IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: **VYAIRE MEDICAL, INC.,** **Liquidating Debtor.**	**Chapter 11** **Case No. 24-11217 (BLS)** **Objection Deadline: April 7, 2025 at 4:00 pm (ET)** **Hearing Date: TBD**

MOTION OF MAXTEC, 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

MaxTec, LLC ("MaxTec") files this motion (the "Motion") to allow late filed Administrative Expense Claim under 11 U.S.C. §503(b)(1)(A) (the "Administrative Expense Claim") and for allowance and immediate payment of the Administrative Expense Claim (the "Motion") for amounts owed by Vyaire Medical, Inc., *et al*. (the "Debtors") to MaxTec related to post-petition goods sold in the ordinary course of business as set forth below in the above-captioned Chapter 11 Bankruptcy cases. In support thereof, MaxTec respectfully states the following:

I. JURISDICTION AND VENUE

1. The United States Bankruptcy Court for the District of Delaware (the "Court") has jurisdiction over these Chapter 11 Cases, and this Motion under 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District for the District of Delaware, dated February 29, 2012.

2. The venue is proper in this District under 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

3. The statutory and legal foundations for the relief sought herein are Sections 364(a), 503(b)(1) and 507(a)(2) of the Bankruptcy Code (the "Bankruptcy Code") and Bankruptcy Rule 9006(b)(1).

4. Pursuant to Local Bankruptcy Rule 9013-1(f), MaxTec confirms its consent to the entry of a final judgment or order by the Court in connection with this Motion if 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.

II. BACKGROUND

5. On June 9, 2024 (the "Petition Date"), the Debtors each filed a voluntary petition for relief pursuant to Chapter 11 of the Bankruptcy Code. [Docket No. 1].

6. The Debtors are engaged in the business of manufacturing and selling products and solutions relating to breathing technology. [*Declaration of John Bibb, the Group Chief Executive Officer of Vyaire Medical, Inc. and its affiliated debtors and debtors in possession in support of Chapter 11 Petitions and First Day Papers.* ¶6, Docket No. 15].

7. MaxTec is a Utah limited liability company located at 2305 South 1070 West, Salt Lake City, Utah, 84119, USA. It is engaged in the business of oxygen analysis and oxygen delivery products.

8. Debtor, Vyaire Medical, Inc. ("Vyaire Medical") engaged in business with MaxTec in the ordinary course and submitted several purchase orders to MaxTec, including Purchase Order No. 46104628, Purchase Order No. 46103307, and Purchase Order No. 46106331 (the "Purchase Orders"), for oxygen delivery products (the "Products"). (Declaration of Emeka Ohadike ("Ohadike Dec."), ¶ 3, Ex. A).

9. To fulfill the Purchase Orders, between September 13, 2024, and September 24, 2024, MaxTec shipped the Products to Vyaire Medical. Vyaire Medical accepted the Products and, to date, has not provided MaxTec notice that the Products were defective or otherwise non-conforming. (*Id.*, ¶¶ 4-7 and 16, Ex. B).

10. Contemporaneously with shipment, MaxTec issued five invoices to Vyaire Medical in the total amount of $283,460.75 ("Invoices"). The Invoices are as follows:

INVOICE NO.	INVOICE DATE	**	REFERENCE	INVOICE BALANCE	DUE DATE	AMOUNT DUE	INVOICE NO.	AMOUNT DUE
394791	9/13/2024	SI	46104628	93,436.00	10/13/2024	93,436.00	394791	93,436.00
394832	9/16/2024	SI	46103307	37,772.00	10/31/2024	37,772.00	394832	37,772.00
394842	9/16/2024	SI	46106331	1,164.75	10/31/2024	1,164.75	394842	1,164.75
395155	9/24/2024	SI	46104628	99,400.00	10/24/2024	99,400.00	395155	99,400.00
395158	9/24/2024	SI	46104628	51,688.00	10/24/2024	51,688.00	395158	51,688.00
			TOTAL:	283,460.75			TOTAL:	283,460.75

(*Id.*, ¶ 5, Ex. C)

11. Despite accepting the Products, Vyaire Medical did not pay MaxTec for the Products by the due date listed MaxTec's invoices. (*Id.*, ¶ 7)

12. On November 14, 2024, the Bankruptcy Court confirmed the Second Amended Joint Chapter 11 Plan of Reorganization of Vyaire Medical and its debtor-affiliates (Docket No. 719, the "Plan"), which was attached as Exhibit A to the Findings of Fact, Conclusions of Law, and Order Confirming the Second Amended Joint Chapter 11 Plan of Reorganization of Vyaire Medical, Inc. and its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code [Docket No. 745, the "Confirmation Order"].

13. On November 27, 2024, the Debtors filed their Notice of (I) Entry of Confirmation Order, (II) Occurrence of Effective Date, and (III) Related Bar Dates [Docket No. 810] ("Notice of Confirmation Order"), that the Effective Date,[1] *i.e.*, indicating that the deadline for creditors to

[1] Capitalized terms not defined herein have the meaning attributed to them in the Plan and Confirmation Order.

file requests for payment of administrative expense claims under the Plan and Confirmation Order was December 27, 2024 (the "Administrative Claims Bar Date").

14. On December 5, 2024, an Affidavit of Service was filed in the Court by Omni Agent Solutions, Inc., the claims agent for the Debtors, notifying that the Notice of Confirmation Order was served on November 27, 2024, to the entities in the Service List. [Docket No. 821]. MaxTec was listed in the Service List.

15. Despite the Affidavit of Service, MaxTec never received the Notice of Confirmation Order, and as a result, was not aware of the Administrative Claims Bar Date. (Ohadike Dec., ¶¶ 12-13)

16. MaxTec only received notice of the following filings: (1) Notice of (I) Successful Bidder for the Sale of Certain of the Debtors' Ventilation Assets, (II) Proposed Purchase Agreement in Connection therewithin, and (III) Proposed Sale Order in Connection Therewith; (2) Notice of Debtors' Proposed Order (I) Approving the Zoll Asset Purchase Agreement and Authorizing the Sale of Certain Ventilation Assets of the Debtors Outside the Ordinary Course of Business, (II) Authorizing the Sale of Assets Free and Clear of All Liens, Claims, Interests, and Encumbrances, (III) Authorizing the Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection therewithin, and (IV) Granting Related Relief; (3) Notice of (I) Successful Bidder for the Sale of Certain of the Debtors' Respiratory Diagnostics Assets, (II) Proposed Purchase Agreement in Connection Therewithin , and (III) Proposed Sale Order in Connection Therewith; and (4) Notice of Debtors' Proposed Order (I) Approving the Trudell Asset Purchase Agreement and Authorizing the Sale of Certain Ventilation Assets of the Debtors Outside the Ordinary Course of Business, (II) Authorizing the Sale of Assets Free and Clear of all Liens, Claims, Interests, and Encumbrances, (III) Authorizing the Assumption and Assignment of Executory Contracts and

Unexpired Leases in Connection Therewithin, and (IV) Granting Related Relief [Docket No. 401]; Plan Administrator's First Motion to Extend the Administrative Claims Objection Deadline; Plan Administrator's First Notice of Satisfaction of Claims; and Administrative Claims Objection Deadline Extension Order. (Ohadike Dec., ¶ 12)

17. In January of 2025, MaxTec reached out to Vyaire Medical regarding the status of payment but did not receive a response. (*Id.*, ¶¶ 8-9)

18. On February 4, 2025, MaxTec emailed Vyaire Medical regarding the status of payment. Vyaire Medical informed MaxTec that the Administrative Claims Bar Date had passed. (*Id.*, ¶ 9)

18. On February 5, 2025, Vyaire Medical responded and, for the first time, told MaxTec that it would not be paying the Invoices. Specifically, Vyaire Medical's Vice President and General Manager wrote that MaxTec's failure to file an administrative claim "on a timely basis amounts to a waiver of those claims." (*Id.*, ¶ 10)

17. Once MaxTec became aware of the Administrative Claims Bar Date, MaxTec engaged outside counsel. MaxTec does not have in-house counsel or a licensed attorney on staff. (*Id.*, ¶ 11)

18. Since February 18, 2025, Mr. Knappick has been in contact with counsel for the Plan Administrator, Matteo Percontino, regarding the outstanding payment for the Invoices. On March 13, 2025, MaxTec and Vyaire Medical reached an impasse. (*Id.*, ¶ 15)

19. On March 13, 2025, MaxTec retained the undersigned as local bankruptcy counsel. (*Id.*)

20. The Plan defines "Administrative Claim" as "a Claim against a Debtor arising on or after the Petition Date and before the Effective Date for the costs and expenses of administration

of the Chapter 11 Cases under sections 503(b), 507(a)(2), 507(b), or 1114(e)(2) of the Bankruptcy Code, including (a) the actual and necessary costs and expenses of preserving the Estates and operating the businesses of the Debtors incurred on or after the Petition Date and through the Effective Date; (b) Allowed Professional Fee Claims in the Chapter 11 Cases; (c) all fees and charges assessed against the Estates pursuant to section 1930 of chapter 123 of title 28 of the United States Code, 28 U.S.C. §§ 1911– 1930; and (d) adequate protection claims provided for in the DIP Orders." *Plan Art. I, A.4*. The claims of trade creditors such as MaxTec who provided valuable goods to the Debtors in connection with the business operation of the Debtors, fall within this definition.

21. The amount of $283,460.75 for MaxTec's post-petition Products remains unpaid as of this Motion's filing.

III. MOTION TO ALLOW A LATE-FILED CLAIM

<u>Maxtec's failure to file its Administrative Expense Claims in a timely manner resulted from excusable negligence.</u>

22. By this Motion, MaxTec requests that this Court enter an order allowing its late filed administrative claim for $283,460.00, less a $5,486.80 credit that Debtor is entitled to for overpayment,[2] for a total amount of $277,973.95, pursuant to Sections 364(a), 503(b)(1), and 507(a)(2) of the Bankruptcy Code for the actual and necessary post-petition costs and expenses of preserving the Debtors' estates in the ordinary course of their business after the Petition Date, as timely filed. MaxTec extended unsecured credit in the ordinary course of business to post-petition Debtors to help preserve the estates by supplying beneficial and valuable products to the Debtors and allowing the Debtors' business to be sold as a going concern and not as a liquidation.

23. MaxTec requests the Court to allow its administrative claim because its failure to

[2] The credit referenced can be found in the Notice of Satisfaction, p.7, Schedule 1 [Docket No. 978].

file an administrative expense claim resulted from excusable neglect.

24. Section 503(a) of the Bankruptcy Code provides that "[a]n entity may timely file a request for payment of an administrative expense, or may tardily file such request if permitted by the court for cause." 11 U.S.C. § 503(a).

25. Pursuant to Rule 9006(b)(1) of the Federal Rules of Bankruptcy Procedure, the Court may enlarge the time for filing a proof of claim where the failure to file a proof of claim was "the result of excusable neglect." Fed. R. Bankr. P. 9006(b)(1). Many courts apply the "excusable neglect" standard under Rule 9006(b)(1) in determining whether "cause" exists under section 503(a). Fed. R. Bankr. P. 9006. See, e.g., *In re AMF Bowling Worldwide, Inc*., 520 B.R. 185, 196 (Bankr. E.D. Va. 2014); *In re Bluestem Brands, Inc.,* 2021 Bankr. LEXIS 1980 *(Bankruptcy Court for the District of Delaware, decided on July 27, 2021).*

26. The Supreme Court identified four factors for determining excusable neglect: "the danger of prejudice to the debtor, the length of the delay and its potential impact on judicial proceedings, the reason for the delay, including whether it was within the reasonable control of the movant, and whether the movant acted in good faith." *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship.*, 507 U.S. 380, 395, 113 S. Ct. 1489, 123 L. Ed. 2d 74 (1993) (adopting test applied by a lower court to a consideration of creditor's late-filed claim). *See also*, *In re Am. Classic Voyages Co*., 405 F.3d 127, 133 (3d Cir. 2005) (affirming denial of a request to file a late claim because the creditor had not established excusable neglect); *In re O'Brien Envtl. Energy, Inc*., 188 F.3d 116, 126-27 (3d Cir. 1999) (concluding that the creditor had met the Pioneer standards and remanding for consideration of late-filed claim). "Not all factors need to favor the moving creditor to warrant acceptance of [the] creditor's late-filed proof of claim on [the] 'excusable neglect theory." *In re Enron Corp*, 298 B.R. at 525 (S.D.N.Y. 2003).

27. Further, in *Pioneer*, the Supreme Court explained that "'excusable neglect' under Rule 9006(b)(1) is a somewhat 'elastic concept' and is not limited strictly to omissions caused by circumstances beyond the control of the movant." *Pioneer*, 507 U.S. at 392. The debtor argued that Rule 9006(b)(1) required showing that the movant's failure to comply with the Court's deadline was caused by circumstances beyond its reasonable control. *Id.* at 388. The Supreme Court disagreed, however, because "the Rule grants a reprieve to out-of-time filings that were delayed by 'neglect'. *Id.* The Court found that "Congress plainly contemplated that the courts would be permitted, where appropriate, to accept late filings caused by inadvertence, mistake, or carelessness, as well as by intervening circumstances beyond party's control. *Id.* The Supreme Court continued, "[W]e conclude that the determination is at bottom an equitable one." *Id.* at 395. *See also*, *In re 50-Off Stores, Inc.* 220 B.R. 897, 901 (Bankr. W.D. Tex. 1998) (holding the four-factor test has "necessarily elastic quality," requiring the Court to look to "the totality of the circumstances" and *In re Kmart Corp*., 381 F. 3d 709, 714 (7th Cir. 2004) ("court may consider 'all relevant circumstances' in its excusable neglect analysis.")

28. There is no danger of prejudice to Debtors. In fact, the opposite is true. Debtors have benefitted from the beneficial and valuable products supplied to them post-petition by MaxTec *without paying for them*. Indeed, the Products have helped preserve the estates. What is more, MaxTec's Invoices provided Vyaire Medical notice of MaxTec's claim as early as September of 2024, well before the Bar Date. Finally, MaxTec's claim is relatively small when viewed in the context of the estate's total assets and liabilities and, as such, will not jeopardize the success of Debtors' reorganization. In light of these facts, the only prejudice Vyaire Medical could claim is that it will have to pay for the Products MaxTec delivered and which Vyaire Medical used. That is not prejudice.

29. Next, the length of delay has not been long. Despite multiple attempts to obtain payment, it was not until February 5, 2025, that Vyaire Medical notified MaxTec of the Bar Date. MaxTec immediately took steps to address the matter. *See In re Premier Membership Services, LLC, 276 B.R. 709 (S.D. Fl. 2002).* In *Premier Membership,* the claimant filed a Motion for Enlargement of Time, similar to this Motion for Leave, six and a half months after the claims bar date and the Debtors' Plan had already been confirmed. *Id.* at *715.* The Court held that the delay had no impact on the judicial proceedings, and as of the filing of the claimant's Motion, substantial matters remain to be resolved in the case post-confirmation, including claims objections. *Id.* In the present case, the Debtors have recently begun filing objections to claims. Further, the Administrative Claims Objection Bar Date has been extended through and including May 27, 2025. Therefore, the delay will not impact these proceeding.

30. MaxTec did not file a claim because MaxTec never *received* the Notice of the Confirmation Order, which included the Administrative Claims Bar Date. As a result, MaxTec was unaware of the deadline. MaxTec has come to learn it did not receive the service/notice of *several* filed documents during the pendency of this bankruptcy case. MaxTec's failure to receive notice of the Bard Date was beyond its reasonable control.

31. Finally, MaxTec has acted in good faith in filing this Motion. Once MaxTec became aware of the Bar Date, Maxtec took immediate steps to remedy the issue. Specifically, MaxTec hired an attorney, who attempted to negotiate a settlement with counsel for the Plan Administrator, in an effort to work the issue out without requiring expensive and unnecessary costs for both MaxTec and Vyaire Medical. MaxTec has operated in good faith and there can be no claim that it delayed filing its claims for tactical reasons.

32. When looking at the "elastic quality" of the *Pioneer* four-prong test, which includes the equitable analysis, the facts support the filing of a late-filed Administrative Expense Claim. MaxTec provided valuable and beneficial Products to Debtors, in the ordinary course of business, anticipating the debt would be repaid. The Products helped preserve the Estates. Debtors continue to benefit from the Products; however, they want to use a *technicality* in the bankruptcy to avoid having to pay for them. Such an outcome would be an unjust windfall to Vyaire Medical. *Prudential ins. Co. of America v. S.S. American Lancer*, 870 F.2d 867, 871 (2nd Cir. 1989) ("[E]quity, we believe, abhors a windfall."). This runs contrary to the spirit of the goals of bankruptcy laws, which are "confined to the honest but unfortunate debtor" and are meant to provide a debtor with a fresh start and to provide for an equitable distribution to creditors. *See Grogan v. Garner,* 498 U.S. 279, 287 (1991). To avoid this outcome, Congress contemplated that "the courts would be permitted, where appropriate, to accept late filings caused by inadvertence, mistake, or carelessness, as well as by intervening circumstances beyond party's control." Based upon the circumstances here, both equity and case law mandate the entry of an Order granting this Motion.

33. WHEREFORE, for the foregoing reasons, MaxTec respectfully requests that this Court enter an Order allowing MaxTec's late-filed Administrative Expense Claim as timely filed for allowance and immediate payment of the Administrative Expense Claim and such additional relief that the Court deems equitable and just.

Date: March 24, 2025

Respectfully submitted:

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