Exhibit "B"

Debtor: Vyaire Holding Company

UNITED STATES BANKRUPTCY COURT DISTRICT OF DELAWARE

Case Number: 24-11229

FILED

Claim No. 2

August 01, 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?

Covington & Burling 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)**
Covington & Burling LLP / Attn: William Phillips 620 Eight Avenue New York, NY 10018	
Contact Phone (212) 841-1000	Contact Phone
Contact email cphillips@cov.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: 2981

7. How much is the claim? $ $508.61
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
Equitable interest and attorney's lien. See 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 addendum.

Basis for perfection:
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

C. William Phillips
Signature

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

Name: C. William Phillips
First Name | Middle Name | Last Name

Title: Partner

Company: Covington & Burling LLP
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address: 620 Eight Avenue
New York, NY 10018

Contact Phone (212) 841-1000 Email cphillips@cov.com

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
VYAIRE MEDICAL, INC., *et al.*,[1]	)	Case No. 24-11217 (BLS) (Jointly Administered)
Debtors.	)	

ADDENDUM TO PROOF OF CLAIM OF COVINGTON & BURLING LLP

This is an addendum ("Addendum") to, and a part of, the proof of claim ("Proof of Claim") filed by Covington & Burling LLP ("Covington") against Vyaire Holding Company ("Vyaire Holding").

1. On June 9, 2024 ("Petition Date"), Vyaire Holding and its affiliated debtors ("Debtors") filed voluntary petitions for relief under chapter 11 of the United States Bankruptcy Code, 11 U.S.C. §§ 101, *et seq.*, ("Bankruptcy Code") in the United States Bankruptcy Court for the District of Delaware ("Bankruptcy Court"). The Debtors are operating their business as debtors-in-possession pursuant to Bankruptcy Code §§ 1107 and 1108.

2. As of the date of this Addendum, no trustee or examiner has been appointed in the cases. On June 26, 2024 the United States Trustee for the District of Delaware appointed the Official Committee of Unsecured Creditors in the Debtors' chapter 11 cases [Docket No. 121].

3. The Claim. Prior to the Petition Date, Covington served as counsel to Vyaire Holding and Vyaire Medical, Inc. (together, "Vyaire Plaintiffs") in an insurance coverage action pending in the Supreme Court of the State of New York, County of New York,

[1] The last four digits of Debtor Vyaire Medical Inc.'s federal tax identification number are 6495. A complete list of each of the Debtors in these chapter 11 cases and each such Debtor's federal tax identification number may be obtained on the website of the Debtors' claims and noticing agent at https://omniagentsolutions.com/Vyaire. The location of Debtor Vyaire Medical, Inc.'s principal place of business and the Debtors' service address in these chapter 11 cases is 26125 North Riverwoods Boulevard, Mettawa, Illinois, USA 60045.

Index No. 652428/2020 ("Insurance Coverage Action"). Pursuant to the engagement letter between the Vyaire Plaintiffs and Covington, dated April 1, 2020 ("Engagement Letter") and attached as Exhibit "A" hereto, Covington agreed to represent the Vyaire Plaintiffs in the Dispute[2] in exchange for a Fee equal to 35% of any recovery received by the Vyaire Plaintiffs in the Dispute, subject to a Trial Exception. With respect to the Trial Exception, the parties agreed that if trial preparation and trial were required to resolve the Dispute, they would in good faith discuss and agree upon a supplemental fee for Covington's continued representation of the Vyaire Plaintiffs in connection with trial preparation and trial (and subsequent proceedings).[3]

4. On May 9, 2022, the Vyaire Plaintiffs filed a Note of Issue in the Insurance Coverage Action stating that all discovery known to be necessary had been completed and that the case 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, and thus the conditions to the Trial Exception under the Engagement Letter were satisfied prior to the Petition Date.

5. Under the Engagement Letter, the Vyaire Plaintiffs are responsible for paying Third Party Costs, either directly to the applicable third parties or to Covington in reimbursement of Covington's payment of the Third-Party Costs. Covington has incurred $508.61 in Third Party Costs that have not been reimbursed by the Vyaire Plaintiffs, as reflected in the invoice attached as Exhibit "B" hereto.

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[2] All capitalized terms, not otherwise defined herein, shall have the meanings given to them in the Engagement Letter.

[3] Following the engagement of Covington, one of the lead attorneys representing the Vyaire Plaintiffs left Covington and joined Reed Smith LLP ("Reed Smith"). Covington and Reed Smith agreed to a fee sharing agreement in accordance with the firms' joint representation of the Vyaire Plaintiffs in the Insurance Coverage Action.

6. Covington has an equitable ownership interest and attorney's lien in the Vyaire Plaintiffs' causes of action and claims in the Insurance Coverage Action and related books and records, which attach "to any verdict, report, determination, decision, award, settlement, judgment, or final order" in the Vyaire Plaintiffs' 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.").

7. Accordingly, Covington asserts (a) a prepetition equitable ownership interest in and secured claim against Debtors for fees in the amount of 35% of any recovery obtained by the Vyaire Plaintiffs in the Insurance Coverage Action, which as of the date of this Proof of Claim has been earned; (b) a prepetition equitable ownership interest in and secured claim against Debtors for a 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; and (c) a prepetition unsecured claim against Debtors for $508.61 in reimbursement of expenses related to Third Party Costs, plus accrued interest as of the Petition Date (collectively, "Claim").

8. Credits/Setoff. No credits or other payments have been received by Covington with respect to the Claim. Covington expressly reserves any and all rights of setoff, netting, recoupment and all similar such rights, and nothing herein shall be construed as a waiver of such rights.

9. Reservation of Rights. Covington expressly preserves any and all (a) rights to assert that the claims in the Insurance Coverage Action do not constitute property of the Debtor's estate

under section 541 of the Bankruptcy Code to the extent of Covington's equitable interest; (b) rights of Covington to assert claims on any ground, including, without limitation, claims based upon (i) indemnity, (ii) contribution, (iii) *quantum meruit*; or (iv) unjust enrichment; and (b) all procedural and substantive rights, claims and defenses with respect to any claim that has been or may be asserted against Covington by the Debtors or any other person or entity whatsoever. In filing this Claim, Covington does not consent to the jurisdiction of the Bankruptcy Court for any purpose other than with respect to the Claim.

10. Amendments and Supplements. Covington expressly reserves any and all rights to amend, clarify and/or supplement the Claim at any time and for any reason, including, without limitation, to: (a) assert and file additional, supplementary and/or amended proofs of claim; (b) correct, increase, liquidate, or amend the amounts referred to herein; (c) add or amend documents and other information, and to describe further the Claim; (d) add or include any other debtors or any other entity, including, but not limited to, any entity which may become a debtor or debtor-in-possession; (e) add or amend categories of payments or liabilities; (f) assert further priority, security interests or similar rights with respect to the Claim asserted herein; and (g) file or otherwise assert requests for the payment of administrative claims.

11. Other Claims Preserved. This Claim is filed without prejudice to the rights of Covington to file proofs of claim with respect to any other indebtedness, obligation or liability of the Debtors and/or its Debtors-affiliates.

12. No Waiver/Consent. The filing of the Claim does not constitute, and should not be construed to be, a waiver by Covington of (a) any rights, claims, defenses, or remedies, whether under applicable law or otherwise, against any other entity that may be liable for all or part of the Claim, whether an affiliate of the Debtors, an assignee, guarantor or otherwise; (b) any obligation owed to Covington; (c) the right to a jury trial in any proceeding so triable; (d) the right to have any

private right causes of actions or non-core matters finally adjudicated by an Article III judge; or (e) the right to seek to have the reference withdrawn with respect to the subject matter of the Claim, any objection or other proceedings commenced with respect thereto, or any other proceedings commenced in the Debtors' case against or otherwise involving Covington. The filing of the Proof of Claim does not constitute, and should not be construed to be, (i) an election of remedies by Covington, (ii) the consent by Covington to a jury trial in the Bankruptcy Court or any other court in any proceeding as to any and all matters so triable herein, or in any case; or (iii) the consent to entry of final orders on any private right cause of action or non-core matter by the Bankruptcy Court.

13. Notices. All notices and communications concerning the Claim should be addressed and sent to:

Covington & Burling LLP
The New York Times Building
620 Eighth Avenue
New York, NY 10018
Attn: C. William Phillips, Esq. (cphillips@cov.com)
Jordan S. Joachim, Esq. (jjoachim@cov.com)
Julia Blackburn, Esq. (jblackburn@cov.com)

or to such person as directed by Covington.

EXHIBIT A

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.

We represent [redacted]. By your signature below, you acknowledge this representation and waive any actual or potential conflict of interest arising from, and will not seek Covington's disqualification from any existing or future matter, based on Covington's representation of [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.

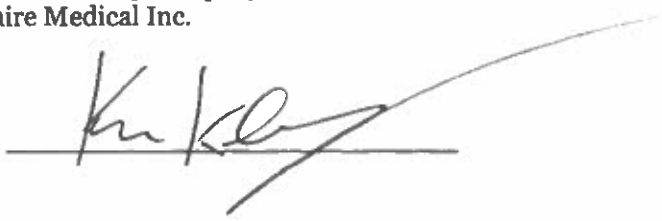
By: 

EXHIBIT B

RECORD PRESS, INC.
229 West 36th Street
8th Floor
New York, NY 10018
dmisser@recordpress.com

RECORD PRESS
Appellate Management Document Solutions

BILL TO

Rebekah Boulos
Covington & Burling LLP
620 Eighth Avenue
New York, NY 10018-1405

INVOICE # 115217
DATE 08/03/2023
DUE DATE 08/18/2023
TERMS Net 15

CAPTION	JOB #	REP
Vyaire v Westchester Surplus	95518	VM

DESCRIPTION	QTY	RATE	AMOUNT
APPELLATE DIVISION - 1ST DEPARTMENT			
Reply Brief & Letter Filing			
Reply Brief - 7 Copies / 58 Pages			
(1st 3 Copies - Printing, Covers & Binding)	1	209.00	209.00
Additional copies	4	38.50	154.00
Bookmarks	40	3.20	128.00
Electronic File Upload (per upload)	3	50.00	150.00
Electronic Preparation and Review (per file)	3	95.00	285.00
			Subtotal: 926.00
15% Courtesy Discount	926	-0.15	-138.90
Court Filing Only	1	90.00	90.00
FedEx Shipment(s)	2	29.50	59.00
Pre-Paid Postage	1	3.00	3.00

PAID

A credit memo was applied in the amount of $508.60 reflecting the agreed upon discount to pay off the remainder of the invoice.

Our preferred method of payment is ACH/Wire transfer. Our banking details are provided below:

BANK NAME: Chase
ACCOUNT NUMBER: 903739951
ABA/ROUTING NUMBER: 021000021

We also accept payment via credit card at the following link:
https://recordpress.com/pay-your-invoice/

(American Express, Visa, MasterCard & Discover)

SUBTOTAL	939.10
TAX (8.875%)	78.11
TOTAL	1,017.21
PAYMENT	1,017.21
BALANCE DUE	**$0.00**

Debtor: Vyaire Medical, Inc.

UNITED STATES BANKRUPTCY COURT DISTRICT OF DELAWARE

Case Number: 24-11217

FILED

Claim No. 133

August 01, 2024

By Omni Claims Agent

For U.S. Bankruptcy Court

District of Delaware

Official Form 410

Proof of Claim

04/22

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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?

Covington & Burling 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?

[X] 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)**
Covington & Burling LLP / Attn: William Phillips 620 Eight Avenue New York, NY, 10018	
Contact Phone (212) 841-1000	Contact Phone
Contact email cphillips@cov.com	Contact email

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

4. Does this claim amend one already filed?

[X] 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?

[X] 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: 2891

7. How much is the claim? $ $508.61
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
Equitable interest and attorney's lien. See 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 addendum.

Basis for perfection:
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.

		Amount entitled to priority
☒	No	
☐	Yes *Check one:*	
☐	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

C. William Phillips
Signature

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

Name: C. William Phillips
First Name | Middle Name | Last Name

Title: Partner

Company: Covington & Burling LLP
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address: 620 Eight Avenue
New York, NY 10018

Contact Phone (212) 841-1000 Email cphillips@cov.com

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
VYAIRE MEDICAL, INC., *et al.*,[1]	)	Case No. 24-11217 (BLS) (Jointly Administered)
Debtors.	)	

ADDENDUM TO PROOF OF CLAIM OF COVINGTON & BURLING LLP

This is an addendum ("Addendum") to, and a part of, the proof of claim ("Proof of Claim") filed by Covington & Burling LLP ("Covington") against Vyaire Medical, Inc. ("Vyaire Medical").

1. On June 9, 2024 ("Petition Date"), Vyaire Medical and its affiliated debtors ("Debtors") filed voluntary petitions for relief under chapter 11 of the United States Bankruptcy Code, 11 U.S.C. §§ 101, *et seq.*, ("Bankruptcy Code") in the United States Bankruptcy Court for the District of Delaware ("Bankruptcy Court"). The Debtors are operating their business as debtors-in-possession pursuant to Bankruptcy Code §§ 1107 and 1108.

2. As of the date of this Addendum, no trustee or examiner has been appointed in the cases. On June 26, 2024 the United States Trustee for the District of Delaware appointed the Official Committee of Unsecured Creditors in the Debtors' chapter 11 cases [D.I. 121].

3. The Claim. Prior to the Petition Date, Covington served as counsel to Vyaire Medical and Vyaire Holding Company (US) (together, "Vyaire Plaintiffs") in an insurance coverage action pending in the Supreme Court of the State of New York, County of New York, Index No. 652428/2020 ("Insurance Coverage Action"). Pursuant to the engagement letter between

[1] The last four digits of Debtor Vyaire Medical, Inc.'s federal tax identification number are 6495. A complete list of each of the Debtors in these chapter 11 cases and each such Debtor's federal tax identification number may be obtained on the website of the Debtors' claims and noticing agent at https://omniagentsolutions.com/Vyaire. The location of Debtor Vyaire Medical, Inc.'s principal place of business and the Debtors' service address in these chapter 11 cases is 26125 North Riverwoods Boulevard, Mettawa, Illinois, USA 60045.

the Vyaire Plaintiffs and Covington, dated April 1, 2020 ("Engagement Letter") and attached as Exhibit "A" hereto, Covington agreed to represent the Vyaire Plaintiffs in the Dispute[2] in exchange for a Fee equal to 35% of any recovery received by the Vyaire Plaintiffs in the Dispute, subject to a Trial Exception. With respect to the Trial Exception, the parties agreed that if trial preparation and trial were required to resolve the Dispute, they would in good faith discuss and agree upon a supplemental fee for Covington's continued representation of the Vyaire Plaintiffs in connection with trial preparation and trial (and subsequent proceedings).[3]

4. On May 9, 2022, the Vyaire Plaintiffs filed a Note of Issue in the Insurance Coverage Action stating that all discovery known to be necessary had been completed and that the case 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, and thus the conditions to the Trial Exception under the Engagement Letter were satisfied prior to the Petition Date.

5. Under the Engagement Letter, the Vyaire Plaintiffs are responsible for paying Third Party Costs, either directly to the applicable third parties or to Covington in reimbursement of Covington's payment of the Third-Party Costs. Covington has incurred $508.61 in Third Party Costs that have not been reimbursed by the Vyaire Plaintiffs, as reflected in the invoice attached as Exhibit "B" hereto.

6. Covington has an equitable ownership interest and attorney's lien in the Vyaire Plaintiffs' causes of action and claims in the Insurance Coverage Action and related books and

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[2] All capitalized terms, not otherwise defined herein, shall have the meanings given to them in the Engagement Letter.

[3] Following the engagement of Covington, one of the lead attorneys representing the Vyaire Plaintiffs left Covington and joined Reed Smith LLP ("Reed Smith"). Covington and Reed Smith agreed to a fee sharing agreement in accordance with the firms' joint representation of the Vyaire Plaintiffs in the Insurance Coverage Action.

records, which attach "to any verdict, report, determination, decision, award, settlement, judgment, or final order" in the Vyaire Plaintiffs' 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.").

7. Accordingly, Covington asserts (a) a prepetition equitable ownership interest in and secured claim against Debtors for fees in the amount of 35% of any recovery obtained by the Vyaire Plaintiffs in the Insurance Coverage Action, which as of the date of this Proof of Claim has been earned; (b) a prepetition equitable ownership interest in and secured claim against Debtors for a 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; and (c) a prepetition unsecured claim against Debtors for $508.61 in reimbursement of expenses related to Third Party Costs, plus accrued interest as of the Petition Date (collectively, "Claim").

8. Credits/Setoff. No credits or other payments have been received by Covington with respect to the Claim. Covington expressly reserves any and all rights of setoff, netting, recoupment and all similar such rights, and nothing herein shall be construed as a waiver of such rights.

9. Reservation of Rights. Covington expressly preserves any and all (a) rights to assert that the claims in the Insurance Coverage Action do not constitute property of the Debtor's estate under section 541 of the Bankruptcy Code to the extent of Covington's equitable interest; (b) rights of Covington to assert claims on any ground, including, without limitation, claims based upon

(i) indemnity, (ii) contribution, (iii) *quantum meruit*; or (iv) unjust enrichment; and (b) all procedural and substantive rights, claims and defenses with respect to any claim that has been or may be asserted against Covington by the Debtors or any other person or entity whatsoever. In filing this Claim, Covington does not consent to the jurisdiction of the Bankruptcy Court for any purpose other than with respect to the Claim.

10. Amendments and Supplements. Covington expressly reserves any and all rights to amend, clarify and/or supplement the Claim at any time and for any reason, including, without limitation, to: (a) assert and file additional, supplementary and/or amended proofs of claim; (b) correct, increase, liquidate, or amend the amounts referred to herein; (c) add or amend documents and other information, and to describe further the Claim; (d) add or include any other debtors or any other entity, including, but not limited to, any entity which may become a debtor or debtor-in-possession; (e) add or amend categories of payments or liabilities; (f) assert further priority, security interests or similar rights with respect to the Claim asserted herein; and (g) file or otherwise assert requests for the payment of administrative claims.

11. Other Claims Preserved. This Claim is filed without prejudice to the rights of Covington to file proofs of claim with respect to any other indebtedness, obligation or liability of the Debtors and/or its Debtors-affiliates.

12. No Waiver/Consent. The filing of the Claim does not constitute, and should not be construed to be, a waiver by Covington of (a) any rights, claims, defenses, or remedies, whether under applicable law or otherwise, against any other entity that may be liable for all or part of the Claim, whether an affiliate of the Debtors, an assignee, guarantor or otherwise; (b) any obligation owed to Covington; (c) the right to a jury trial in any proceeding so triable; (d) the right to have any private right causes of actions or non-core matters finally adjudicated by an Article III judge; or (e) the right to seek to have the reference withdrawn with respect to the subject matter of the Claim,

any objection or other proceedings commenced with respect thereto, or any other proceedings commenced in the Debtors' case against or otherwise involving Covington. The filing of the Proof of Claim does not constitute, and should not be construed to be, (i) an election of remedies by Covington, (ii) the consent by Covington to a jury trial in the Bankruptcy Court or any other court in any proceeding as to any and all matters so triable herein, or in any case; or (iii) the consent to entry of final orders on any private right cause of action or non-core matter by the Bankruptcy Court.

13. Notices. All notices and communications concerning the Claim should be addressed and sent to:

Covington & Burling LLP
The New York Times Building
620 Eighth Avenue
New York, NY 10018
Attn: C. William Phillips, Esq. (cphillips@cov.com)
Jordan S. Joachim, Esq. (jjoachim@cov.com)
Julia Blackburn, Esq. (jblackburn@cov.com)

or to such person as directed by Covington.

EXHIBIT A

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.

We represent [redacted]. By your signature below, you acknowledge this representation and waive any actual or potential conflict of interest arising from, and will not seek Covington's disqualification from any existing or future matter, based on Covington's representation of [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.

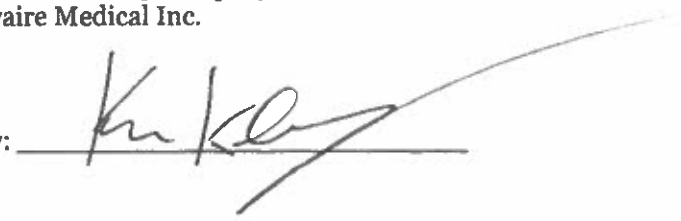
By: 

EXHIBIT B

RECORD PRESS, INC.
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8th Floor
New York, NY 10018
dmisser@recordpress.com

RECORD PRESS
Appellate Management Document Solutions

BILL TO

Rebekah Boulos
Covington & Burling LLP
620 Eighth Avenue
New York, NY 10018-1405

INVOICE # 115217
DATE 08/03/2023
DUE DATE 08/18/2023
TERMS Net 15

CAPTION	JOB #	REP
Vyaire v Westchester Surplus	95518	VM

DESCRIPTION	QTY	RATE	AMOUNT
APPELLATE DIVISION - 1ST DEPARTMENT			
Reply Brief & Letter Filing			
Reply Brief - 7 Copies / 58 Pages			
(1st 3 Copies - Printing, Covers & Binding)	1	209.00	209.00
Additional copies	4	38.50	154.00
Bookmarks	40	3.20	128.00
Electronic File Upload (per upload)	3	50.00	150.00
Electronic Preparation and Review (per file)	3	95.00	285.00
			Subtotal: 926.00
15% Courtesy Discount	926	-0.15	-138.90
Court Filing Only	1	90.00	90.00
FedEx Shipment(s)	2	29.50	59.00
Pre-Paid Postage	1	3.00	3.00

PAID

A credit memo was applied in the amount of $508.60 reflecting the agreed upon discount to pay off the remainder of the invoice.

Our preferred method of payment is ACH/Wire transfer. Our banking details are provided below:

BANK NAME: Chase
ACCOUNT NUMBER: 903739951
ABA/ROUTING NUMBER: 021000021

We also accept payment via credit card at the following link:
https://recordpress.com/pay-your-invoice/

(American Express, Visa, MasterCard & Discover)

SUBTOTAL	939.10
TAX (8.875%)	78.11
TOTAL	1,017.21
PAYMENT	1,017.21
BALANCE DUE	**$0.00**

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