

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

VYAIRE MEDICAL, INC.,¹

Liquidating Debtor.

)
) Chapter 11
)
) Case No. 24-11217 (BLS)
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**DECLARATION OF JOEL AMICO OF AP SERVICES, LLC
IN SUPPORT OF PLAN ADMINISTRATOR’S OBJECTION TO MOTION OF
DATASITE LLC TO ALLOW LATE FILED ADMINISTRATIVE EXPENSE CLAIM
UNDER 11 U.S.C. § 503(B)(1)(A) AND FOR ALLOWANCE AND IMMEDIATE
PAYMENT OF AN ADMINISTRATIVE EXPENSE CLAIM**

I, Joel Amico, pursuant to section 1746 of title 28 of the United States Code, hereby declare that the following is true and correct to the best of my knowledge, information and belief:

1. I submit this declaration (the “Declaration”) in support of the *Plan Administrator’s Objection to Motion of Datasite LLC to Allow Late Filed Administrative Expense Claim Under 11 U.S.C. § 503(b)(1)(A) and for Allowance and Immediate Payment of an Administrative Expense Claim* filed on March 26, 2025 at Docket No. 1046 (the “Objection”).² I am over the age of 18, competent to testify and authorized to submit the Declaration on behalf of the Plan Administrator.

2. I am a Director with AP Services, LLC (“AP Services”). AP Services was previously retained by Vyair Medical Inc. and its affiliated debtors (collectively, the “Debtors”)

¹ This chapter 11 case is now being administered by the Plan Administrator pursuant to the terms of 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 Vyair Medical, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 745] (the “Confirmation Order”). The Plan Administrator’s mailing address is Vyair Medical, Inc., Attn: David M. Barse, Plan Administrator, c/o Cole Schotz P.C., 500 Delaware Avenue, Suite 600, Wilmington, DE 19801.

² Capitalized terms not defined herein have the meanings ascribed to them in the Objection.

in March 2024 to provide restructuring and financial advisory services. AP Services was thereafter retained in the bankruptcy cases and continued to provide those services to the Debtors through the Effective Date of the Debtors' Plan. *See* Docket No. 388. During the chapter 11 cases, I worked under the direction of the Debtors' Chief Restructuring Officer, Charles Braley, a Partner and Managing Director of Alix Partners, LLP (an affiliate of AP Services).

3. Following the Effective Date of the Plan, AP Services, with me as the lead, was retained by the Plan Administrator as a consultant to, among other things, assist with the reconciliation of claims filed against the Debtors' estates and facilitate the wind-down of the Debtors' cases pursuant to the Plan and Confirmation Order. I have more than 20 years of experience in the restructuring industry, including many years of providing consulting and advisory services in both pre-confirmation and post-confirmation chapter 11 cases.

4. Every matter set forth herein is based on (a) my personal knowledge and experience as a Director with AP Services and an authorized representative of the Plan Administrator, (b) my review, or the review of work performed by other AP Services' consultants whom I oversee in a managerial capacity, of relevant documents, and/or (c) my understanding based on information obtained from the Debtors' books and records and the Plan Administrator's counsel.

5. I have read the Objection, and I am familiar with the information contained in therein. To the best of my knowledge, information and belief, the information that is contained in the Objection is true and correct.

6. I, and/or one or more individuals at AP Services working under my direction, have reviewed the Debtors' books and records and the Motion, together with any supporting documentation attached thereto.

7. Prior to the Petition Date, on April 25, 2024, the Debtors retained PJT Partners LP (“PJT”) to act as its investment banker in connection with the marketing and sale of their business and assets. PJT was thereafter retained in the same capacity pursuant to an order of the Bankruptcy Court on July 30, 2024. *See* Docket No. 338.

8. With the assistance of PJT and in anticipation of the bankruptcy filing, on May 8, 2024, Vyair entered into a service agreement with Datasite (the “Agreement”) for the purpose of maintaining a virtual data room (the “Data Room”) in connection with the marketing and sale of the Debtors’ assets in the bankruptcy cases.

9. Once in chapter 11, the Debtors continued to actively market their assets and, with the assistance of PJT and AP Services, populated the Data Room with due diligence documents for prospective bidders to access in connection with the sale process.

10. The marketing efforts ultimately concluded in sales for the Debtors’ businesses to Trudell Medical Limited (“Trudell”) as the successful bidder for the respiratory diagnostics business and ZOLL Medical Corporation (“ZOLL”) as the successful bidder for its ventilation business.

11. The sale to ZOLL closed on October 11, 2024 [Docket No. 626], and the sale to Trudell closed on November 12, 2024 [Docket No. 736].

12. Following the closing of the sales, the Debtors no longer had a need for the Data Room as it was established to allow prospective bidders to access documents in connection with the sale through the date of a closing.

13. Following the sale closings, there was no requirement that the Debtors maintain the Data Room for the benefit of ZOLL or Trudell pursuant to the terms of the asset purchase agreements or otherwise.

14. The Debtors confirmed their Plan on November 14, 2025 [Docket No. 745], and the Plan went effective on November 27, 2024 (the “Effective Date”) [Docket No. 810].

15. I understand that on November 27, 2024, the Debtors’ claims and noticing agent served Datasite with the *Notice of (I) Entry of Confirmation Order, (II) Occurrence of Effective Date, and (III) Related Bar Dates* by both email and mail at two different locations. See Docket No. 821.

16. I understand that pursuant to the Plan, the Agreement was rejected as of the Effective Date. It was my understanding that as of the rejection date, the Data Room would be closed, and there was no longer a business relationship between Datasite and the Debtors.

17. The Debtors have satisfied all obligations owed to Datasite other than the amounts asserted in the Motion.

18. On January 13, 2025, a former employee of the Debtors contacted AP Services concerning a request for payment received from Datasite. On January 14, 2025, I contacted Datasite on behalf of the Plan Administrator and requested information regarding the payment request. Upon receipt of the information, on January 15, 2025, I advised Datasite that the alleged amounts were not due as the Agreement had been rejected as of the Effective Date.

19. I have reviewed the Motion and the documents attached to the Motion, including certain activity reports. The Motion alleges that Datasite provided services in the form of continued access to the Data Room between November 19, 2024 and January 18, 2025. As of the rejection date (i.e. November 27, 2024), Datasite was under no obligation to allow continued access to the Data Room.

20. The pre-rejection date services were allegedly provided between November 19, 2024 through November 27, 2024. Based on my review of the Motion and the documents

attached thereto, none of the costs or expenses in connection with the services allegedly provided to the Debtors prior to the rejection date were necessary to preserve the Debtors estates. In fact, no value was provided to the Debtors for these alleged services. The purpose of the Data Room was to assist the Debtors in marketing their assets, which terminated upon the closing of the sales of those assets. The last sale closed on November 12, 2024, and no one provided any compensation or value to the Debtors for any access between November 19, 2024 through November 27, 2024.

21. In addition, any alleged services provided after the rejection date did not provide any value to the Plan Administrator. The only representative of AP Services who accessed the Data Room was John Tutty, who accessed the Data Room on four separate occasions. All documents downloaded by AP Services following the rejection date were documents already maintained by the Plan Administrator on behalf of the Debtors. The documents were downloaded by AP Services under the belief that following rejection of the Agreement, the Debtors were authorized to retrieve all their documents. There was no value gained by the Plan Administrator in retrieving such documents, no assets were liquidated based on access to the Data Room, and no one has compensated or was required to compensate the Debtors for access to the Data Room.

22. The Motion further alleges that the Data Room was accessed by ZOLL following the rejection date. The Plan Administrator did not authorize Zoll to access the Data Room and was not aware that ZOLL was accessing the Data Room. The Debtors did not receive any compensation, value, or other benefit from ZOLL based on its access to the Data Room.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

Dated: April 23, 2025

/s/ Joel Amico
JOEL AMICO