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)**
	)	**Obj. Deadline: January 22, 2025 at 4:00 p.m. (ET)**

PLAN ADMINISTRATOR'S MOTION FOR ENTRY OF FINAL DECREE CLOSING CERTAIN CASES

David M. Barse, solely in his capacity as the plan administrator (the "Plan Administrator") in the above-captioned chapter 11 cases (the "Chapter 11 Cases"), hereby submits this motion (the "Motion")[2] for entry of a final decree, substantially in the form attached hereto as **Exhibit A** (the "Proposed Order"), closing the chapter 11 cases of each of the Debtors other than the chapter 11 case of Vyaire Medical, Inc. (24-11217) (BLS)) (the "Remaining Case"). In support of this Motion, the Plan Administrator states as follows:

Background

1. On June 9, 2024, Vyaire Medical, Inc. ("Vyaire") and its affiliated debtors in the above-captioned Chapter 11 Cases (collectively, the "Debtors") each commenced a voluntary case under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") with the United States Bankruptcy Court for the District of Delaware (the "Court").

[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] Capitalized terms used but not defined in this Motion shall have the meanings ascribed to them in the Plan (as defined below).

2. The Debtors' Chapter 11 Cases are being jointly administered under the case styled *In re: Vyaire Medical, Inc., et al.* for procedural purposes only pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), Rule 1015-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules") and the *Order (I) Directing Joint Administration of Chapter 11 Cases and (II) Granting Related Relief* [Docket No. 84] entered by the Court on June 11, 2024. The Debtors operated their business and managed their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

3. On June 26, 2024, the Office of the United States Trustee for the District of Delaware (the "U.S. Trustee") appointed an official committee of unsecured creditors in the Chapter 11 Cases [Docket No. 121] (the "Committee").[3] On October 30, 2024, the Bankruptcy Court appointed a fee examiner [Docket No. 690]. No trustee has been appointed in these Chapter 11 Cases.

4. Information regarding the Debtors' business and capital structure and the circumstances leading to the commencement of the Chapter 11 Cases is set forth in the *Declaration of John Bibb, Group Chief Executive Officer of Vyaire Medical, Inc., in Support of Debtors' Chapter 11 Petitions and First Day Motions* [Docket No. 15].

5. On November 14, 2024, the Court entered the *Findings of Fact, Conclusions of Law, and Order Approving the Debtors' Disclosure Statement for, and Confirming the Second Amended Joint Chapter 11 Plan of Vyaire Medical, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 745] (the "Confirmation Order"), approving the *Disclosure Statement for the Joint Chapter 11 Plan of Vyaire Medical, Inc. and Its Debtor*

[3] Pursuant to Art. IV.I. of the Plan, except for certain limited purposes including to prosecute fee applications, the Committee dissolved on the Effective Date (as defined herein).

Affiliates [Docket No. 582] (the "Disclosure Statement") on a final basis and confirming the *Second Amended Joint Chapter 11 Plan of Vyaire Medical, Inc. and Its Debtor Affiliates* [Docket No. 719] (the "Plan"). The effective date of the Plan (the "Effective Date") occurred on November 27, 2024. *See* Docket No 810.

6. The Plan provides that the Plan Administrator has the authority to, *inter alia*, (1) wind down the Debtors' businesses and affairs and liquidate all Wind-Down Debtor Assets, (2) perform any obligations under any Transition Services Agreements, (3) enforce and prosecute Claims, interests, and rights of the Debtors, (4) resolve any Disputed Claims, (5) pay or otherwise satisfy Allowed Claims, and (6) file appropriate tax returns and pursue any refunds, credits, or other tax benefits. *See* Plan Art. IV.C.

7. The Plan further provides that the Plan Administrator has the authority to (1) File, withdraw, or litigate to judgment objections to Claims and Interests, (2) settle or compromise any Disputed Claim without any further notice to or action, order or approval of the Bankruptcy Court; and (3) administer and adjust the Claims Register to reflect any such settlements or compromises without any further notice to or action, order or approval by the Bankruptcy Court. *See* Plan Art. VII.B.

8. Pursuant to the Plan, "[t]he Plan Administrator shall, promptly after the full administration of the Chapter 11 Cases, File with the Bankruptcy Court all documents required by Bankruptcy Rule 3022 or Local Rule 3022-1, including the motion required by Local Rule 3002-1, and any applicable order necessary to close the Chapter 11 Cases." *See* Plan Art. XII.J.

9. The Debtors' claims register (the "Claims Register"), prepared and maintained by Omni Agent Solutions, Inc. (the "Claims Agent"), reflects that, to date, approximately 341 proofs of claim (each a "Proof of Claim") have been filed in the Chapter 11 Cases. In addition, numerous motions for allowance of Administrative Claims have been filed by various parties. To the extent

that any outstanding Proofs of Claim or Administrative Claims assert claims against, or interests in, the Chapter 11 Cases of the Closing Debtors (defined below), the Plan Administrator requests that such Proofs of Claim or Administrative Claims be treated, for administrative purposes only (*i.e.*, with no effect on parties' substantive rights), as though they were filed against the Debtor in the Remaining Case.

Jurisdiction

8. The Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334, and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012.

9. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409.

10. Pursuant to Local Rule 9013-1(f), the Plan Administrator consents 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 consistent with Article III of the United States Constitution.

Relief Requested

11. By this Motion, pursuant to section 350(a) of the Bankruptcy Code, Bankruptcy Rule 3022 and Local Rule 3022-1, the Plan Administrator requests entry of the Proposed Order, substantially in the form attached hereto as **Exhibit A**, closing the Chapter 11 Cases of each of the Debtors other than the Remaining Case, Vyaire Medical, Inc., 24-11217 (BLS). Specifically, by this Motion, the Plan Administrator seeks to close the Chapter 11 Cases of the following Debtors (the "Closing Debtors" and their cases, the "Closing Cases"):

a. Bird Products Corporation, Case No. 24-11218 (BLS);
b. Breathe US Holdco, Inc., Case No. 24-11219 (BLS);
c. Breathe US Holdings LP, Case No. 24-11220 (BLS);

d. EME Medical, Inc., Case No. 24-11221 (BLS);
e. Revolutionary Medical Devices, Inc., Case No. 24-11222 (BLS);
f. SensorMedics Corporation, Case No. 24-11223 (BLS);
g. VIASYS Holdings, Inc., Case No. 24-11224 (BLS);
h. VM Finance Sub, LLC, Case No. 24-11225 (BLS);
i. Vyaire Company, Case No. 24-11226 (BLS);
j. Vyaire Finance B.V., Case No. 24-11227 (BLS);
k. Vyaire Financial Holdings LLC, Case No. 24-11228 (BLS);
l. Vyaire Holding Company, Case No. 24-11229 (BLS);
m. Vyaire Medical 202, Inc., Case No. 24-11230 (BLS);
n. Vyaire Medical 203, Inc., Case No. 24-11231 (BLS);
o. Vyaire Medical 205, Inc., Case No. 24-11232 (BLS);
p. Vyaire Medical 206, Inc., Case No. 24-11233 (BLS);
q. Vyaire Medical 211, Inc., Case No. 24-11234 (BLS);
r. Vyaire Medical BR LLC, Case No. 24-11235 (BLS);
s. Vyaire Medical Capital LLC, Case No. 24-11236 (BLS);
t. Vyaire Medical Consumables LLC, Case No. 24-11237 (BLS);
u. Vyaire Medical International LLC, Case No. 24-11238 (BLS);
v. Vyaire Medical LLC, Case No. 24-11239 (BLS);
w. Vyaire Medical Payroll LLC, Case No. 24-11240 (BLS);
x. Vyaire Receivables LLC, Case No. 24-11241 (BLS);
y. Vyaire Respiratory Diagnostics LLC, Case No. 24-11242 (BLS);
z. Vyaire TSR MidCo, LLC, Case No. 24-11243 (BLS); and
aa. Vyaire TSR Sub, LLC, Case No. 24-11244 (BLS).

12. The Remaining Case will remain open to allow (i) professionals to file and prosecute any remaining fee applications and (ii) the Plan Administrator to resolve any contested matters, pursue any claims, including through adversary proceedings, and finalize the process of reconciling, objecting to and resolving claims, as applicable. Upon the filing of a further motion to close the Remaining Case, the Plan Administrator, as applicable, will file a final report with respect to all of the Chapter 11 Cases (including the Closing Cases) pursuant to Local Rule 3022-1(c).

Basis For Relief

13. Section 350(a) of the Bankruptcy Code provides that "[a]fter an estate is fully administered and the court has discharged the trustee, the court shall close the case." 11 U.S.C. § 350(a). Bankruptcy Rule 3022, which implements section 350 of the Bankruptcy Code, further

provides that "[a]fter an estate is fully administered in a chapter 11 reorganization case, the court, on its own motion or on motion of a party in interest, shall enter a final decree closing the case." FED. R. BANKR. P. 3022. Local Rule 3022-1(a) provides that, "[u]pon written motion, a party in interest may seek the entry of a final decree at any time after the confirmed plan has been fully administered provided that all required fees due under 28 U.S.C. § 1930 have been paid." DEL. BANKR. L.R. 3022-1(a).

14. The term "fully administered" is not defined in either the Bankruptcy Code or the Bankruptcy Rules. The Advisory Committee Note to the 1991 amendments to Bankruptcy Rule 3022 (the "Advisory Committee Note"), however, sets forth the following non-exclusive factors to be considered in determining whether a case has been fully administered:

(a) whether the order confirming the plan has become final;

(b) whether deposits required by the plan have been distributed;

(c) whether the property proposed by the plan to be transferred has been transferred;

(d) whether the debtor or the successor to the debtor under the plan has assumed the business or the management of the property dealt with by the plan;

(e) whether payments under the plan have commenced; and

(f) whether all motions, contested matters and adversary proceedings have been finally resolved.

See Advisory Committee Note.

15. Bankruptcy courts, including in this District, have adopted the view that "these factors are but a guide in determining whether a case has been fully administered, and not all factors need to be present before the case is closed." *In re SLI, Inc.*, 2005 WL 1668396, at *2 (Bankr. D. Del. June 24, 2005) (citing *In re Mold Makers, Inc.*, 124 B.R. 766, 768 (Bankr. N.D. Ill. 1990)); *see also In re Ginko Assocs., L.P.*, 2009 WL 2916917, at *2 (Bankr. E.D. Pa. June 25, 2009) (stating

Bankruptcy Rule 3022 "is intended to allow bankruptcy courts flexibility in determining whether an estate is fully administered," and not all factors need to be present before closing a case) (quoting *In re Federated Dep't Stores, Inc.*, 43 F. App'x 820, 822 (6th Cir. 2002)).

16. In addition to the factors set forth in the Advisory Committee Note, courts have considered whether a plan has been substantially consummated. *See In re Motors Liquidation Co.*, 625 B.R. 605, 615 (Bankr. S.D.N.Y. 2021) (stating that courts consider substantial consummation as a factor) (citations omitted); *see also In re Gates Cmty. Chapel of Rochester, Inc.*, 212 B.R. 220, 224 (Bankr. W.D.N.Y. 1997) (considering substantial consummation as a factor in determining whether to close a case).

17. The Advisory Committee Note also indicates that the entry of a final decree "should not be delayed solely because the payments required by the plan have not been completed," and the Court "should not keep the case open only because of the possibility that the court's jurisdiction may be invoked in the future." *See* Advisory Committee Note. Additionally, "a final decree closing the case after the estate is fully administered does not deprive the court of jurisdiction to enforce or interpret its own orders and does not prevent the court from reopening the case for cause pursuant to § 350(b) of the [Bankruptcy] Code." *Id.*

18. Indeed, Bankruptcy Rule 3022 was amended in order to:

> set forth a flexible Rule to permit the court to determine that an estate is fully administered and should be closed even though payments or other activities involving the debtor and its creditors might continue . . . . As is evident by the Committee note, the Advisory Committee interprets "fully administered" very loosely and encourages courts to use substantially more discretion in deciding whether to close a [c]hapter 11 case th[a]n Code § 350 and the Rule literally read.

In re Gould, 437 B.R. 34, 37-38 (Bankr. D. Conn. 2010) (citation omitted).

19. Further, courts have also noted that entry of a final decree is appropriate to stop the accrual of fees debtors are obliged to pay pursuant to 28 U.S.C. § 1930(a)(6) (the "Statutory Fees").

In re Junior Food Mart of Arkansas, Inc., 201 B.R. 522, 524 (Bankr. E.D. Ark. 1996) (closing case "in order that no further [Section 1930] [F]ees accrue"); *In re Jay Bee Enters., Inc.*, 207 B.R. 536, 539 (Bankr. E.D. Ky. 1997) (concluding that "it seems appropriate to close this case to stop the financial drain on the debtor" on account of the continuing accrual of section 1930 fees).

20. As of the filing of this Motion, the Closing Cases have been "fully administered" within the meaning of section 350 of the Bankruptcy Code, making it appropriate for the Court to enter a final decree closing such cases. Among other things:

(a) the Confirmation Order is final and non-appealable;

(b) the Effective Date of the Plan has occurred;

(c) the transactions contemplated by the Plan have been substantially consummated;

(d) the Plan Administrator is authorized to do all things and to execute and deliver all agreements, documents, instruments, notices and certificates as are contemplated by the Plan and the Plan Administrator Agreement, and to take all necessary actions required in connection therewith, in the name of and on behalf of the Debtors; and

(e) the Wind-Down Debtor Assets have vested in the Wind-Down Debtors free and clear of all Claims, Liens, and Interests, except as otherwise expressly provided in the Plan.

21. The foregoing factors support closing the Closing Cases. The fact that the Plan Administrator is still reviewing and resolving claims does not require the Closing Cases to remain open until all such claims are resolved and final distributions are made. *In re Jay Bee Enters., Inc.*, 207 B.R. at 539 (finding that Bankruptcy Rule 3022 "does not require that a chapter 11 case be kept open until all awarded fees and allowed claims have been paid in accordance with the confirmed plan or until the statutory fees . . . have been paid").

22. Further, to the extent necessary, the Court can retain jurisdiction over any issues related to the Closing Cases, including the resolution of claims[4] and any pending contested matters. There are no adversary proceedings currently pending. Therefore, no party in interest will be prejudiced if the Closing Cases are closed because the Remaining Case will provide an avenue for resolving any issues that relate to the Closing Cases.

23. In addition, as of the filing of this Motion, all outstanding Statutory Fees have been paid and any further Statutory Fees that may arise will be paid as and when such fees come due. *See* Plan Art. II.E. As such, closing the Closing Cases complies with Local Rule 3022-1.

24. Finally, closing the Closing Cases will relieve the Court, the U.S. Trustee and the Plan Administrator from the administrative burdens with respect to the Closing Cases, thus promoting judicial efficiency and preserving the assets of the Wind-Down Debtors. The Plan Administrator estimates that if the Closing Cases remain open, the Wind-Down Debtors will incur substantial Statutory Fees. Closing the Closing Cases will save a substantial expense that would otherwise continue to incur while the Closing Cases unnecessarily remain open. That fact further supports the relief requested in this Motion. *See Junior Food Mart*, 201 B.R. at 524; *Jay Bee*, 207 B.R. at 539.

Notice

25. The Plan Administrator has provided notice of the Motion to all parties that are required to receive notice under Local Rule 3022-1(b). The Plan Administrator submits that, considering the nature of the relief requested, no other or further notice is required.

[4] In addition, the Proposed Order provides that the entry of such decree is without prejudice to the rights of any party in interest to, among other things, object to any claim and/or commence and prosecute any potential cause of action. *See* Proposed Order ¶ 5.

No Prior Motion

26. The Plan Administrator has not made any prior motion for the relief sought herein to this Court or any other court.

WHEREFORE, the Plan Administrator respectfully requests that the Court enter the Proposed Order granting the relief requested in this Motion and such other and further relief as may be just and proper.

Dated: January 8, 2025
Wilmington, Delaware

/s/ Stacy L. Newman
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