

**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)
)
) (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 SECOND OMNIBUS OBJECTION
(NON-SUBSTANTIVE) TO CERTAIN CLAIMS
(Amended/Superseded and Late Filed)**

TO ALL PARTIES RECEIVING THIS OBJECTION:

YOU SHOULD REVIEW SCHEDULE 1 AND SCHEDULE 2 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 ALSO MAY 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 Vyair Medical, Inc., *et al.* (the “Plan Administrator”), appointed pursuant to the *Second Amended Joint Chapter 11 Plan of Vyair Medical, Inc. and Its Debtor Affiliates* [Docket No. 719] (the “Plan”) (the

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>.

“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 second omnibus objection (non-substantive) (the “Objection”) seeking entry of an order, substantially in the form attached hereto as **Exhibit A** (the “Proposed Order”), disallowing and expunging the claims listed on (i) **Schedule 1** (the “Amended/Superseded Claims”) and (ii) **Schedule 2** (the “Late Filed Claims”).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 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.

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.

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 Rule 1015(b) of the Bankruptcy Rules, Rule 1015-1 of 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

6. 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.

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

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).

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 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 claims based on section 503(b)(9) of the Bankruptcy Code (“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]⁴ and (b) 60 days after the Filing of the applicable request for payment of the Administrative Claim” (the “Administrative Claims Objection Bar Date”).

⁴ 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).

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.⁵

RELIEF REQUESTED

14. By this Objection, the Plan Administrator objects to the claims set forth on Schedules 1 and 2 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 and expunging the (i) Amended/Superseded Claims on Schedule 1 to the Proposed Order and (ii) Late Filed Claims on Schedule 2 to the Proposed Order, 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

⁵ 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.

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). In addition, Bankruptcy Rule 3007 and Local Rule 3007-1 permits the Plan Administrator to make omnibus objections to the Disputed Claims.

16. A claim, however, 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.

17. For the reasons set forth below, there is ample evidence to rebut the *prima facie* validity of each Disputed Claim.

B. Amended/Superseded Claims

18. The Bankruptcy Rules and Local Rules specifically provide for the disallowance of the Amended/Superseded Claims on the basis asserted by the Plan Administrator. Bankruptcy Rule 3007(d)(3) permits omnibus claim objections on the basis that the claims should be disallowed because “they have been amended by subsequently filed proofs of claim.” FED. R. BANKR. P. 3007(d)(3).

19. The Plan Administrator has reviewed the Amended/Superseded Claims on Schedule 1 and has determined that each claim has been amended and superseded by the corresponding “Surviving Claims” identified on Schedule 1 to the Proposed Order. By filing the Surviving Claims, the claimant modified the liability originally identified in the Amended/Superseded Claims.

20. The Plan Administrator requests that the Amended/Superseded Claims be disallowed and expunged, and the Surviving Claims remain on the claims register as an

outstanding liability, subject to the Plan Administrator's right to object on any other grounds. The claimant will suffer no prejudice because the Surviving Claims will be unaffected by the relief sought in this Objection, and the claimant's rights to assert the liability against the Debtors' estates will be preserved, subject to the Plan Administrator's right to file additional objections to the Surviving Claims.

C. Late Filed Claims

21. With respect to each of the Late Filed Claims identified on Schedule 2 to the Proposed Order, the Plan Administrator has carefully reviewed the proofs of claim, including the supporting documentation provided by the claimants, if any, and determined that the Late Filed Claims were not timely filed. Among other things, the Bar Date Order established August 2, 2024 as the Bar Date by which all persons and entities (subject to certain exceptions not relevant here) holding or wishing to assert a claim against the Debtors that arose before the Petition Date, including a 503(b)(9) Claim, were required to file such claim. Each of the Late Filed Claims was filed after the August 2, 2024 Bar Date.

22. Accordingly, the Plan Administrator seeks to disallow and expunge the Late Filed Claims in their entirety. Disallowing and expunging the Late Filed Claims set forth on Schedule 2 is necessary to ensure that the claimants ultimately entitled to receive distributions from the Debtors' estates receive the appropriate treatment and distribution.

RESPONSES TO OBJECTION

23. 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.

24. 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:

Patrick J. Reilley, Esq.
Stacy L. Newman, Esq.
500 Delaware Avenue, Suite 1410
Wilmington, DE 19801
Telephone: (302) 652-3131
Facsimile: (302) 652-3117
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- and -

Matteo Percontino, Esq.
Court Plaza North, 25 Main Street
Hackensack, NJ 07601
Telephone: 201-489-8000
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25. 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

26. 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 hereof 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

27. Notice of this Objection will be given to: (i) the U.S. Trustee; (ii) claimants whose claims are subject to this Objection and their counsel, if known, and (iii) 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

28. 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

29. 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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*Counsel to David M. Barse, solely in his capacity as
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al.*