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

In re:	)	Chapter 11
VYAIRE MEDICAL, INC., *et al.*,	)	Case No. 24-11217 (BLS)
Debtors.	)	(Jointly Administered)
	)	**Re: Docket No. 16**

PREPETITION FIRST LIEN AGENT'S LIMITED OBJECTION TO MOTION OF DEBTORS FOR ENTRY OF AN ORDER (I) APPROVING BIDDING PROCEDURES IN CONNECTION WITH THE SALE OF SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS, (II) AUTHORIZING THE DEBTORS TO ENTER INTO A STALKING HORSE AGREEMENT AND PROVIDE BID PROTECTIONS, (III) APPROVING THE FORM AND MANNER OF NOTICE THEREOF, (IV) SCHEDULING AN AUCTION AND SALE HEARING, (V) APPROVING PROCEDURES FOR THE ASSUMPTION AND ASSIGNMENT OF CONTRACTS, (VI) APPROVING THE SALE OF THE DEBTORS' ASSETS FREE AND CLEAR, AND (VII) GRANTING RELATED RELIEF

Bank of America, N.A., as administrative agent and collateral agent (the "**Prepetition First Lien Agent**") under that certain First Lien Credit Agreement dated April 16, 2018 (as amended, the "**Prepetition First Lien Credit Agreement**") files this *Limited Objection* (the "**Limited Objection**") to *Motion of Debtors for Entry of an Order (I) Approving Bidding Procedures in Connection with the Sale of Substantially All of the Debtors' Assets, (II) Authorizing the Debtors to Enter into a Stalking Horse Agreement and Provide Bid Protections, (III) Approving the Form and Manner of Notice Thereof, (IV) Scheduling an Auction and Sale Hearing, (V) Approving Procedures for the Assumption and Assignment of Contracts, (VI) Approving the Sale of the Debtors' Assets Free and Clear, and (VII) Granting Related Relief* (Docket No. 16, the "**Sale Motion**") and respectfully states:

Limited Objection

1. The Prepetition First Lien Agent does not generally object to the Sale Motion or the proposed sales of the Debtors' assets pursuant thereto; however, the Prepetition First Lien Agent

objects to the extent the proposed orders approving the sales: (i) provide for the distribution of any sale proceeds on account of the Roll-Up Loans prior to the payment in full of the Prepetition First Lien Revolving Loan Obligations, and (ii) do not provide for the payment of the Lender Professionals' fees and expenses in accordance with paragraph 18 of the Final DIP Order.

2. On July 11, 2024, the Court entered the *Final Order (I) Authorizing the Debtors to Obtain Postpetition Financing, (II) Authorizing the Debtors to Use Cash Collateral, (III) Granting Liens and Providing Superpriority Administrative Expense Claims, (IV) Granting Adequate Protection, (V) Modifying Automatic Stay, and (VI) Granting Related Relief* (Docket No. 248, the "**Final DIP Order**") [1].

3. In paragraph F(i)(b)(2) of the Final DIP Order, the Debtors stipulate that:

> as of the Petition Date, the Prepetition Loan Party Debtors were jointly and severally indebted to the Prepetition First Lien Revolving Lenders and the Prepetition First Lien Term Loan Agent pursuant to the Prepetition First Lien Loan Documents without objection, defense, counterclaim, or offset of any kind, in the aggregate amount of $1,463,162.00 on account of certain outstanding fees owed to the Prepetition First Lien Revolving Lenders and reimbursement obligations with respect to certain fees and expenses incurred by the Prepetition First Lien Term Loan Agent's legal counsel and financial advisor (collectively, the "Prepetition First Lien Revolving Loan Obligations")

4. Paragraph 39 of the Final DIP Order provides:

> Notwithstanding anything to the contrary contained in this Final Order, including, without limitation, paragraphs 6, 7, and 8 hereof, the DIP Liens and DIP Superpriority Claims granted herein solely with respect to the Roll-Up Loans (but, for the avoidance of doubt, not with respect to the New Money Loans made available to the DIP Borrowers on the date of both the Interim Order and this Final Order) ***shall be subject and subordinate to, in all respects, the First Lien Term Loan Liens in existence as of the Petition Date securing the Prepetition First Lien Revolving Loan Obligations*** and the First Lien Adequate Protection Liens and First Lien Adequate Protection Superpriority Claims granted by virtue of entry of this Final Order on account of the Prepetition First Lien Revolving Loan Obligations . . . .

(emphasis added).

[1] Capitalized terms not specifically defined herein are given the meanings ascribed to them in the Final DIP Order.

5. Accordingly, the Final DIP Order provides that the liens securing the Prepetition First Lien Revolving Loan Obligations, and the adequate protection claims related thereto, are senior to the liens and claims related to the Roll-Up Loans.

6. The Final DIP Order also provides that the Debtors shall pay the Lender Professionals' reasonable and documented postpetition fees, costs, and expenses, including the fees and expenses of counsel to the Prepetition First Lien Agent. The Debtors have not paid the undisputed postpetition fees and expenses of counsel to the Prepetition First Lien Agent for June and July even though they are required to be paid "promptly" pursuant to paragraph 18 of the Final DIP Order.

7. The as-filed proposed orders approving the two proposed sales pursuant to the Sale Motion (Docket Nos. 399 and 400, collectively, the "**Proposed Sale Orders**") provide:

i. for the distribution of sale proceeds in an undetermined amount as an irrevocable payment of DIP Claims on a dollar-for dollar basis (defined in the Sale Orders as the "**DIP Paydown Amount**");

ii. the funding of a reserve in undetermined amount (defined in the Sale Orders as the "**Holdback Reserve**") for payment of undetermined items to be included on a schedule which the Debtors may modify at any time with the consent of the Required DIP Lenders (defined in the Sale Orders as the "**Holdback Schedule**");

iii. the funding of an escrow account for the payment of Professional Persons of the Debtors and the Committee (defined in the Sale Orders as the "**Professional Fees Account**");

iv. that after payment of the (i) DIP Paydown Amount and (ii) claims and amounts specified in the Holdback Schedule, any remaining DIP Claims shall be the senior most claims to recover under any Debtor plan or other wind-down or similar arrangement; and

v. that all of the Debtors' remaining cash after closing of the sale transactions and funding of the Holdback Schedule shall be paid to the DIP Lenders on account of the DIP Claims and the Debtors are authorized and directed to distribute all such cash on account of any remaining DIP Claims.

8. The Prepetition First Lien Agent objects to the Proposed Sale Orders to the extent: (a) the DIP Paydown Amount, in violation of the Final DIP Order, includes the payment of any claims related to Roll-Up Loans prior to the payment in full of the Prepetition First Lien Revolving Loan Obligations; (b) the Debtors' remaining cash after closing of the sale transactions and funding of the Holdback Schedule, in violation of the Final DIP Order, is paid to DIP Lenders on account of DIP Claims related to Roll-Up Loans prior to the payment in full of the Prepetition First Lien Revolving Loan Obligations; (c) the Debtors are not ordered and directed to pay the Prepetition First Lien Revolving Loan Obligations in full from the proceeds of the sale prior to any distributions to DIP Lenders on account of Roll-Up Loans; and (d) the Holdback Reserve and Holdback Schedule do not include funds specifically earmarked and escrowed to pay all reasonable and documented postpetition fees, costs, and expenses, of counsel to the Prepetition First Lien Agent in full in accordance with the Final DIP Order with such reserved/scheduled amounts not being subject to any other claims or modification in any respect.[2]

9. The Prepetition First Lien Agent requests that the Court not approve the Sale Motion pursuant to the terms of the Proposed Sale Orders as the Proposed Sale Orders do not comply with the terms of the Final DIP Order with regard to the priority of the liens and claims related to the Prepetition First Lien Revolving Loan Obligations, and it does not appear the Proposed Sale Orders provide a mechanism for the prompt payment of the documented postpetition fees, costs, and expenses of counsel to the Prepetition First Lien Agent as required by the Final DIP Order.

10. Prior to filing this Limited Objection, counsel for the Prepetition First Lien Agent contacted counsel for the Debtors and the DIP/First Lien Group in an effort to resolve the issues

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[2] If not already paid prior to commencement of any sale hearing, the Lender Professionals' undisputed postpetition fees and expenses for June and July 2024 should be paid immediately. Multiple requests for payment have been made.

raised herein. To the extent an agreement is not reached by the parties in advance of the Sale Hearing, this Limited Objection is without prejudice to, and the Prepetition First Lien Agent hereby fully reserves, all rights to raise additional arguments and objections to the Sale Motion and the Proposed Sale Orders.

WHEREFORE, the Prepetition First Lien Agent respectfully requests that the Sale Motion be denied to the extent the Proposed Sale Orders do not: (i) comply with the terms of the Final DIP Order with regard to the priority of the liens and claims related to the Prepetition First Lien Revolving Loan Obligations, and (ii) provide a mechanism for the prompt payment of the documented postpetition fees, costs, and expenses of counsel to the Prepetition First Lien Agent as required by the Final DIP Order. The Prepetition First Lien Agent also requests such other relief that is just and proper.

Dated: August 23, 2024

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Counsel to Bank of America, N.A.in its capacity as the Administrative Agent and Collateral Agent Under the First Lien Credit Agreement