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: March 5, 2025 at 10:30 a.m. (ET)**
	)	**Obj. Deadline: February 26, 2025 at 4:00 p.m. (ET)**

THE PLAN ADMINISTRATOR'S FIRST OMNIBUS OBJECTION
(SUBSTANTIVE) TO CERTAIN SECTION 503(B)(9) CLAIMS
(Assumed Claims, Non-Statutory Period Claims, Non-Goods Claims, Books and Records Claims)

TO ALL PARTIES RECEIVING THIS OBJECTION:

YOU SHOULD REVIEW SCHEDULE 1, SCHEDULE 2, SCHEDULE 3, AND SCHEDULE 4 TO THE PROPOSED ORDER TO LOCATE YOUR NAME AND CLAIM(S) AND DETERMINE IF YOUR CLAIM(S) ARE SUBJECT TO THIS OBJECTION. IF YOUR CLAIM(S) ARE LISTED ON THE SCHEDULES ATTACHED TO THE PROPOSED ORDER, YOU MAY HAVE SUBSTANTIVE RIGHTS AFFECTED BY THIS OBJECTION.

YOUR SUBSTANTIVE RIGHTS MAY ALSO BE AFFECTED BY FURTHER OBJECTIONS THAT MAY BE FILED IN THESE CHAPTER 11 CASES.

THE RELIEF SOUGHT IN THIS OBJECTION IS WITHOUT PREJUDICE TO THE RIGHTS OF THE PLAN ADMINISTRATOR, THE DEBTORS, THEIR ESTATES, ANY SUCCESSORS THERETO OR ANY OTHER PARTY IN INTEREST TO PURSUE FURTHER OBJECTIONS AGAINST THE CLAIMS SUBJECT TO THIS OBJECTION, AND NOTHING HEREIN OR THE PROPOSED ORDER IS INTENDED OR SHALL BE DEEMED TO BE AN ALLOWANCE OF ANY SUCH CLAIMS.

David M. Barse, solely in his capacity as the Plan Administrator of Vyaire Medical, Inc., *et al.* (the "Plan Administrator"), appointed pursuant to the *Second Amended Joint Chapter 11*

[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.

Plan of Vyaire Medical, Inc. and Its Debtor Affiliates [Docket No. 719] (the "Plan"), which was confirmed by the Order of the United States Bankruptcy Court for the District of Delaware (the "Court") on November 14, 2024 [Docket No. 745] (the "Confirmation Order"),[2] hereby files this first omnibus objection (substantive) (the "Objection") seeking entry of an order, substantially in the form attached hereto as **Exhibit A** (the "Proposed Order"), disallowing and expunging, modifying, reducing, or reclassifying, as applicable, the claims listed on (i) **Schedule 1** (the "Assumed Claims"), (ii) **Schedule 2** (the "Non-Statutory Period Claims"), (iii) **Schedule 3** (the "Non-Goods Claims"), and (iv) **Schedule 4** (the "Books and Records Claims"). In support of the Objection, the Plan Administrator submits and incorporates herein the declaration of Joel Amico of AP Services, LLC attached hereto as **Exhibit B** (the "Amico Declaration"), and respectfully represents as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction to consider the Objection under 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. This is a core proceeding under 28 U.S.C. § 157(b) and, 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"), the Plan Administrator consents to the entry of a final order by the Court in connection with the Objection to the extent that it is later determined that the Court, absent consent of the

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 otherwise defined herein shall have the meanings ascribed to such terms in the Confirmation Order or Plan, as applicable.

parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

2. Venue is proper in this District under 28 U.S.C. §§ 1408 and 1409.

3. The statutory and legal predicates for the relief requested in the Objection are sections 502(b), 503(b) and 506(a) of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the "Bankruptcy Code"), Rule 3007 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and Local Rule 3007-1.

BACKGROUND

A. The Chapter 11 Cases

4. On June 9, 2024, Vyaire Medical, Inc. and its affiliated debtors in the above-captioned chapter 11 cases (collectively, the "Debtors") each commenced a voluntary case under the Bankruptcy Code with the Court.

5. 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 Bankruptcy Rule 1015(b), Local Rule 1015-1, 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 Court

[3] Pursuant to Article 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).

appointed a fee examiner [Docket No. 690]. No trustee has been appointed in these chapter 11 cases.

4. Once in chapter 11, the Debtors continued to actively market their assets. On August 20, 2024, the Debtors selected Trudell Medical Limited ("Trudell") as the successful bidder for the Respiratory Diagnostics Business. On September 4, 2024, the Court approved the sale of the Respiratory Diagnostics Business to Trudell [Docket No. 497] (the "Trudell Transaction"). On November 12, 2024, the Debtors closed the Trudell Transaction.

6. Pursuant to Article I, Section 1.3(i) of the asset purchase agreement in the Trudell Transaction, Trudell assumed certain liabilities, including certain claims pursuant to section 503(b)(9) of the Bankruptcy Code (the "503(b)(9) Claims").[4]

7. On November 14, 2024, this Court entered the Confirmation Order.

8. On November 27, 2024 (the "Effective Date"), the Plan became effective in accordance with its terms [Docket No. 810].

9. On the Effective Date, David M. Barse, in his capacity as Plan Administrator, became the sole representative of the Debtors' estates for the purpose of, *inter alia*, reconciling claims filed against the Debtors' estates and facilitating distributions in accordance with the Plan. *See* Plan, Art. IV.E. and VII.

B. The Claims Reconciliation Process

10. On July 9, 2024, the Court entered the *Order (I) Setting Bar Dates for Filing Proofs of Claim, Including Under Section 503(b)(9), (II) Establishing Amended Schedules Bar Date and Rejection Damages Bar Date, (III) Approving the Form of and Manner for Filing Proofs of Claim, Including Section 503(b)(9) Requests, and (IV) Approving Form and Manner of*

[4] A copy of the Trudell asset purchase agreement was filed at Docket No. 736.

Notice Thereof [Docket No. 227] (the "Bar Date Order"), which established, *inter alia*, August 2, 2024 (the "Bar Date") as the deadline for all persons and entities to file prepetition proofs of claim against the Debtors, including 503(b)(9) Claims.

11. Pursuant to Article I.A.6. of the Plan, the Plan Administrator's deadline for filing objections to the 503(b)(9) Claims "shall be the later of (a) 60 days after the Effective Date [i.e., January 27, 2025][5] and (b) 60 days after the Filing of the applicable request for payment of the Administrative Claim" (the "Administrative Claims Objection Bar Date").

12. On January 24, 2025, the Plan Administrator filed a motion seeking to extend the Administrative Claims Objection Bar Date through and including May 27, 2025 [Docket No. 971].

13. To date, thirty-six (36) 503(b)(9) Claims have been filed in the chapter 11 cases totaling approximately $9 million.[6]

RELIEF REQUESTED

14. By this Objection, the Plan Administrator objects to the claims set forth on Schedules 1, 2, 3, and 4 to the Proposed Order (collectively, the "Disputed Claims") pursuant to section 502(b) of the Bankruptcy Code, Bankruptcy Rule 3007 and Local Rule 3007-1. The Plan Administrator respectfully requests entry of the Proposed Order disallowing, expunging, modifying, reducing, or reclassifying, as applicable, the (i) Assumed Claims on Schedule 1 to the Proposed Order, (ii) the Non-Statutory Period Claims on Schedule 2 to the Proposed Order, (iii)

[5] Because 60 days after the Effective Date falls on Sunday, January 26, 2025, the Administrative Claims Objection Bar Date rolls until the next business day – i.e., Monday, January 27, 2025. *See* FED. R. BANKR. P. 9006(a).

[6] Four of the 503(b)(9) Claims totaling approximately $4.6 million have been resolved by the *Order Approving Joint Stipulation Between the Debtors and SunMed Group Holdings, LLC (d/b/a AirLife) in Connection With Zoll Sale* [Docket No. 632] leaving a balance of approximately $4.468 million.

the Non-Goods Claims on Schedule 3 to the Proposed Order, and (iv) the Books and Records Claims on Schedule 4, as set forth herein.

OBJECTION

A. Legal Standard

15. When asserting a proof of claim against a bankrupt estate, a claimant must allege facts that, if true, would support a finding that the debtor is legally liable to the claimant. *See In re Energy Future Holdings*, 2016 WL 4925052, at *3 (D. Del. Sept. 14, 2016) ("The initial burden is on the claimant to allege sufficient facts to support the claim"); *In re Allegheny Int'l, Inc.*, 954 F.2d 167, 173 (3d. Cir. 1992). Where the claimant alleges sufficient facts to support its claim, its claim is afforded *prima facie* validity. *See Allegheny Int'l*, 954 F.2d at 173. A party wishing to dispute such a claim must produce evidence in sufficient force to negate the claim's *prima facie* validity. *See Energy Future Holdings*, 2016 WL 4925052, at *3 ("The objector must produce evidence which, if believed, would refute at least one of the allegations that is essential to the claim's legal sufficiency"); *see also* 11 U.S.C. § 502(a); FED. R. BANKR. P. 3001(f). A claim should not be allowed if that claim is unenforceable against a debtor and property of a debtor, under any agreement or applicable law. *See* 11 U.S.C. § 502(b)(1). If an objection is made to the proof of claim, the claimant has the ultimate burden of persuasion as to the validity and amount of the claim. *See Allegheny Int'l*, 954 F.2d at 172. In addition, Bankruptcy Rule 3007 and Local Rule 3007-1 permits the Plan Administrator to make omnibus objections to the Disputed Claims.

16. Section 503(b)(9) of the Bankruptcy Code elevates the priority of certain prepetition claims based on goods received by the debtor within 20 days before the commencement of a case:

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> (b) After notice and a hearing, there shall be allowed, administrative expenses, . . . including . . .
>
> (9) the value of any goods received by the debtor within 20 days before the commencement of the case under this title in which the goods have been sold to the debtor in the ordinary course of such debtor's business.

11 U.S.C. § 503(b)(9).

17. Claimants asserting 503(b)(9) Claims have the ultimate burden of proof with respect to the validity of such claims. *See In re Wetco Rest. Group, LLC*, 2008 WL 1848779, at *2 (Bankr. W.D. La. Apr. 23, 2008) (the claimant has the "burden to establish that the value of the 20-Day Goods qualifies for administrative expense treatment under section 503(b)(9)"); *see also In re Goody's Family Clothing Inc*., 401 B.R. 131, 136, n.24 (Bankr. D. Del. 2009) (finding burden not met where creditor did not submit evidence establishing delivery of goods occurred within priority period) (citing *In re Insilco Techs., Inc*., 309 B.R. 111, 114 (Bankr. D. Del. 2004)). For the reasons set forth below, there is ample evidence to rebut the *prima facie* validity of each Disputed Claim.

18. As a threshold matter, a party asserting a 503(b)(9) Claim must show that the Debtors received goods within twenty (20) days of the Petition Date (the "Statutory Period"). 11 U.S.C. § 503(b)(9). For purposes of section 503(b)(9) of the Bankruptcy Code, a debtor has "received" goods when it takes actual possession of such goods. *See In re World Imports, Inc.*, 862 F. 3d 338, 343-44 (3d Cir. 2017) (finding that "received" means taking physical possession, for section 503(b)(9)); *SRC Liquidation*, 2017 WL 2992718, *2-3 (Bankr. D. Del. Jul. 3, 2017) (recognizing that "receipt" is not defined in the Bankruptcy Code, and finding it can include physical or constructive possession); *see also In re ADI Liquidation, Inc.*, 572 B.R. 543, 548-49 (Bankr. D. Del. 2017), *aff'd*, No. BR 14-12092 (KJC), 2019 WL 211528 (D. Del. Jan. 16, 2019)

(goods are "received" when the debtor physically possesses the goods, rather than upon shipment or delivery to a related third-party).

19. In addition, the language in section 503(b)(9) encompasses claims for goods—not services. *See In re Goody's Family Clothing Inc.*, 401 B.R. at 135 ("the construction of the Bankruptcy Code itself excludes services from the meaning of the term 'goods'") (citing 11 U.S.C. § 101(4A)); *see also In re Circuit City Stores, Inc.*, 416 B.R. 531, 535 (Bankr. E.D. Va. 2009) ("expenses under § 503(b)(9) should only be for claims arising from the sale and delivery of goods to the [d]ebtors). The Court should interpret section 503(b)(9) of the Bankruptcy Code narrowly and in accordance with its plain meaning. *See In re LaRoche Indus. Inc.*, 284 B.R. 406, 408 (Bankr. D. Del. 2002) (when interpreting section 502(d) of the Bankruptcy Code, stating that what "Congress says in a statute is what it means and means in a statute what it says there."); *see also United States v. Ron Pair Enter.*, 489 U.S. 235, 241 (1989) (stating that when a "statute's language is plain . . . the sole function of the courts is to enforce it according to its terms."). If a claimant has submitted a 503(b)(9) claim for services, such claim falls patently outside of the ambit of section 503(b)(9) of the Bankruptcy Code and such claims should be reclassified as general unsecured claims.

B. Assumed Claims

20. The Plan Administrator has reviewed the Assumed Claims on Schedule 1 to the Proposed Order and has determined that such claims have been assumed by Trudell pursuant to the Trudell Sale Transaction as set forth on Schedule 1.

21. Based on the assumptions, the Debtors are not liable for the Assumed Claims and the Plan Administrator requests that the Assumed Claims be disallowed and expunged or modified and reduced, as applicable.

C. Non-Statutory Period Claims

22. With respect to the Non-Statutory Period Claims listed on Schedule 2 to the Proposed Order, each claimant's proof of claim form indicates that the Debtors received the goods underlying the Non-Statutory Period Claims outside of the Statutory Period or the Debtors' records reflect that the goods underlying the Non-Statutory Period Claims were received outside of the Statutory Period.

23. Accordingly, the Plan Administrator objects to the Non-Statutory Period Claims and respectfully requests that all such claims be reclassified as non-priority general unsecured claims.

D. Non-Goods Claims

24. With respect to the Non-Goods Claims listed on Schedule 3 to the Proposed Order, the proof of claim form indicates that the claim is not based on the Debtors' receipt of goods, but rather relates to services provided to the Debtors. This is consistent with the Debtors' books and records.

25. Accordingly, the Plan Administrator objects to the Non-Goods Claims and respectfully requests that all such claims be reclassified as non-priority general unsecured claims.

E. Books and Records Claims

26. For the reasons set forth herein and on Schedule 4 to the Proposed Order, the Plan Administrator objects to the Books and Records Claims identified on Schedule 4 and seeks to reclassify any Section 503(b)(9) Claims asserted therein to non-priority general unsecured claims.

27. Based on the Plan Administrator's review of the Debtors' books and records, the Debtors' schedules of assets and the Books and Records Claims, including supporting documentation provided by the claimant, if any, the Plan Administrator has determined that the

Section 503(b)(9) Claims asserted in the Books and Records Claims are not sufficiently supported by the claimant. Unless the Books and Records Claims are reclassified as requested herein, the claimants may receive an improper distribution in the chapter 11 cases in contravention of the provisions and policies of the Bankruptcy Code and to the direct detriment of the Debtors and other creditors.

28. Therefore, for all the foregoing reasons, the Books and Records Claims identified on Schedule 4 should be reclassified as set forth on Schedule 4.

RESPONSES TO OBJECTION

29. Filing and Service of Responses. To contest the Objection, a claimant must file and serve a written response to the Objection (a "Response") so that it is received by **4:00 p.m. (Eastern Time) on February 26, 2025** (the "Response Deadline"). A claimant who has timely filed a Response and wishes to oppose the Objection must attend or make other plans to participate in the hearing on the Objection, which is scheduled to be held on **March 5, 2025 at 10:30 a.m. (Eastern Time)** before The Honorable Brendan L. Shannon, United States Bankruptcy Judge, United States Bankruptcy Court for the District of Delaware, 824 N. Market Street, 6th Floor, Courtroom No. 1, Wilmington, Delaware 19801.

30. Every Response should be filed with the Office of the Clerk, United States Bankruptcy Court for the District of Delaware, 824 North Market Street, 3rd Floor, Wilmington, Delaware 19801, and served on counsel for the Plan Administrator, so that the Response is received no later than the Response Deadline at the following address:

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- and -

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31. Timely Response Required. If a claimant fails to file and serve a timely Response, then, without further notice to the claimant or a hearing on the Objection, the Plan Administrator will present the Court with an order, substantially in the form attached hereto as **Exhibit A**, and the relief requested in the Objection may be granted without a hearing.

RESERVATION OF RIGHTS

32. The Plan Administrator hereby reserves his right and those of the Debtors' estates and any successors thereto to object further to the Disputed Claims on any additional factual or legal grounds. Without limiting the generality of the foregoing, the Plan Administrator specifically reserves the right to amend the Objection, file additional papers in support thereof or take other appropriate actions, including to: (a) respond to any allegation or defense that may be raised in a Response by or on behalf of any claimant or other party in interest; (b) object further to any claim for which a claimant provides (or attempts to provide) additional documentation or substantiation; and (c) object further to any claim based on additional information that may be discovered on further review by the Plan Administrator or through discovery.

NOTICE

33. Notice of this Objection will be given to: (i) the U.S. Trustee; (ii) counsel for Trudell; (iii) claimants whose claims are subject to this Objection and their counsel, if known, and (iv) all parties entitled to notice pursuant to Bankruptcy Rule 2002. The Plan Administrator submits that, under the circumstances, no other or further notice is required.

NO PRIOR REQUEST

34. No prior request for the relief sought in the Objection has been made to this or any other court.

COMPLIANCE WITH LOCAL RULE 3007-1

35. To the best of the Plan Administrator's knowledge and belief, the Objection, including its exhibits and schedules, substantially complies with Local Rule 3007-1. To the extent that the Objection does not comply with the requirements of Local Rule 3007-1, the Plan Administrator submits that the deviations are not material and respectfully request that those requirements be waived.

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CONCLUSION

WHEREFORE, for the reasons stated herein, the Plan Administrator respectfully requests that the Court enter the Proposed Order, substantially in the form attached hereto as **Exhibit A**, granting the relief requested in the Objection and such other and further relief as the Court deems just and proper.

Dated: January 27, 2025
Wilmington, Delaware

COLE SCHOTZ P.C.

/s/ Stacy L. Newman

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