

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

In re:	)	Chapter 11
	)	
VYAIRE MEDICAL, INC., <i>et al.</i> ,	)	Case No. 24-11217 (BLS)
	)	
Debtors.	)	(Jointly Administered)
	)	
	)	<u>Related D.I.: 256</u>
	)	

**OBJECTION OF DELL-METTAWA, LLC TO FIRST NOTICE TO
CONTRACT PARTIES OF POTENTIALLY ASSUMED AND ASSIGNED
EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

Dell-Mettawa, LLC (assignee of Dell Realty Company) (“*Dell*”), by and through its undersigned attorneys, hereby objects to the above captioned debtors and debtors in possession’s (the “*Debtors*”) *First Notice to Contract Parties of Potentially Assumed and Assigned Executory Contracts and Unexpired Leases* [D.I. 256] (the “*Notice*”) and states as follows:

1. Dell and Debtor Vyair Medical, Inc. (the “*Debtor*”) are parties to that certain Office Lease dated November 3, 2016 (as amended by that certain First Amendment to Lease dated December 30, 2016, that certain Second Amendment to Lease dated January 19, 2022, and as otherwise modified the “*Lease*”). The Lease is for space in a portion of Dell’s real property that consists of an office building and is located at 26125 North Riverwoods Boulevard, Mettawa, Illinois (the “*Premises*”).

2. As stated by the Debtors in footnote 1 of the Notice and in other filings, the Premises serves as the Debtor’s principal place of business and the Debtors’ service address in these chapter 11 cases. The Debtor also subleases a portion of the Premises to a third party.

3. Rows 1931 through 1968 of the Notice appear to list the Lease and what the Debtors believe are agreements relating to the Lease (collectively with the Lease, the “*Lease*

Documents”). Several of the Lease Documents listed in the Notice are duplicative of one another.

A. Dell objects to the Notice because it lists the wrong counterparty to the Lease Documents.

4. Dell objects to the Notice because it incorrectly states that the counterparty to the Lease Documents is Dell Realty Company. Through a series of transactions, the applicable Lease Documents were assigned to Dell on or about January 10, 2019. Therefore, the Notice should list “Dell-Mettawa, LLC,” and not “Dell Realty Company,” as the “Unique Vendor Name” with respect to the Lease and any other applicable Lease Documents. Additionally, any assumption or assumption and assignment of the Lease or any other applicable Lease Documents should involve “Dell-Mettawa, LLC” and not “Dell Realty Company.”

B. Dell objects to any assumption or assumption and assignment of the Lease to the extent the Debtors seek to assume or assume and assign the Office Lease without its Amendments and without the Consent to Sublease.

5. If the Debtors seek to assume or assume and assign the Lease, such assumption or assumption and assignment must include the complete Lease with all of its material parts. This includes the First Amendment, the Second Amendment, and the Consent to Sublease dated January 19, 2022 (the “*Consent to Sublease*”) for the Debtor’s sublease to Brunswick Corporation (which also contains material agreements with respect to the Lease). The Notice lists the Lease Documents (often listing the same agreement twice) as if they are divisible agreements. This is incorrect with respect to the Lease and the Consent to Sublease. Dell and the Debtor’s lease arrangement is evidenced by the original Office Lease, its two Amendments, and the Consent to Sublease. If these agreements are to be assumed or assumed and assigned, they must be assumed or assumed and assigned together because collectively, they form lease arrangement between Dell and the Debtor.

C. Dell objects to the Notice because it does not accurately associate the cure amount with the Lease.

6. Dell objects because the Notice incorrectly associates the cure amount with just the Consent to Sublease. Rather, the cure amount should be associated with the Lease together with the Consent to Sublease that must be assumed with it.

D. Dell objects to the Debtors' calculation of the Cure Amount.

7. Dell objects to the Debtors' calculation of the Cure Amount. If an assumption or assignment of the Lease Documents occurs in August 2024, the cure amount will be not less than \$550,076.25. If the Debtors pay their August obligations prior to assumption or assignment and assignment in August 2024 (as they are required to do pursuant 11 U.S.C. § 365(d)(3)), the cure amount will be not less than \$269,816.78. The cure amount consists of the following amounts owed by the Debtor under the Lease:

May 2024 Base Rent	\$162,607.50
May 2024 Expense Payment	\$92,476.72
May 2024 Tax Payment	\$25,175.25
June 2024 Base Rent	\$162,607.50
June 2024 Expense Payment	\$92,476.72
June 2024 Tax Payment	\$25,175.25
Electric Charges Billable (Invoice #30510)	\$4,992.96
Electric Charges Billable (Invoice #30794)	\$4,992.96
2022 YE Reconciliation Credit	(\$149,966.37)
2023 YE Reconciliation Credit	(\$148,820.36)
Prepay Credit (March 1, 2024)	(\$1,140.81)
Prepay Credit (April 9, 2024)	(\$380.27)
Prepay Credit (July 2, 2024)	(\$380.27)
Total before August 1, 2024	\$269,816.78
August 2024 Base Rent	\$162,607.50
August 2024 Expense Payment	\$92,476.72
August 2024 Tax Payment	\$25,175.25
Total as of August 1, 2024 (if the Debtors do not pay their August obligations)	\$550,076.25

8. The cure amount will also consist of any other unpaid obligations that accrue prior to assumption or assumption and assignment. For the avoidance of doubt, if the Lease is

assumed and assigned and the 2025 reconciliation pursuant to Exhibit E of the Lease reveals a credit is owing from Dell, Dell will apply the credit for the benefit of the new “Tenant” under the Lease even if a portion of the credit is for a period that the Debtor paid. To the extent the Debtors are not in agreement with this approach, the Debtors should be required to set forth their position immediately, and this Court should determine any disagreement.

9. Dell’s investigation into the amounts it is owed by the Debtor continues, and Dell expressly reserves its right to make changes to the cure amount and this Objection. Dell expressly reserves all other rights including, without limitation, the right to make objections to the assumption or the assumption and assignment of any of the Lease Documents, the right to make objections to any proposed adequate assurance of future performance with respect to any of the Lease Documents, the right to make objections to any proposed assignee of any of the Lease Documents, and the right to assert any claims against the Debtors to which Dell is entitled.

WHEREFORE, Dell respectfully requests that this Court (a) require that any assumption or assumption and assignment of the Lease include the Office Lease together with its Amendments and the Consent to Sublease, (b) require that any assumption or assumption and assignment of any of the applicable Lease Documents include Dell-Mettawa, LLC rather than Dell Realty Company as the counterparty, (c) require payment of the cure amount in connection with the Lease together with the Consent to Sublease, (d) correct the cure amount of the Lease together with the Consent to Sublease to be as set forth above, and (e) grant such other and further relief as this Court may deem just and proper.

Dated: July 24, 2024
Wilmington, DE

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