IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
VYAIRE MEDICAL, INC.,[1]	)	Case No. 24-11217 (BLS)
Liquidating Debtor.	)	**Hearing Date: TBD**
	)	**Objection Deadline: April 15, 2025**

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 EXPENSES CLAIM

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 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"), hereby files this objection (the "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* [Docket No. 988] (the "First Motion") and *Amended 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* [Docket No. 989] (the "Amended Motion" and together with the First Motion, the "Motion") filed by Datasite LLC

[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 Vyaire 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 Vyaire Medical, Inc., Attn: David M. Barse, Plan Administrator, c/o Cole Schotz P.C., 500 Delaware Avenue, Suite 1410, Wilmington, DE 19801

("Datasite"). In support of the Objection, the Plan Administrator respectfully represents as follows:

PRELIMINARY STATEMENT

Datasite requests that this Court grant it a late filed allowed administrative claim in the amount of $171,389.60 premised on its own failures to shut down access to its data room and to file a timely claim. The Motion should be denied for three basic reasons.

First, all access to the data room serving as the basis of the claims occurred following the Plan effective date at which time the contract was already rejected. Administrative claims were defined by the terms of the Plan as claims arising against the Debtor after the petition date and **before** the Plan effective date. Thus, by definition, the claims asserted are not administrative claims. In addition, the alleged "services" were entirely avoidable had Datasite not sat on its rights and timely shut down access to the data room following the rejection of its agreement.

Second, assuming an administrative claim could be asserted, the claim is untimely pursuant to the terms of the Plan and Datasite has not established "cause" to file its claim late.

Third, the Motion lacks any support or analysis whatsoever to meet Datasite's burden of proof to establish allowance of an administrative expense claim. Indeed, aside from reciting the statute and mentioning 11 U.S.C. § 503 in the title, there is absolutely no discussion of how any post-petition transactions benefitted the Debtors' estates. In fact, a review of what is alleged in the Motion leads to the contrary conclusion. The Motion alleges that (i) primarily non-debtor representatives of ZOLL Medical Corp., the purchaser of the Debtors' ventilation business, accessed the data room to review records and (ii) a member of the Debtors' financial advisory team accessed the data room only **four** (4) times. In addition, the data room was established for the debtors' sale process. The alleged "services" here all post-date the closing of those sales when the Debtors no longer required access to the data room for its established purpose.

For the reasons identified above, and set forth in more detail below, the Court should deny the Motion.

BACKGROUND

I. General Background

1. On June 9, 2024 (the "Petition Date"), Vyaire Medical Inc. ("Vyaire") and its affiliated debtors (collectively, the "Debtors") each commenced a voluntary case under title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the "Bankruptcy Code") with the Court.

2. On November 11, 2024, the Debtors filed the Plan.

3. On November 14, 2024, the Court entered the Confirmation Order.

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

5. 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., VII.

6. The Plan defines "Administrative Claims" 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…" *See* Plan, Art. I.A.4.

7. The Plan established a deadline to file an "Administrative Claim" as thirty (30) days from the Effective Date (or December 27, 2024) (the "Administrative Claims Bar Date"). *See* Plan, Art. I.A.5.

8. Pursuant to Art. V. of the Plan, all executory contracts not previously assumed or assumed and assigned were deemed automatically rejected by the debtors on the Effective Date without any further notice or order.[2]

9. On January 25, 2025, the Court entered a *Final Decree Closing Certain Cases* [Docket No. 974], *inter alia,* closing the Debtors' cases other than the above-captioned case and authorizing that relief in connection with any of the Debtors be filed in the above-captioned case.

10. On February 11, 2025, the Court entered an *Order Approving the Plan Administrator's First Motion to Extend the Administrative Claims Objection Deadline* [Docket No. 987], pursuant to which the (i) Administrative Claims Objection Bar Date was extended to May 27, 2025, and (ii) deadline to respond to any motions or requests for payment of an administrative claim was extended May 27, 2025.

II. The Debtors' Limited Access to Datasite's Data Room

11. In anticipation of the bankruptcy filing, on May 8, 2024, Vyaire entered into a service agreement with Datasite (the "Agreement") for the purpose of maintaining a virtual data room in connection with the marketing and sale of the Debtors' assets in the bankruptcy cases.

12. Once in chapter 11, the debtors continued to actively market their assets and ultimately concluded sales for their businesses to Trudell Medical Limited as the successful bidder for the respiratory diagnostics business and ZOLL Medical Corporation ("ZOLL") as the successful bidder for its ventilation business.

13. The sale to ZOLL closed on October 11, 2024, and the sale to Trudell Medical Limited closed on November 12, 2024.

[2] There were limited exceptions which are not applicable to the agreement at issue in the Motion (e.g. TSA Contract, subject to a pending motion, asset purchase agreement, or insurance policy).

14. The Agreement was rejected on the Effective Date.

15. Datasite incorrectly alleges that the Debtors continued to "engage in business with Datasite in the ordinary course" following the rejection of the Agreement. *See* Amended Motion, ¶ 14. Rather, following the rejection on November 27, 2024, Datasite could have immediately closed the data room and there was no obligation for the Debtors to inform it of its legal rights. Instead, Datasite sat on its rights and continued to allow access to the data room.

16. Indeed, all the invoices referenced in the Motion relate to services following the closing of sales at which time the data room was no longer useful to the Debtors for the purpose Datasite was engaged. Thus, there was no continued ordinary course business relationship.

17. It was not until January 13, 2025, nearly two months after the Effective Date and just over two weeks after the Administrative Claims Bar Date, that Datasite first contacted a former representative of the Debtors to discuss payment of invoices.

18. One day later, on January 14, 2025, Joel Amico, a representative of the Plan Administrator requested information from Datasite regarding amounts it asserted were due, and thereafter on January 15, 2025, Mr. Amico informed Datasite that the Agreement had been rejected pursuant to the terms of the Plan on the Effective Date.

19. Again, contrary to Datasite's allegations this was not the first time it was informed of the Confirmation Order and rejection of its Agreement. 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* [Docket No. 810] ("<u>Notice of Plan Effective Date</u>") by both mail at two different locations and by email. *See* Affidavit of Service, Docket No. 821.

20. In addition, Datasite concedes that based on its own activity reports, there was no access to the data room between the closing of the sales and the Effective Date of the Plan, and that the "majority of the persons accessing the data room represent ZOLL Medical Corporation." *See* Amended Motion at ¶ 14. In fact, the only debtor representative that accessed the data room after the rejection of the Agreement, John Tutty, only accessed it four times. *See* Amended Motion at ¶ 14, fn 2.

21. On February 17, 2025, fifty-two (52) days after the Administrative Claims Bar Date, Datasite filed the Motion asserting its exorbitant and late request for payment of an administrative expense claim in the amount of $171,389.60 (the "<u>Asserted Administrative Claim</u>").

22. The Asserted Administrative Claim is based entirely on Datasite's standard fees under the Agreement which had already been rejected and was no longer applicable.

<u>OBJECTION</u>

23. The Plan Administrator objects to the allowance and payment of the Asserted Administrative Claim for the following reasons.

A. The Motion Does Not Assert an "Administrative Claim"

24. As aptly noted in the Motion, the Plan defines "Administrative Claims" as a claim against a Debtor "arising after the Petition Date and **<u>before the Effective Date</u>**." *See* Motion at ¶ 21 and Plan, Art. I.A.4. (emphasis added).

25. Datasite admits that with respect to the amounts asserted in the Motion, the data room was only accessed between December 4, 2024, and January 14, 2025. *See* Motion at ¶ 14, fn 2. Thus, none of the alleged "services" occurred "**<u>before</u>** the Effective Date," and therefore any

alleged services cannot be considered "Administrative Claims."[3] On this basis alone, the Motion should be denied.

26. In addition, Datasite was on notice of the Confirmation Order and Plan Effective Date. Had it timely enforced its rights and shut down the data room this whole situation could have been avoided. Instead, it sat on its rights alleging neglect due to its failure to properly account for its mail during the holiday season. It should not now be rewarded unreasonable fees which did not benefit the Debtors due to its own neglect.

B. The Asserted Administrative Claim is Untimely

27. To the extent that the Asserted Administrative Claim is considered an "Administrative Claim" it is untimely and has been "discharged" by operation of the Plan and Confirmation Order. The Administrative Claim Bar Date was established pursuant to the Plan and Confirmation Order as December 27, 2024. *See* Plan, Art. I.A.5.

28. The Plan further provides that:

> Holders of Administrative Claims that are required to File and serve a request for payment of such Administrative Claims that do not File and serve such a request by the Administrative Claims Bar Date shall be forever barred, estopped, and enjoined from asserting such Administrative Claims against the Debtors, the Wind-Down Debtors, or their respective property, and such Administrative Claims shall be deemed <u>**discharged**</u> as of the Effective Date without the need for any objection from the Wind-Down Debtors or any notice to or action, order, or approval of the Bankruptcy Court.

See Plan, Art. II.A. (emphasis added).

[3] The only alleged "services" referenced in the Motion which predate the Effective Date is a post-Effective Date invoice asserting a prorated fee for "services" between 11/19/24 and 11/27/24 in the amount of $27,340.03. However, these alleged "services" were after the sale of both closings, and as admitted in the Motion, there was no access to the data room during this period.

29. Datasite was clearly served with the Notice of Plan Effective Date apprising it of its rights and obligations to file an Administrative Claim. *See* Affidavit of Service, Docket No. 821. The Motion was not filed until February 17, 2025, and therefore the Asserted Administrative Claim was "discharged."

30. Moreover, the untimely Asserted Administrative Claim cannot now be revived. Section 503(a) of the Bankruptcy Code ("Section 503") provides that an "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) (emphasis added).

31. As the Third Circuit has long held, a "bar date means just that; it is a 'drop-dead date' that bars [ ] claimants who received the required notice." *In re Trans World Airlines, Inc.*, 96 F.3d 687, 690 (3d Cir. 1996). Bar dates are considered "essential in formulating a viable [bankruptcy] plan" and the court's power to set and enforce bar dates extends to postpetition administrative claims. *Ellis v. Westinghouse Elec. Co., LLC*, 11 F.4th 221, 232 (3d Cir. 2021).

32. In addition, because of the priority scheme of the Bankruptcy Code, Section 503 "provides both a carrot and a stick" for creditors to promptly request payment of administrative expenses. *Id.* If filed timely and valid, the claims receive priority treatment in the bankruptcy and are generally paid in full under the plan. But if filed late, the claims face release or discharge. *Id.* This "harsh result is justified because, like general claim bar dates for prepetition claims, bar dates for administrative expense claims help the debtors know their liabilities and implement a viable plan. As further aptly explained by the Third Circuit, because "the plan must pay administrative expenses claims in full…unexpected administrative expenses can jeopardize the entire restructuring or become a significant burden" to the debtor. *Id.*

33. Bankruptcy courts considering whether to allow an untimely claim for "cause" have applied the "excusable neglect" standard set forth in *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380, 395, 113 S. Ct. 1489, 1498, 123 L. Ed. 2d 74 (1993). Those factors include (1) the danger of prejudice to the debtor, (2) the length of delay and its potential impact on the judicial proceedings, (3) the reason for the delay, and (4) whether the movant acted in good faith. *In re Energy Future Holdings Corp.*, 619 B.R. 99, 110 (Bankr. D. Del. 2020). However, this Court has taken a "hard line" view of the Supreme Court's excusable neglect standard under *Pioneer* in allowing a late filed claim with an emphasis on the "reason for the delay." *Energy Future Holdings*, 619 B.R. at 110; *In re Nortel Networks Inc.*, 573 B.R. 522, 527 (Bankr. D. Del. 2017). In addition, the burden of proving excusable neglect rests with the movant. *Energy Future Holdings*, 619 B.R. at 110. Applying the standard here, Datasite has not carried its burden for allowance of a late filed claim.

34. *First*, in evaluating prejudice to the debtors, courts consider several factors including:

> (i) whether the debtor was surprised or caught unaware by the assertion of a claim that it had not anticipated, (ii) whether the payment of the claim would force the return of amounts already paid out under the confirmed plan or affect the distribution to creditors; (iii) whether payment of the claim would jeopardize the success of the debtor's reorganization; (iv) whether allowance of the claim would adversely impact the debtor actually or legally; and (v) whether allowance of the claim would open the floodgates to other future claims.

Id.

35. Here, the Debtors relied on the universe of timely filed and anticipated known claims in formulating its winddown budget, setting administrative claim reserves, and updating its budget following the Administrative Claim Bar Date. The Asserted Administrative Claim was never known or contemplated as the Debtors understood that no further services were necessary

after the sales closed and the Agreement was rejected on the Effective Date. In addition, as this Court is aware, this was a difficult case, and the Debtors navigated numerous issues, including hard fought confirmation negotiations with the Committee and lenders on a wind-down budget. Allowing an unanticipated claim of this magnitude[4] at this stage would be prejudicial to the Debtors' winddown prospects and would certainly embolden other similarly situated creditors to assert late claims.

36. *Second,* while viewed in isolation the delay in time may appear insignificant—nearly two months from the Administrative Claims Bar Date—but that delay was entirely within the control of Datasite. The Notice of Plan Effective Date was served on it on November 27, 2024. Datasite's sole basis for failing to timely file its claim is based on "mailing issues" and "limited staff during the holiday season." When a delay is a direct result of a claimant's own failure to review notices sent to it, the Third Circuit has found that this factor strongly disfavors a finding of excusable neglect. *In re Am. Classic Voyages Co.*, 405 F.3d 127, 134 (3d Cir. 2005) (relying primarily on the third *Pioneer* factor, the court concluded that the late asserted claim did not meet the standard for excusable neglect where the delay was in the claimant's control). Similarly, courts generally do not find excusable neglect when the reason for the delay was merely "ignorance or misconstruction of the rules of procedures." *In re Invs. & Lenders, Ltd.*, 169 B.R. 546, 551 (Bankr. D.N.J. 1994).

37. *Third,* while there may not be reason to believe that Datasite acted in bad faith, it certainly was not careful or vigilant in both asserting its claim timely or turning off services following the rejection of the Agreement.

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[4] Contrary to Datasite's allegations, that its claim is "relatively small" (*see* Amended Motion, ¶ 30), it is one of the largest administrative claims asserted against a wind-down estate with limited resources.

38. Based on the foregoing, Datasite has not met its burden of establishing that the Asserted Administrative Claim was a result of excusable neglect and therefore the Motion should be denied.

C. Datasite Also Cannot Meet Its Burden of Proof to Establish Entitlement to an Administrative Expense Claim

39. Assuming Datasite could initially meet its burden of establishing excusable neglect to file an untimely claim, it certainly has not and cannot meet its burden for allowance of an administrative claim. Section 503(b)(1) provides in the relevant part that:

> (b) after notice and a hearing, there shall be allowed, administrative expenses…including –
>
> (1)(A) the actual, necessary costs and expenses of preserving the estate. …

11 U.S.C. § 503(b)(1).

40. Section 503 allows for the collection of administrative expenses from a bankruptcy estate with first priority in distribution of the assets of a debtor. *In re Hechinger Inv. Co. of Delaware*, 298 F.3d 219, 224 (3d Cir. 2002). Section 503(b)(1) is intended to limit priority to solely those claims that are actual and necessary, to avoid "the estate being consumed by administrative expenses" and to "preserve[] the estate for the benefit of creditors." *In re Marcal Paper Mills, Inc.,* 650 F.3d 311, 315 (3d Cir. 2011).

41. Thus, in interpreting this provision, the Third Circuit has held that to qualify for administrative priority, the claimant has the heavy burden of establishing that the expenses need to both (1) arise from a postpetition transaction with the debtor-in-possession and (2) must be beneficial to the debtor-in-possession in the operation of its business. *Marcal Paper Mills,* 650 F.3d at 314-15; *In re O'Brien Env't Energy, Inc.*, 181 F.3d 527, 533 (3d Cir. 1999). In addition, the

Third Circuit has further explained that the benefit "must be *actual*, not hypothetical." *In re Energy Future Holdings Corp.*, 990 F.3d 728, 742 (3d Cir. 2021). Datasite fails to meet both requirements.

42. *First*, as set forth above, the transactions all occurred post-Plan Effective Date, and therefore were not transactions with the chapter 11 "debtors-in-possession." Once the Plan went effective, the assets vested in the wind-down debtors and the estate ended. *Westinghouse Elec. Co.*, 11 F.4th at 234. Therefore, there were no applicable transactions during the relevant chapter 11 period which could be considered administrative expenses.

43. *Second,* Datasite provided no evidence whatsoever, as to how the very limited access to its data room meets the "heavy burden" of providing an "actual" and "necessary" benefit to the Debtors. To the contrary, Datasite admits that during the relevant time, only ZOLL employees were "administrators" and that access to the data room was predominantly had by ZOLL employees. ZOLL is not the debtor and the sale to ZOLL closed nearly two months before the first access alleged in the Motion. This Court has routinely denied motions seeking allowance of an administrative expense where no benefit was conferred upon a debtor. *See e.g., In re Bernard Techs., Inc.*, 342 B.R. 174 (Bankr. D. Del. 2006) (denying creditors' request for administrative claim where debtor did not benefit from expenses); *In re Insilco Techs., Inc.*, 309 B.R. 111, 116 (Bankr. D. Del. 2004) (same); *In re Exide Techs.*, 601 B.R. 271, 288 (Bankr. D. Del. 2019) (same).

44. In addition, Datasite asserts it is entitled to significant fees based on contractual rates under the Agreement. Setting aside, that the Agreement was rejected, and the rates do not apply, there is no nexus between the rates charged and the benefit to the Debtors. Thus, even assuming Datasite could establish some benefit to the Debtors' estates, it is entirely unreasonable to assert that four (4) days' access to the Debtors' own records amounts to approximately $171,000 in benefit conferred.

45. Based on all the foregoing allowing the Asserted Administrative Claim under these circumstances is highly inequitable and exactly what the Third Circuit cautioned against in *Marcal Paper Mills. Id.* at 315 (explaining that administrative claims should be scrutinized to avoid an "estate being consumed by administrative expenses" and to preserve value for the benefit of all creditors). The Motion should be denied.

RESERVATION OF RIGHTS

46. The Plan Administrator hereby reserves the right to amend, modify, and supplement this Objection prior to the hearing before the Court on this Objection, if any; *provided, however*, that nothing in this Objection shall affect the Plan Administrator's right to object to the claims at a future date on a basis other than as set forth in this Objection as permitted by bankruptcy and nonbankruptcy law, subject to any limitations set forth in the Local Rules or in the Order.

CONCLUSION

WHEREFORE, the Plan Administrator respectfully requests that the Court (i) enter an order denying the Motion, and (ii) grant such other relief as the Court may deem just and proper.

Dated: March 26, 2025
Wilmington, Delaware

COLE SCHOTZ P.C.

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