Exhibit "A"

Debtor: Vyaire Holding Company

UNITED STATES BANKRUPTCY COURT DISTRICT OF DELAWARE

Case Number: 24-11229

FILED

Claim No. 4

August 02, 2024

By Omni Claims Agent
For U.S. Bankruptcy Court
District of Delaware

Official Form 410

Proof of Claim

04/22

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

Carefully read instructions included with this Proof of Claim before completing.

Part 1: Identify the Claim

1. Who is the current creditor?

Reed Smith LLP

Name of the current creditor (the person or entity to be paid for this claim)

Other names the creditor used with the debtor

2. Has this claim been acquired from someone else?

☒ No
☐ Yes From whom?

3. Where should notices and payments to the creditor be sent?

Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

Where should notices to the creditor be sent?	**Where should payments to the creditor be sent? (if different)**
Reed Smith LLP c/o Mark W. Eckard, Esquire 1201 N. Market Street, Suite 1500 Wilmington, DE 19801	
Contact Phone 302.778.7546	Contact Phone
Contact email meckard@reedsmith.com	Contact email

Uniform claim identifier for electronic payments in chapter 13 (if you use one)

4. Does this claim amend one already filed?

☒ No
☐ Yes Claim Number on court claims registry (if known) Filed On MM / DD / YYYY

5. Do you know if anyone else has filed a proof of claim for this claim?

☒ No
☐ Yes Who made the earlier filing?

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. Do you have any number you use to identify the debtor?
☒ No
☐ Yes Last 4 digits of the debtor's account or any number you use to identify the debtor: _____

7. How much is the claim? $ _____ **Does this amount include interest or other charges?**
☒ No
☐ Yes Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. What is the basis of the claim?
Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.
Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).
Limit disclosing information that is entitled to privacy, such as health care information
**SEE ATACHED ADDENDUM

9. Is all or part of the claim secured?
☐ No
☒ Yes The claim is secured by a lien on property

Nature of property:
☐ Real Estate If the claim is secured by the debtor's principal residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*
☐ Motor Vehicle
☒ Other Describe: **SEE ATTACHED ADDENDUM

Basis for perfection: **SEE ATTACHED ADDENDUM
Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.

Value of Property: $ _____
Amount of the claim that is secured: $ _____
Amount of the claim that is unsecured: $ _____ (The sum of the secured and unsecured amounts should match the amount in line 7).

Amount necessary to cure any default as of the date of the petition: $ _____

Annual Interest Rate: (when case was filed) _____%
☒ Fixed
☐ Variable

10. Is this claim based on a lease?
☒ No
☐ Yes **Amount necessary to cure any default as of the date of the petition.** $ _____

11. Is this claim subject to a right of setoff?
☒ No
☐ Yes Identify the property: _____

12. Is this claim for the value of goods received by the debtor within 20 days before the commencement date of this case (11 U.S.C. § 503(b)(9))?
☒ No
☐ Yes Amount of 503(b)(9) Claim: $ _____

13. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

☒ No
☐ Yes *Check one:*

	Amount entitled to priority
☐ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	$
☐ Up to $3,350* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	$
☐ Wages, salaries, or commissions (up to $15,150*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	$
☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	$
☐ Contributions to an employee benefit plan 11 U.S.C. § 507(a)(5).	$
☐ Other. Specify subsection of 11 U.S.C. § 507(a)(___) that applies.	$

* Amounts are subject to adjustment on 4/01/25 and every 3 years after that for cases begun on or after the date of adjustment.

Part 3: Sign Below

The person completing this proof of claim must sign and date it.

FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

☒ I am the creditor.
☐ I am the creditor's attorney or authorized agent.
☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.
☐ I am the guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowlegment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 8/2/2024
MM / DD / YYYY

/s/ Bert Wells
Signature

Print the name of the person who is completing and signing this claim:

Name: Bert Wells
First Name | Middle Name | Last Name

Title: Partner

Company: Reed Smith LLP
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address: 599 Lexington Avenue, 22nd Floor
New York, NY 10022

Contact Phone 212.521.5400 Email bert.wells@reedsmith.com

Fill in this information to identify the case:

Debtor 1 Vyaire Holding Company

Debtor 2 (Spouse, if filing) _____

United States Bankruptcy Court for the: District of Delaware

Case number 24-11229 (BLS)

Official Form 410

Proof of Claim

04/22

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) **that you received.**

Part 1: Identify the Claim

1. **Who is the current creditor?**

Reed Smith LLP
Name of the current creditor (the person or entity to be paid for this claim)

Other names the creditor used with the debtor _____

2. **Has this claim been acquired from someone else?**

☑ No
☐ Yes. From whom? _____

3. **Where should notices and payments to the creditor be sent?**
Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

Where should notices to the creditor be sent?

Reed Smith LLP (Attn: Mark W. Eckard, Esq.)
Name

1201 N. Market Street, Suite 1500
Number Street

Wilmington DE 19801
City State ZIP Code

Contact phone 302.778.7546

Contact email meckard@reedsmith.com

Where should payments to the creditor be sent? (if different)

Name

Number Street

City State ZIP Code

Contact phone _____

Contact email _____

Uniform claim identifier for electronic payments in chapter 13 (if you use one):

_ _

4. **Does this claim amend one already filed?**

☑ No
☐ Yes. Claim number on court claims registry (if known) _____ Filed on _____ MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?**

☑ No
☐ Yes. Who made the earlier filing? _____

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. **Do you have any number you use to identify the debtor?**
☑ No
☐ Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: ____ ____ ____ ____

7. **How much is the claim?** $**SEE ATTACHED ADDENDUM. **Does this amount include interest or other charges?**
☐ No
☐ Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. **What is the basis of the claim?**
Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.
Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).
Limit disclosing information that is entitled to privacy, such as health care information.
**SEE ATTACHED ADDENDUM

9. **Is all or part of the claim secured?**
☐ No
☑ Yes. The claim is secured by a lien on property.
Nature of property:
☐ Real estate. If the claim is secured by the debtor's principal residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.
☐ Motor vehicle
☑ Other. Describe: **SEE ATTACHED ADDENDUM
Basis for perfection: **SEE ATTACHED ADDENDUM
Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)
Value of property: $_____
Amount of the claim that is secured: $_____
Amount of the claim that is unsecured: $_____ (The sum of the secured and unsecured amounts should match the amount in line 7.)
Amount necessary to cure any default as of the date of the petition: $_____
Annual Interest Rate (when case was filed)_____%
☑ Fixed
☐ Variable

10. **Is this claim based on a lease?**
☑ No
☐ Yes. **Amount necessary to cure any default as of the date of the petition.** $_____

11. **Is this claim subject to a right of setoff?**
☑ No
☐ Yes. Identify the property: _____

12. **Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?**

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

☑ No

☐ Yes. *Check one:*

	Amount entitled to priority
☐ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	$_____
☐ Up to $3,350* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	$_____
☐ Wages, salaries, or commissions (up to $15,150*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	$_____
☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	$_____
☐ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	$_____
☐ Other. Specify subsection of 11 U.S.C. § 507(a)(__) that applies.	$_____

* Amounts are subject to adjustment on 4/01/25 and every 3 years after that for cases begun on or after the date of adjustment.

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

☑ I am the creditor.
☐ I am the creditor's attorney or authorized agent.
☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.
☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 08/02/2024
MM / DD / YYYY

/s/ Bert Wells
Signature

Print the name of the person who is completing and signing this claim:

Name: Bert (First name) | (Middle name) | Wells (Last name)

Title: Partner

Company: Reed Smith LLP
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address: 599 Lexington Avenue, 22nd Floor
Number Street

New York (City) | NY (State) | 10022 (ZIP Code)

Contact phone: 212.521.5400 Email: bert.wells@reedsmith.com

ADDENDUM TO PROOF OF CLAIM

FILED BY

REED SMITH LLP

I. CLAIMANT

1. The claimant is Reed Smith LLP ("***Reed Smith***").

2. Reed Smith has offices at 599 Lexington Avenue, New York, New York, 10022-7650.

3. Bert Wells, a Partner of Reed Smith, is authorized to make this claim on behalf of Reed Smith.

II. BASIS FOR CLAIM

4. Reed Smith and Debtors Vyaire Medical Inc. and Vyaire Holding Company (collectively, the "***Debtors***") are parties to the letter agreement dated as of October 1, 2023 (the "***Reed Smith Engagement Letter***"), providing for and governing Reed Smith's representation of the Debtors in connection with an insurance coverage dispute related to recovery of the Debtors' insured losses attributable to the recall of the Debtors' *enFlow* product (the "***Dispute***"), which representation includes, among other things, serving as counsel for the Debtors in the civil action styled as *Vyaire Holding Company & Vyaire Medical, Inc. v. Westchester Surplus Lines Insurance Company, et al.*, pending in the Supreme Court of the State of New York, Commercial Division, Case No. 652428/2020 (the "***Insurance Coverage Action***").

5. As set forth in the Reed Smith Engagement Letter, Reed Smith's representation of the Debtors in connection with the Dispute, including the Insurance Coverage Action, is subject to the terms of the letter agreement between Covington & Burling LLP ("***Covington***") and the

Debtors dated April 1, 2020 (the "***Covington Engagement Letter***" and, together with the Reed Smith Engagement Letter, the "***Engagement Letters***"). The Debtors agreed in the Reed Smith Engagement Letter that, among things, Reed Smith's "representation of Vyaire is subject to the terms of the [Covington Engagement Letter], read as if [Reed Smith] and Covington jointly stood in the shoes of Covington alone."

6. Since the effective dates of their respective Engagement Letters, Covington and Reed Smith, together (the "***Firms***"), have represented the Debtors in connection with the Dispute, including the Insurance Coverage Action, in exchange for a fee equal to 35% of any recovery received by the Debtors in connection therewith (the "***Fee***"), subject to a Trial Exception. [1] With respect to the Trial Exception, the parties agreed that if trial preparation and trial was required to resolve the Dispute, they would, in good faith, discuss and agree upon the terms of a supplemental fee (the "***Supplemental Fee***") in addition to the Fee for the Firms' continued representation of the Debtors in connection with trial preparation and trial (and subsequent proceedings).

7. On May 9, 2022, the Debtors filed a *Notice of Issue* in the Insurance Coverage Action stating that all discovery known to be necessary had been completed and that the Insurance Coverage Action was ready for trial. All summary judgment motions and appeals thereof have been decided in the Insurance Coverage Action, and the case is trial ready. Trial preparation began prior to the Petition Date,[2] thus the conditions to the Trial Exception under the Engagement Letter were satisfied prepetition.

8. Pursuant to applicable law, Reed Smith has a vested equitable ownership interest and attorney's lien in the Debtors' causes of action and claims in the Insurance Coverage Action

[1] Capitalized terms not defined herein have the meanings given to them in the Engagement Letters.

[2] *I.e.*, June 9, 2024.

and related books and records (the "***Vested Ownership Interest***"), which attach "to any verdict, report, determination, decision, award, settlement, judgment, or final order" in the Debtors' favor, and "the proceeds thereof in whatever hands they may come." N.Y. Judiciary Law § 475; *see In re A. Tarricone, Inc.*, 76 B.R. 53, 56 (Bankr. S.D.N.Y. 1987) ("[T]he lien takes effect from the time the services were commenced, and a trustee in a subsequent bankruptcy case involving the client takes the property of the estate subject to such lien."); *LMWT Realty Corp. v. Davis Agency Inc.*, 649 N.E.2d 1183, 1186 (N.Y. 1995) ("[T]he charging lien does not merely give an attorney an enforceable right against the property of another, it gives the attorney an equitable ownership interest in the client's cause of action.").

9. Thus, upon execution of the Reed Smith Engagement Letter, Reed Smith acquired its share of the Vested Ownership Interest. *LMWT Realty Corp. v. Davis Agency*, 649 N.E.2d at 1186 (the attorney's lien "is something more than a mere claim against either property or proceeds; [the attorney's lien] is a vested property right created by law and not a priority of payment."); *see also In re A. Tarricone, Inc.*, 76 B.R. at 56 ("[T]he lien takes effect from the time the services were commenced, and a trustee in a subsequent bankruptcy case involving the client takes the property of the estate subject to such lien."). Thus, the Charging Lien "is something more than a mere claim against either property or proceeds; [the Charging Lien] is ***a vested property right created by law and not a priority of payment***." *LMWT Realty Corp. v. Davis Agency*, 649 N.E.2d at 1186 (internal quotation marks and citation omitted) (emphasis added).

10. Accordingly, Reed Smith asserts (a) a prepetition equitable ownership interest in and secured claim against the Debtors for the Fee in the amount of 35% of any recovery obtained by the Debtors n the Insurance Coverage Action, which as of the date of this Proof of Claim has been earned; and (b) a prepetition equitable ownership interest in and secured claim against the

Debtors for the Supplemental Fee in connection with trial preparation in the Insurance Coverage Action as contemplated by the Trial Exception as set forth in the Engagement Letter, in an amount to be determined (collectively, the "***Claim***").

III. SUPPORTING DOCUMENTATION

11. The Engagement Letters support this Claim and true and correct copies thereof are attached hereto (the Covington Engagement Letter is attached as Exhibit 1 to the Reed Smith Engagement Letter, redacted solely to keep confidential a conflicts-related disclosure identifying a client of Covington's unrelated to the Debtors).

IV. CREDITS AND SETOFF

12. This Claim is not subject to any setoffs, defenses, or counterclaims by the Debtors. To the extent, however, that the Debtors, or either of them, assert claims against Reed Smith or Covington, Reed Smith reserves the right to assert that any such claims are subject to rights of setoff or recoupment.

V. RESERVATION OF RIGHTS

13. Reed Smith reserves the right, for any reason, to amend, modify, supplement, restate, or withdraw this Claim in any manner, including without limitation, with respect to the amount, priority, or security of this Claim or the identity of the entities liable thereon. Reed Smith also reserves the right to seek payment of any portion of this Claim under 11 U.S.C. § 503(b) or otherwise.

14. Nothing in this Claim shall be deemed a waiver of any rights or remedies that Reed Smith has or may have under the Engagement Letters, or applicable law, or the benefit of subordination of any other claims. All such rights and remedies are expressly reserved.

15. Reed Smith reserves all its rights relating to any chapter 11 plan of reorganization or liquidation.

16. The filing of this Claim is not and shall not be deemed or construed as:

a. Reed Smith's waiver of any of its rights to file or otherwise assert any other claim against the Debtors or either of them, including an administrative claim under 11 U.S.C. § 503 or claims based upon indemnity, contribution, *quantum meruit*, or unjust enrichment;

b. Reed Smith's waiver of any procedural or substantive rights, claims or defenses with respect to any claim that has been or may be asserted against Reed Smith by either of the Debtors or any other person or entity;

c. Reed Smith's consent to the jurisdiction of the United States Bankruptcy Court for the District of Delaware (the "***Bankruptcy Court***") or any other court except for the determination of the amount and priority of this Claim;

d. Reed Smith's consent to a jury trial in the Bankruptcy Court;

e. Reed Smith's waiver or release of any of its rights to have any and all final orders in any and all non-core matters or proceedings entered only after a *de novo* review by a United States District Court;

f. Reed Smith's waiver or release of any of its rights to move to withdraw the reference with respect to the subject matter of this Claim, any objection to this Claim, or any other proceeding that may be commenced in any of the bankruptcy cases of the Debtors or any of their affiliated debtors against or otherwise involving either of the Firms; or

g. an election of remedies.

VI. NOTICES

17. All notices with respect to this Claim should be sent to:

REED SMITH LLP
1201 North Market Street, Suite 1500
Wilmington, Delaware 19801
Attn: Mark W. Eckard, Esq.

REED SMITH LLP
599 Lexington Avenue
New York, New York 10022-7650
Attn: Bert Wells, Esq.

ReedSmith
Driving progress
through partnership
Bert Wells
Direct Phone: +1 212 549 0323
Email: bert.wells@reedsmith.com

Reed Smith LLP
599 Lexington Avenue
New York, NY 10022-7650
+1 212 521 5400
Fax +1 212 521 5450
reedsmith.com

As of October 1, 2023

By Email

John Bibb
General Counsel
Vyaire Medical Inc.
26125 N. Riverwoods Blvd.
Mettawa, IL 600455
john.bibb@vyaire.com

Dear John:

We at Reed Smith LLP are very pleased to have been invited to undertake the representation of Vyaire Medical Inc. and Vyaire Holding Company (collectively, "Vyaire") in connection with the enFlow Coverage Litigation ("Engagement"). This letter will confirm the scope and work and will describe the arrangement and terms we discussed pursuant to which we will represent Vyaire.

We will represent Vyaire in the enFlow Coverage Litigation, which arises from the 2019 recall of an infusion fluid warming system, enFlow, against Vyaire's four product recall insurers, which are defendants in that action. Following a summary judgment ruling in the New York State Supreme Court for New York County, the action is currently on appeal to the New York State Appellate Division, First Department, awaiting oral argument and a ruling on the parties' cross-appeals.

Covington & Burling LLP will be co-counsel in this Engagement. As you requested, we and Covington have reached an agreement on sharing of fees under the letter dated April 1, 2020 between Vyaire and Covington attached hereto as Exhibit 1 (the "Letter").[1]

You and we hereby agree that our representation of Vyaire is subject to the terms of the Letter, read as if we and Covington jointly stood in the shoes of Covington alone. More particularly, and without limiting the foregoing:

- Vyaire's engagement of us will not increase any fees otherwise due from Vyaire;
- If we incur costs, including Third Party Costs, that would be payable if incurred by Covington under the terms of the Letter, then Vyaire will reimburse us pursuant to such terms;
- We confirm that our records reveal no representation of another client adverse to Vyaire in any existing matter presently being handled by this firm or in the Engagement, and we otherwise adopt, and Vyaire agrees to, the other statements in the paragraph carrying over from page 2 to page 3 of the Letter, excepting only the reference in that paragraph to the redacted paragraph that follows; and
- Vyaire consents and agrees to the three complete non-redacted paragraphs on page 3 of the Letter as equally applicable to Reed Smith.

[1] The attachment contains a redaction relating to a client of Covington's that you and we agree is not relevant or applicable to Vyaire's engagement of us.

ReedSmith

Notwithstanding the foregoing, in place of the first complete paragraph of page 4 of the Letter, we represent and you acknowledge that Reed Smith LLP is a limited liability partnership organized under the laws of the State of Delaware.

For your information, in the event that circumstances arise in which it may become relevant, my current hourly rate is $1,425.00 per hour, and current rates for other Reed Smith partners, and associates who may work on the Engagement, range from $515.00 to $1,475.00 per hour. These rates are subject to periodic adjustment.

If the terms of this engagement letter meet with your approval, please sign below and either: (1) return the enclosed copy of same, keeping the second copy for your files; or (2) send an electronic copy (.pdf preferred) of the signed copy via email. If, in the alternative, you have any questions regarding this engagement letter, the attached Letter, or otherwise regarding our requested representation of Vyaire for the Engagement, please contact me. We look forward to the opportunity to work with and for you.

Very truly yours,

Bert Wells

Accepted By:

Vyaire Medical Inc. and Vyaire Holding Company

By: _____

Title: John T. Bibb

Date: October 27, 2023

EXHIBIT 1

COVINGTON

BEIJING BRUSSELS DUBAI FRANKFURT JOHANNESBURG
LONDON LOS ANGELES NEW YORK PALO ALTO
SAN FRANCISCO SEOUL SHANGHAI WASHINGTON

Covington & Burling LLP
The New York Times Building
620 Eighth Avenue
New York, NY 10018-1405
T +1 212 841 1000

April 1, 2020

Kevin Klemz, Esq.
Executive Vice President, Chief Legal Officer
Vyaire Medical Inc.
17400 Medina Rd,
Plymouth, MN 55447

Dear Kevin:

We are very pleased to confirm that we will represent Vyaire Holding Company (US) and Vyaire Medical Inc. (collectively "Vyaire") in an insurance coverage dispute with Westchester Surplus Lines Insurance Company (a Chubb affiliate), North American Capacity Insurance Company (a Swiss Re affiliate), Allianz Underwriters Insurance Company, and Lloyd's Syndicate 2003 XLC (an affiliate of XL Catlin) relating to recovery of Vyaire's insured losses attributable to the recall of Vyaire's enFlow product (the "Dispute"). We appreciate the opportunity to work with you on this matter.

We understand that Vyaire will be our client in this representation and not any of Vyaire's other affiliates or related parties.

I will be in charge of the engagement and will call upon others as appropriate.

We have agreed to carry out this engagement under a contingency fee arrangement, subject to the following scope and other terms:

1. The Fee (as defined below) will be our entire fee for representing Vyaire, starting April 1, 2020, in all aspects of the Dispute, including litigation, through and including any summary judgment motion(s), interlocutory or final appeal(s), and other proceedings, if any, subject to the Trial Exception, below.

2. The Fee will be Vyaire's sole payment to the firm for our services, and we will not charge Vyaire for the standard costs and disbursements identified below in connection with these services; provided however, that Vyaire will be responsible for paying Third Party Costs, as defined below, either directly to the relevant third parties or to us, for our payment to those third parties, as you and we may agree.

3. If it ultimately develops that trial preparation and trial are necessary to resolve the Dispute, at that time that becomes apparent we will in good faith discuss and agree upon a supplemental fee to represent Vyaire in those and any subsequent proceedings (the "Trial Exception").

4. The "Fee" means 35% of any recovery resulting from the Dispute, whether a judgment, settlement or other type of payment or award, except that if the Dispute is

finally and completely resolved before any defendant responds to written discovery requests and before we serve the first written response to discovery on Vyaire's behalf, the Fee will equal two times the amount that would have been Covington's regular fee determined at standard hourly rates, plus one times standard costs and disbursements as outlined below.

5. If there is an opportunity to settle the matter fully and completely that we recommend but Vyaire declines, then we may elect, as an alternative to paragraphs 3 and 4, to claim a fee for services through the date of Vyaire's declination equal to the Fee that would have been payable if such settlement had been accepted and finalized, and thereafter Vyaire will pay us at our standard hourly rates and reimburse our costs and disbursements as outlined below.

For reference in case such information becomes applicable pursuant to the preceding paragraphs, we will keep internal records of our time, costs and disbursements for this matter as we customarily do for clients paying hourly rates. Currently, my hourly rate is $1,170, Will Phillip's rate is $1,750, and Pam Forrest's rate is $1,035; hourly rates for other lawyers range from $560 for junior associates to $2,250 for senior partners; and for legal assistants from $280 to $520. We normally review and adjust our rates once a year as of January 1, although there are circumstances in which we may adjust rates at other times.

Our standard costs and disbursements include charges for support services incurred on your behalf, such as printing, duplicating, computer research, telecommunications, any secretarial overtime attributable to your special needs, mail, deliveries and the like, as well as out-of-pocket costs, such as travel.

Third Party Costs, for which you will be responsible as described above, consist of the fees and costs of experts, court filing fees, the fees of mediators (if any), the costs of court reporters and transcripts, including deposition transcripts, and the costs of other third parties, all of which will be engaged only with your consent.

Payment of our statements in full is due within 30 days of receipt. We reserve the right to charge interest on any portion of a statement that is not paid on time.

In accordance with New York professional rules, we advise you that in the event of a fee dispute you may have the right to elect to submit the dispute to arbitration under Part 137 of the Rules of the Chief Administrator of the New York courts.

Except as noted in the following paragraph, our records reveal no representation of another client adverse to you in any existing matter presently being handled by this firm or in the Dispute. However, as you recognize, we are a large law firm with multiple practices in multiple offices throughout the world, and we represent many different clients in many different industries, including clients who are competitors of each other and sometimes adversaries in legal matters. In taking on this representation, we commit that we will not represent any other client in any matter adverse to you that is substantially related to this matter. In this context, "substantially related" is a term that has come to have a settled meaning in the case law and in Bar ethics opinions. What this commitment means is that we will not take on any matter

adverse to you on behalf of another client in circumstances in which any of your privileged/ confidential data or information, as normally would have been obtained by us in our representation of you, would be material to any new matter adverse to you that we might accept from another client.

[redacted]

In return for our agreement to represent you in this matter, you consent and agree that we may be adverse to you on behalf of other clients in matters that are not substantially related to the matter we are now undertaking on your behalf or to any additional matter we may undertake on your behalf in the future. This means that we might be adverse to you in litigation, intellectual property matters (including patent litigation), transactional matters, counseling, matters involving administrative agencies, lobbying and other legislative matters, or any other type of matter so long as the matter is not substantially related to work we have performed for you and subject to our agreement to implement and maintain an ethical screen that prohibits the sharing of privileged/confidential data or information between Covington personnel working on Vyaire's Dispute and Covington personnel working on the adverse matter.

Specifically, our Firm regularly serves as an advisor and counsel for innovative pharmaceutical manufacturers and their trade associations in litigation, disputes and proceedings in the courts of the United States, the European Union and other jurisdictions, and in a variety of other forums, including legislative and administrative bodies, relating to patents and other forms of intellectual property, pharmaceutical regulatory issues, antitrust and competition regulation and other matters in which Vyaire or its affiliates may be adverse. You have expressly consented to our current and future representation of other clients in such matters, including in Hatch-Waxman and similar litigation relating to generic drugs (including ANDAs, 505(b)(2) applications, and follow-on biologics), in any present or future representations in which we serve as counsel, including counsel of record, in proceedings to which Vyaire or its affiliates may have an adverse interest. If so, Covington will implement and maintain an ethical screen that prohibits the sharing of privileged/confidential data or information between Covington personnel working on Vyaire's Dispute and Covington personnel working on the adverse matter.

In addition, if there are parties adverse to you in the matter we are undertaking on your behalf, it is possible that those adverse parties will have need for counsel in matters which do not have a substantial relationship to the matter in which we represent you. Even though we would, as a result, be receiving some fee income from your adversary, you consent to our representing such parties in matters that are not substantially related to any of our work for you. We, for our part, commit to continued zealous representation of your interests in the matters in which we do represent you notwithstanding any fee income we may receive from your adversary.

You agree that both you and our firm may use electronic devices and Internet services to communicate with each other and forward documents notwithstanding some risk that such

communications may be intercepted by and disclosed to unauthorized parties. You agree that the benefits of using such technology outweigh the risks of unauthorized disclosure.

Covington & Burling LLP is a limited liability partnership organized under the laws of the District of Columbia. Under this form of partnership, a partner's personal assets are not subject to claims against the firm (and other partners) based on contracts, professional negligence or other liability unless the partner is personally liable based on his or her own conduct.

I trust this letter accurately states our mutual understanding. If you have questions about any aspect of it, please let me know promptly. Otherwise please confirm our understanding by signing and returning a copy of this letter to me.

We very much appreciate your selecting our firm to assist you, and we look forward to working with you on this matter.

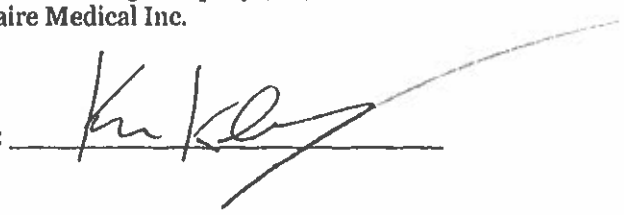
Sincerely,

/s/ Bert Wells

Bert Wells

Agreed to:

Vyaire Holding Company (US) and
Vyaire Medical Inc.

By: 

Debtor: Vyaire Medical, Inc.

UNITED STATES BANKRUPTCY COURT DISTRICT OF DELAWARE

Case Number: 24-11217

FILED

Claim No. 144

August 02, 2024

By Omni Claims Agent

For U.S. Bankruptcy Court

District of Delaware

Official Form 410

Proof of Claim

04/22

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

Carefully read instructions included with this Proof of Claim before completing.

Part 1: Identify the Claim

1. Who is the current creditor?

Reed Smith LLP

Name of the current creditor (the person or entity to be paid for this claim)

Other names the creditor used with the debtor

2. Has this claim been acquired from someone else?

☒ No

☐ Yes From whom?

3. Where should notices and payments to the creditor be sent?

Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

Where should notices to the creditor be sent?	**Where should payments to the creditor be sent? (if different)**
Reed Smith LLP c/o Mark W. Eckard, Esquire 1201 N. Market Street, Suite 1500 Wilmington, DE 19801	
Contact Phone 302.778.7546	Contact Phone
Contact email meckard@reedsmith.com	Contact email

Uniform claim identifier for electronic payments in chapter 13 (if you use one)

4. Does this claim amend one already filed?

☐ No

☒ Yes Claim Number on court claims registry (if known) 143 Filed On 8/2/2024 MM / DD / YYYY

5. Do you know if anyone else has filed a proof of claim for this claim?

☒ No

☐ Yes Who made the earlier filing?

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. Do you have any number you use to identify the debtor?
☒ No
☐ Yes Last 4 digits of the debtor's account or any number you use to identify the debtor: _____

7. How much is the claim? $ _____ **Does this amount include interest or other charges?**
☒ No
☐ Yes Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. What is the basis of the claim?
Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.
Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).
Limit disclosing information that is entitled to privacy, such as health care information
**SEE ATTACHED ADDENDUM

9. Is all or part of the claim secured?
☐ No
☒ Yes The claim is secured by a lien on property

Nature of property:
☐ Real Estate If the claim is secured by the debtor's principal residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*
☐ Motor Vehicle
☒ Other Describe: **SEE ATTACHED ADDENDUM

Basis for perfection: **SEE ATTACHED ADDENDUM
Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.

Value of Property: $ _____
Amount of the claim that is secured: $ _____
Amount of the claim that is unsecured: $ _____ (The sum of the secured and unsecured amounts should match the amount in line 7).

Amount necessary to cure any default as of the date of the petition: $ _____

Annual Interest Rate: (when case was filed) _____%
☒ Fixed
☐ Variable

10. Is this claim based on a lease?
☒ No
☐ Yes **Amount necessary to cure any default as of the date of the petition.** $ _____

11. Is this claim subject to a right of setoff?
☒ No
☐ Yes Identify the property: _____

12. Is this claim for the value of goods received by the debtor within 20 days before the commencement date of this case (11 U.S.C. § 503(b)(9)).?
☒ No
☐ Yes Amount of 503(b)(9) Claim: $ _____

13. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

☒ No
☐ Yes *Check one:*

	Amount entitled to priority
☐ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	$
☐ Up to $3,350* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	$
☐ Wages, salaries, or commissions (up to $15,150*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	$
☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	$
☐ Contributions to an employee benefit plan 11 U.S.C. § 507(a)(5).	$
☐ Other. Specify subsection of 11 U.S.C. § 507(a)(___) that applies.	$

* Amounts are subject to adjustment on 4/01/25 and every 3 years after that for cases begun on or after the date of adjustment.

Part 3: Sign Below

The person completing this proof of claim must sign and date it.

FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

☒ I am the creditor.
☐ I am the creditor's attorney or authorized agent.
☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.
☐ I am the guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowlegment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 8/2/2024
MM / DD / YYYY

/s/ Bert Wells
Signature

Print the name of the person who is completing and signing this claim:

Name: Bert Wells
First Name | Middle Name | Last Name

Title:

Company: Reed Smith LLP
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address: 599 Lexington Avenue, 22nd Floor
New York, NY 10022

Contact Phone 212.521.5400 Email bert.wells@reedsmith.com

Fill in this information to identify the case:

Debtor 1 Vyaire Medical, Inc.

Debtor 2 (Spouse, if filing) _____

United States Bankruptcy Court for the: District of Delaware

Case number 24-11217 (BLS)

Official Form 410

Proof of Claim

04/22

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) **that you received.**

Part 1: Identify the Claim

1. **Who is the current creditor?**

Reed Smith LLP
Name of the current creditor (the person or entity to be paid for this claim)

Other names the creditor used with the debtor _____

2. **Has this claim been acquired from someone else?**

☑ No
☐ Yes. From whom? _____

3. **Where should notices and payments to the creditor be sent?**
Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

Where should notices to the creditor be sent?

Reed Smith LLP (Attn: Mark W. Eckard, Esq.)
Name

1201 N. Market Street, Suite 1500
Number Street

Wilmington DE 19801
City State ZIP Code

Contact phone 302.778.7546

Contact email meckard@reedsmith.com

Where should payments to the creditor be sent? (if different)

Name

Number Street

City State ZIP Code

Contact phone _____

Contact email _____

Uniform claim identifier for electronic payments in chapter 13 (if you use one):

_ _

4. **Does this claim amend one already filed?**

☑ No
☐ Yes. Claim number on court claims registry (if known) _____ Filed on _____ MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?**

☑ No
☐ Yes. Who made the earlier filing? _____

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. **Do you have any number you use to identify the debtor?**
☑ No
☐ Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: ____ ____ ____ ____

7. **How much is the claim?** $**SEE ATTACHED ADDENDUM **Does this amount include interest or other charges?**
☐ No
☐ Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. **What is the basis of the claim?**
Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.
Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).
Limit disclosing information that is entitled to privacy, such as health care information.
**SEE ATTACHED ADDENDUM

9. **Is all or part of the claim secured?**
☐ No
☑ Yes. The claim is secured by a lien on property.

Nature of property:
☐ Real estate. If the claim is secured by the debtor's principal residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.
☐ Motor vehicle
☑ Other. Describe: **SEE ATTACHED ADDENDUM

Basis for perfection: ** SEE ATTACHED ADDENDUM
Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)

Value of property: $_____
Amount of the claim that is secured: $_____
Amount of the claim that is unsecured: $_____ (The sum of the secured and unsecured amounts should match the amount in line 7.)

Amount necessary to cure any default as of the date of the petition: $_____

Annual Interest Rate (when case was filed)_____%
☑ Fixed
☐ Variable

10. **Is this claim based on a lease?**
☑ No
☐ Yes. **Amount necessary to cure any default as of the date of the petition.** $_____

11. **Is this claim subject to a right of setoff?**
☑ No
☐ Yes. Identify the property: _____

12. **Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?**

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

☑ No

☐ Yes. *Check one:*

	Amount entitled to priority
☐ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	$
☐ Up to $3,350* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	$
☐ Wages, salaries, or commissions (up to $15,150*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	$
☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	$
☐ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	$
☐ Other. Specify subsection of 11 U.S.C. § 507(a)(__) that applies.	$

* Amounts are subject to adjustment on 4/01/25 and every 3 years after that for cases begun on or after the date of adjustment.

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

☑ I am the creditor.
☐ I am the creditor's attorney or authorized agent.
☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.
☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 08/02/2024
MM / DD / YYYY

/s/ Bert Wells
Signature

Print the name of the person who is completing and signing this claim:

Name: Bert (First name) | (Middle name) | Wells (Last name)

Title: Partner

Company: Reed Smith LLP
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address: 599 Lexington Avenue, 22nd Floor
Number Street

New York (City) | NY (State) | 10022 (ZIP Code)

Contact phone: 212.521.5400 Email: bert.wells@reedsmith.com

ADDENDUM TO PROOF OF CLAIM

FILED BY

REED SMITH LLP

I. CLAIMANT

1. The claimant is Reed Smith LLP ("***Reed Smith***").

2. Reed Smith has offices at 599 Lexington Avenue, New York, New York, 10022-7650.

3. Bert Wells, a Partner of Reed Smith, is authorized to make this claim on behalf of Reed Smith.

II. BASIS FOR CLAIM

4. Reed Smith and Debtors Vyaire Medical Inc. and Vyaire Holding Company (collectively, the "***Debtors***") are parties to the letter agreement dated as of October 1, 2023 (the "***Reed Smith Engagement Letter***"), providing for and governing Reed Smith's representation of the Debtors in connection with an insurance coverage dispute related to recovery of the Debtors' insured losses attributable to the recall of the Debtors' *enFlow* product (the "***Dispute***"), which representation includes, among other things, serving as counsel for the Debtors in the civil action styled as *Vyaire Holding Company & Vyaire Medical, Inc. v. Westchester Surplus Lines Insurance Company, et al.*, pending in the Supreme Court of the State of New York, Commercial Division, Case No. 652428/2020 (the "***Insurance Coverage Action***").

5. As set forth in the Reed Smith Engagement Letter, Reed Smith's representation of the Debtors in connection with the Dispute, including the Insurance Coverage Action, is subject to the terms of the letter agreement between Covington & Burling LLP ("***Covington***") and the

Debtors dated April 1, 2020 (the "***Covington Engagement Letter***" and, together with the Reed Smith Engagement Letter, the "***Engagement Letters***"). The Debtors agreed in the Reed Smith Engagement Letter that, among things, Reed Smith's "representation of Vyaire is subject to the terms of the [Covington Engagement Letter], read as if [Reed Smith] and Covington jointly stood in the shoes of Covington alone."

6. Since the effective dates of their respective Engagement Letters, Covington and Reed Smith, together (the "***Firms***"), have represented the Debtors in connection with the Dispute, including the Insurance Coverage Action, in exchange for a fee equal to 35% of any recovery received by the Debtors in connection therewith (the "***Fee***"), subject to a Trial Exception. [1] With respect to the Trial Exception, the parties agreed that if trial preparation and trial was required to resolve the Dispute, they would, in good faith, discuss and agree upon the terms of a supplemental fee (the "***Supplemental Fee***") in addition to the Fee for the Firms' continued representation of the Debtors in connection with trial preparation and trial (and subsequent proceedings).

7. On May 9, 2022, the Debtors filed a *Notice of Issue* in the Insurance Coverage Action stating that all discovery known to be necessary had been completed and that the Insurance Coverage Action was ready for trial. All summary judgment motions and appeals thereof have been decided in the Insurance Coverage Action, and the case is trial ready. Trial preparation began prior to the Petition Date,[2] thus the conditions to the Trial Exception under the Engagement Letter were satisfied prepetition.

8. Pursuant to applicable law, Reed Smith has a vested equitable ownership interest and attorney's lien in the Debtors' causes of action and claims in the Insurance Coverage Action

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[1] Capitalized terms not defined herein have the meanings given to them in the Engagement Letters.

[2] *I.e.*, June 9, 2024.

and related books and records (the "***Vested Ownership Interest***"), which attach "to any verdict, report, determination, decision, award, settlement, judgment, or final order" in the Debtors' favor, and "the proceeds thereof in whatever hands they may come." N.Y. Judiciary Law § 475; *see In re A. Tarricone, Inc.*, 76 B.R. 53, 56 (Bankr. S.D.N.Y. 1987) ("[T]he lien takes effect from the time the services were commenced, and a trustee in a subsequent bankruptcy case involving the client takes the property of the estate subject to such lien."); *LMWT Realty Corp. v. Davis Agency Inc.*, 649 N.E.2d 1183, 1186 (N.Y. 1995) ("[T]he charging lien does not merely give an attorney an enforceable right against the property of another, it gives the attorney an equitable ownership interest in the client's cause of action.").

9. Thus, upon execution of the Reed Smith Engagement Letter, Reed Smith acquired its share of the Vested Ownership Interest. *LMWT Realty Corp. v. Davis Agency*, 649 N.E.2d at 1186 (the attorney's lien "is something more than a mere claim against either property or proceeds; [the attorney's lien] is a vested property right created by law and not a priority of payment."); *see also In re A. Tarricone, Inc.*, 76 B.R. at 56 ("[T]he lien takes effect from the time the services were commenced, and a trustee in a subsequent bankruptcy case involving the client takes the property of the estate subject to such lien."). Thus, the Charging Lien "is something more than a mere claim against either property or proceeds; [the Charging Lien] is ***a vested property right created by law and not a priority of payment***." *LMWT Realty Corp. v. Davis Agency*, 649 N.E.2d at 1186 (internal quotation marks and citation omitted) (emphasis added).

10. Accordingly, Reed Smith asserts (a) a prepetition equitable ownership interest in and secured claim against the Debtors for the Fee in the amount of 35% of any recovery obtained by the Debtors n the Insurance Coverage Action, which as of the date of this Proof of Claim has been earned; and (b) a prepetition equitable ownership interest in and secured claim against the

Debtors for the Supplemental Fee in connection with trial preparation in the Insurance Coverage Action as contemplated by the Trial Exception as set forth in the Engagement Letter, in an amount to be determined (collectively, the "***Claim***").

III. SUPPORTING DOCUMENTATION

11. The Engagement Letters support this Claim and true and correct copies thereof are attached hereto (the Covington Engagement Letter is attached as Exhibit 1 to the Reed Smith Engagement Letter, redacted solely to keep confidential a conflicts-related disclosure identifying a client of Covington's unrelated to the Debtors).

IV. CREDITS AND SETOFF

12. This Claim is not subject to any setoffs, defenses, or counterclaims by the Debtors. To the extent, however, that the Debtors, or either of them, assert claims against Reed Smith or Covington, Reed Smith reserves the right to assert that any such claims are subject to rights of setoff or recoupment.

V. RESERVATION OF RIGHTS

13. Reed Smith reserves the right, for any reason, to amend, modify, supplement, restate, or withdraw this Claim in any manner, including without limitation, with respect to the amount, priority, or security of this Claim or the identity of the entities liable thereon. Reed Smith also reserves the right to seek payment of any portion of this Claim under 11 U.S.C. § 503(b) or otherwise.

14. Nothing in this Claim shall be deemed a waiver of any rights or remedies that Reed Smith has or may have under the Engagement Letters, or applicable law, or the benefit of subordination of any other claims. All such rights and remedies are expressly reserved.

15. Reed Smith reserves all its rights relating to any chapter 11 plan of reorganization or liquidation.

16. The filing of this Claim is not and shall not be deemed or construed as:

a. Reed Smith's waiver of any of its rights to file or otherwise assert any other claim against the Debtors or either of them, including an administrative claim under 11 U.S.C. § 503 or claims based upon indemnity, contribution, *quantum meruit*, or unjust enrichment;

b. Reed Smith's waiver of any procedural or substantive rights, claims or defenses with respect to any claim that has been or may be asserted against Reed Smith by either of the Debtors or any other person or entity;

c. Reed Smith's consent to the jurisdiction of the United States Bankruptcy Court for the District of Delaware (the "***Bankruptcy Court***") or any other court except for the determination of the amount and priority of this Claim;

d. Reed Smith's consent to a jury trial in the Bankruptcy Court;

e. Reed Smith's waiver or release of any of its rights to have any and all final orders in any and all non-core matters or proceedings entered only after a *de novo* review by a United States District Court;

f. Reed Smith's waiver or release of any of its rights to move to withdraw the reference with respect to the subject matter of this Claim, any objection to this Claim, or any other proceeding that may be commenced in any of the bankruptcy cases of the Debtors or any of their affiliated debtors against or otherwise involving either of the Firms; or

g. an election of remedies.

VI. NOTICES

17. All notices with respect to this Claim should be sent to:

REED SMITH LLP
1201 North Market Street, Suite 1500
Wilmington, Delaware 19801
Attn: Mark W. Eckard, Esq.

REED SMITH LLP
599 Lexington Avenue
New York, New York 10022-7650
Attn: Bert Wells, Esq.

ReedSmith
Driving progress
through partnership
Bert Wells
Direct Phone: +1 212 549 0323
Email: bert.wells@reedsmith.com

Reed Smith LLP
599 Lexington Avenue
New York, NY 10022-7650
+1 212 521 5400
Fax +1 212 521 5450
reedsmith.com

As of October 1, 2023

By Email

John Bibb
General Counsel
Vyaire Medical Inc.
26125 N. Riverwoods Blvd.
Mettawa, IL 600455
john.bibb@vyaire.com

Dear John:

We at Reed Smith LLP are very pleased to have been invited to undertake the representation of Vyaire Medical Inc. and Vyaire Holding Company (collectively, "Vyaire") in connection with the enFlow Coverage Litigation ("Engagement"). This letter will confirm the scope and work and will describe the arrangement and terms we discussed pursuant to which we will represent Vyaire.

We will represent Vyaire in the enFlow Coverage Litigation, which arises from the 2019 recall of an infusion fluid warming system, enFlow, against Vyaire's four product recall insurers, which are defendants in that action. Following a summary judgment ruling in the New York State Supreme Court for New York County, the action is currently on appeal to the New York State Appellate Division, First Department, awaiting oral argument and a ruling on the parties' cross-appeals.

Covington & Burling LLP will be co-counsel in this Engagement. As you requested, we and Covington have reached an agreement on sharing of fees under the letter dated April 1, 2020 between Vyaire and Covington attached hereto as Exhibit 1 (the "Letter").[1]

You and we hereby agree that our representation of Vyaire is subject to the terms of the Letter, read as if we and Covington jointly stood in the shoes of Covington alone. More particularly, and without limiting the foregoing:

- Vyaire's engagement of us will not increase any fees otherwise due from Vyaire;
- If we incur costs, including Third Party Costs, that would be payable if incurred by Covington under the terms of the Letter, then Vyaire will reimburse us pursuant to such terms;
- We confirm that our records reveal no representation of another client adverse to Vyaire in any existing matter presently being handled by this firm or in the Engagement, and we otherwise adopt, and Vyaire agrees to, the other statements in the paragraph carrying over from page 2 to page 3 of the Letter, excepting only the reference in that paragraph to the redacted paragraph that follows; and
- Vyaire consents and agrees to the three complete non-redacted paragraphs on page 3 of the Letter as equally applicable to Reed Smith.

[1] The attachment contains a redaction relating to a client of Covington's that you and we agree is not relevant or applicable to Vyaire's engagement of us.

ReedSmith

Notwithstanding the foregoing, in place of the first complete paragraph of page 4 of the Letter, we represent and you acknowledge that Reed Smith LLP is a limited liability partnership organized under the laws of the State of Delaware.

For your information, in the event that circumstances arise in which it may become relevant, my current hourly rate is $1,425.00 per hour, and current rates for other Reed Smith partners, and associates who may work on the Engagement, range from $515.00 to $1,475.00 per hour. These rates are subject to periodic adjustment.

If the terms of this engagement letter meet with your approval, please sign below and either: (1) return the enclosed copy of same, keeping the second copy for your files; or (2) send an electronic copy (.pdf preferred) of the signed copy via email. If, in the alternative, you have any questions regarding this engagement letter, the attached Letter, or otherwise regarding our requested representation of Vyaire for the Engagement, please contact me. We look forward to the opportunity to work with and for you.

Very truly yours,

Bert Wells

Accepted By:

Vyaire Medical Inc. and Vyaire Holding Company

By: _____

Title: John T. Bibb

Date: October 27, 2023

EXHIBIT 1

COVINGTON

BEIJING BRUSSELS DUBAI FRANKFURT JOHANNESBURG
LONDON LOS ANGELES NEW YORK PALO ALTO
SAN FRANCISCO SEOUL SHANGHAI WASHINGTON

Covington & Burling LLP
The New York Times Building
620 Eighth Avenue
New York, NY 10018-1405
T +1 212 841 1000

April 1, 2020

Kevin Klemz, Esq.
Executive Vice President, Chief Legal Officer
Vyaire Medical Inc.
17400 Medina Rd,
Plymouth, MN 55447

Dear Kevin:

We are very pleased to confirm that we will represent Vyaire Holding Company (US) and Vyaire Medical Inc. (collectively "Vyaire") in an insurance coverage dispute with Westchester Surplus Lines Insurance Company (a Chubb affiliate), North American Capacity Insurance Company (a Swiss Re affiliate), Allianz Underwriters Insurance Company, and Lloyd's Syndicate 2003 XLC (an affiliate of XL Catlin) relating to recovery of Vyaire's insured losses attributable to the recall of Vyaire's enFlow product (the "Dispute"). We appreciate the opportunity to work with you on this matter.

We understand that Vyaire will be our client in this representation and not any of Vyaire's other affiliates or related parties.

I will be in charge of the engagement and will call upon others as appropriate.

We have agreed to carry out this engagement under a contingency fee arrangement, subject to the following scope and other terms:

1. The Fee (as defined below) will be our entire fee for representing Vyaire, starting April 1, 2020, in all aspects of the Dispute, including litigation, through and including any summary judgment motion(s), interlocutory or final appeal(s), and other proceedings, if any, subject to the Trial Exception, below.

2. The Fee will be Vyaire's sole payment to the firm for our services, and we will not charge Vyaire for the standard costs and disbursements identified below in connection with these services; provided however, that Vyaire will be responsible for paying Third Party Costs, as defined below, either directly to the relevant third parties or to us, for our payment to those third parties, as you and we may agree.

3. If it ultimately develops that trial preparation and trial are necessary to resolve the Dispute, at that time that becomes apparent we will in good faith discuss and agree upon a supplemental fee to represent Vyaire in those and any subsequent proceedings (the "Trial Exception").

4. The "Fee" means 35% of any recovery resulting from the Dispute, whether a judgment, settlement or other type of payment or award, except that if the Dispute is

finally and completely resolved before any defendant responds to written discovery requests and before we serve the first written response to discovery on Vyaire's behalf, the Fee will equal two times the amount that would have been Covington's regular fee determined at standard hourly rates, plus one times standard costs and disbursements as outlined below.

5. If there is an opportunity to settle the matter fully and completely that we recommend but Vyaire declines, then we may elect, as an alternative to paragraphs 3 and 4, to claim a fee for services through the date of Vyaire's declination equal to the Fee that would have been payable if such settlement had been accepted and finalized, and thereafter Vyaire will pay us at our standard hourly rates and reimburse our costs and disbursements as outlined below.

For reference in case such information becomes applicable pursuant to the preceding paragraphs, we will keep internal records of our time, costs and disbursements for this matter as we customarily do for clients paying hourly rates. Currently, my hourly rate is $1,170, Will Phillip's rate is $1,750, and Pam Forrest's rate is $1,035; hourly rates for other lawyers range from $560 for junior associates to $2,250 for senior partners; and for legal assistants from $280 to $520. We normally review and adjust our rates once a year as of January 1, although there are circumstances in which we may adjust rates at other times.

Our standard costs and disbursements include charges for support services incurred on your behalf, such as printing, duplicating, computer research, telecommunications, any secretarial overtime attributable to your special needs, mail, deliveries and the like, as well as out-of-pocket costs, such as travel.

Third Party Costs, for which you will be responsible as described above, consist of the fees and costs of experts, court filing fees, the fees of mediators (if any), the costs of court reporters and transcripts, including deposition transcripts, and the costs of other third parties, all of which will be engaged only with your consent.

Payment of our statements in full is due within 30 days of receipt. We reserve the right to charge interest on any portion of a statement that is not paid on time.

In accordance with New York professional rules, we advise you that in the event of a fee dispute you may have the right to elect to submit the dispute to arbitration under Part 137 of the Rules of the Chief Administrator of the New York courts.

Except as noted in the following paragraph, our records reveal no representation of another client adverse to you in any existing matter presently being handled by this firm or in the Dispute. However, as you recognize, we are a large law firm with multiple practices in multiple offices throughout the world, and we represent many different clients in many different industries, including clients who are competitors of each other and sometimes adversaries in legal matters. In taking on this representation, we commit that we will not represent any other client in any matter adverse to you that is substantially related to this matter. In this context, "substantially related" is a term that has come to have a settled meaning in the case law and in Bar ethics opinions. What this commitment means is that we will not take on any matter

adverse to you on behalf of another client in circumstances in which any of your privileged/ confidential data or information, as normally would have been obtained by us in our representation of you, would be material to any new matter adverse to you that we might accept from another client.

[redacted]

In return for our agreement to represent you in this matter, you consent and agree that we may be adverse to you on behalf of other clients in matters that are not substantially related to the matter we are now undertaking on your behalf or to any additional matter we may undertake on your behalf in the future. This means that we might be adverse to you in litigation, intellectual property matters (including patent litigation), transactional matters, counseling, matters involving administrative agencies, lobbying and other legislative matters, or any other type of matter so long as the matter is not substantially related to work we have performed for you and subject to our agreement to implement and maintain an ethical screen that prohibits the sharing of privileged/confidential data or information between Covington personnel working on Vyaire's Dispute and Covington personnel working on the adverse matter.

Specifically, our Firm regularly serves as an advisor and counsel for innovative pharmaceutical manufacturers and their trade associations in litigation, disputes and proceedings in the courts of the United States, the European Union and other jurisdictions, and in a variety of other forums, including legislative and administrative bodies, relating to patents and other forms of intellectual property, pharmaceutical regulatory issues, antitrust and competition regulation and other matters in which Vyaire or its affiliates may be adverse. You have expressly consented to our current and future representation of other clients in such matters, including in Hatch-Waxman and similar litigation relating to generic drugs (including ANDAs, 505(b)(2) applications, and follow-on biologics), in any present or future representations in which we serve as counsel, including counsel of record, in proceedings to which Vyaire or its affiliates may have an adverse interest. If so, Covington will implement and maintain an ethical screen that prohibits the sharing of privileged/confidential data or information between Covington personnel working on Vyaire's Dispute and Covington personnel working on the adverse matter.

In addition, if there are parties adverse to you in the matter we are undertaking on your behalf, it is possible that those adverse parties will have need for counsel in matters which do not have a substantial relationship to the matter in which we represent you. Even though we would, as a result, be receiving some fee income from your adversary, you consent to our representing such parties in matters that are not substantially related to any of our work for you. We, for our part, commit to continued zealous representation of your interests in the matters in which we do represent you notwithstanding any fee income we may receive from your adversary.

You agree that both you and our firm may use electronic devices and Internet services to communicate with each other and forward documents notwithstanding some risk that such

communications may be intercepted by and disclosed to unauthorized parties. You agree that the benefits of using such technology outweigh the risks of unauthorized disclosure.

Covington & Burling LLP is a limited liability partnership organized under the laws of the District of Columbia. Under this form of partnership, a partner's personal assets are not subject to claims against the firm (and other partners) based on contracts, professional negligence or other liability unless the partner is personally liable based on his or her own conduct.

I trust this letter accurately states our mutual understanding. If you have questions about any aspect of it, please let me know promptly. Otherwise please confirm our understanding by signing and returning a copy of this letter to me.

We very much appreciate your selecting our firm to assist you, and we look forward to working with you on this matter.

Sincerely,

/s/ Bert Wells

Bert Wells

Agreed to:

Vyaire Holding Company (US) and
Vyaire Medical Inc.

By: 