of the First Lien Notes and counsel thereto; and (h) any party that has requested notice pursuant to Bankruptcy Rule 2002. The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

Conclusion

37. To summarize, the Engagement Letter provides for the payment of the Completion Fee based upon defined criteria. The defined criteria, namely a transaction that effectively transfers a significant and material portion of the business as a going concern to another entity or entities, was attained. Fees such as the Completion Fee are a normal part of the compensation structure of APS and other similar firms both inside and outside of bankruptcy. Mr. Braley and APS played a pivotal role in the positive outcome of these Chapter 11 Cases. Accordingly, approval of the Completion Fee is warranted and appropriate.

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WHEREFORE, APS respectfully requests that this Court enter an order, substantially in the form of the proposed order attached hereto as Exhibit C, awarding APS its Completion Fee in the amount of $1,000,000, and for such other or further relief as is just or appropriate.

Dated this 22nd day of November, 2024.

AP Services, LLC

/s/ Charles Braley
Name: Charles Braley
Authorized Representative