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)
Debtors.	(Jointly Administered)
	Related Docket Nos.: 249, 256, 263 and 311

OBJECTION AND RESERVATION OF RIGHTS OF KILMAINHAM VYAIRE, LLC TO PROPOSED CURE AMOUNTS

Kilmainham Vyaire, LLC ("Kilmainham") hereby objects to the alleged cure amount as set forth in *First Notice to Contract Parties of Potentially Assumed and Assigned Executory Contracts and Unexpired Leases* [Dkt. No. 256] (the "Notice") related to an unexpired lease for real property between Debtor Vyaire Medical, Inc. and Kilmainham dated August 31, 2022 (the "Lease"). In support of this objection, Kilmainham further states as follows:

FACTUAL BACKGROUND

1. On June 9, 2024, (the "Petition Date"), the Debtors each filed a voluntary petition for relief pursuant to Chapter 11 of the Bankruptcy Code.

2. On July 11, 2024, the Court entered the *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*

[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.

Procedures for the Assumption and Assignment of Contracts, (VI) Approving the Sale of the Debtors' Assets Free and Clear, and (VII) Granting Related Relief [Dkt. No. 249] (the "Bidding Procedures Order").

3. The Assumption and Assignment Procedures contained within the Bidding Procedures Order required the Debtor to file a schedule listing the contracts and leases that may potentially be assumed and assigned as part of the sale together with providing a "Cure Cost" for each contract that the Debtors may potentially assume and assign as part of the sale of their assets. *Id.*

4. On July 11, 2024, the Debtor filed the Cure Notice with Exhibit A [Dkt. 256]. Exhibit A sets forth the contracts that the Debtors may potentially assume and assign as part of their sale to a third-party buyer. Per the Assumption and Assignment Procedures, Exhibit A also contains the Debtors' proposed "Cure Cost" for each contract and lease it will potentially assume and assign.

5. Debtors' Exhibit A identifies the Lease with a proposed "Cure Cost" of $206,759.32.

OBJECTIONS TO ASSUMPTION AND ASSIGNMENT

6. Bankruptcy Code section 365(b) provides in relevant part that the Debtors "may not assume such contract or lease unless, at the time of assumption of such contract or lease [the Debtors] (A) cures or provides adequate assurance that the trustee will promptly cure such default; (B) compensates, or provide adequate assurance that he [debtors] will promptly compensation, a party other than the debtor to such contract or lease, for any actual pecuniary loss to such party resulting from such default." 11 U.S.C. § 365(b).

7. The cure amount under Bankruptcy Code section 365(b) must include all prepetition and postpetition amounts due under the assumed contract. *In re Crown Books Corp.*, 269 B.R. 12, 18 (Bankr. D. Del. 2001) ("Landlords were seeking to collect sums due them under their Leases . . . those actions are compensable under both the terms of the Leases and the Bankruptcy Code.").

8. The "Cure Cost" identified on Exhibit A does not reflect accurately the amount to cure all defaults under the Lease. Specifically, the rent amount currently due is $318,091.64. In addition to the past due monthly rent, the Debtors owe unliquidated amounts including (i) any Taxes (as defined in the Lease section 4.2) that have accrued but are unpaid; (ii) late charges of 5% plus 12 % interest; (iii) any unpaid amounts under sections 6.1 and 6.2; and (iv) attorneys' fees and expenses.

WHEREFORE, Kilmainham respectfully requests that the Court (i) sustain this objection; (ii) require that the Debtors cure all outstanding defaults prior to assumption; and (iii) grant such further relief as is just and proper.

Dated: August 1, 2024

Respectfully submitted,

/s/ Ericka F. Johnson

Ericka Johnson (DE Bar No. 5024)
BAYARD, P.A.
600 North Market Street, Suite 400
Wilmington, DE 19801
Telephone: (302) 429-4275
E-mail: ejohnson@bayardlaw.com

Counsel to Kilmainham Vyaire, LLC