UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

In Re:	)	Chapter 11
	)	Case No. 24-11217 (BLS)
VYAIRE MEDICAL, INC., *et al.*,[1]	)	
	)	(Jointly Administered)
Debtors.	)	**Related Docket Nos. 249, 256, 263 and 311**

LIMITED OBJECTION AND RESERVATION OF RIGHTS OF FISCHER USA, INC. TO VYAIRE MEDICAL, INC.'S FIRST AND SECOND NOTICE TO CONTRACT PARTIES OF POTENTIALLY ASSUMED AND ASSIGNED EXECUTORY CONTRACTS AND UNEXPIRED LEASES

Fischer USA, Inc. ("Fischer") by its attorneys, hereby files this limited objection ("Objection") to the cure amounts contained in Vyaire Medical, Inc.'s ("Debtor") and its Debtor Affiliates *First and Second Notice to Contract Parties of Potentially Assumed and Assigned Executory Contracts and Expired Leases* (the "Cure Notice") [Dkt. No. 256]. In support of this Objection, Fischer states:

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. Before the Petition Date, the Debtors were in the business of providing respiratory solutions to hospitals, health centers, and private practices.

[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.

3. On July 11, 2024, the Court entered an order granting the Debtor's *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* (the "Bidding Procedures Order"). [Dkt. No. 249].

4. 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. [Dkt. 249].

5. 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 Debtor's proposed "Cure Costs" for each contract and lease it will potentially assume and assign.

6. In its respiratory products, the Debtor uses shaft ventilator assemblies, which consist of a shaft, key, retaining ring, and rotor ("Rotor Assemblies").

7. Before the Petition Date, Fischer assembled and balanced the Debtor's Rotor Assemblies. The Debtors would deliver the raw material for the Rotor Assemblies to Fischer, and Fischer would assemble and then perform other services to the Rotor Assemblies including

grinding, balancing, and reassembly. The Rotor Assemblies would then be shipped back to the Debtors and Fischer would invoice the Debtors for the work.

8. Debtor's Exhibit A identifies a Confidential Disclosure Agreement, effective May 5, 2020, ("CDA") that the Debtor will potentially assume and assign to a prospective buyer. [Dkt. No. 256 at 74]. Debtor proposes the cure amount for the CDA is $0.00. [Dkt. No. 256 at 74].

9. The CDA referenced in the Debtor's Exhibit A does not govern the trade relationship between the Debtor and Fischer related to the Rotor Assemblies; rather, the trade relationship between the Debtor and Fischer is conducted on the basis of individual purchase orders. Nevertheless, for the avoidance of doubt, Fischer submits this Objection to clarify that the Debtor owes Fischer $114,708.19 for services performed on the Debtor's Rotor Assemblies pursuant to various purchase orders as described above, and that assumption of the CDA and payment of a $0 Cure Amount is not sufficient to result in the assumption of any outstanding purchase orders.

10. Fischer objects to the Cure Notice to the extent it suggests that the amount due to Fischer to cure past defaults under the trade relationship or individual purchase orders is $0.

CURE CLAIM OBJECTION

11. Section 365 provides:

> (b)(1) If there has been a default in an executory contract or unexpired lease of the debtor, the trustee may not assume such contract or lease unless, at the time of assumption of such contract or lease, the trustee--
>
> > (A) cures, or provides adequate assurance that the trustee will promptly cure, such default . . . ;
> >
> > (B) compensates, or provides adequate assurance that the trustee will promptly compensate, a party other than the debtor to such contract or lease, for any actual pecuniary loss to such party resulting from such default; and

> (C) provides adequate assurance of future performance under such contract or lease.

11 U.S.C. § 365(b)(1).

12. Fischer does not object *per se* to the assumption and assignment of the purchase orders governing the trade relationship between the Debtor and Fischer; however, the Debtor incorrectly alleges that their cure obligation is $0.00, and identifies only the CDA as an agreement to be potentially assumed and assigned. *See* Cure Notice, Exhibit A, at p. 74.

13. Fischer further objects to the cure amount identified in the Cure Notice because it fails to provide for payment of the Cure Amount (defined above) due to Fischer pursuant to the parties' trade relationship and individual purchase orders, plus any additional amounts that become due to Fischer through the effective date of assumption.

RESERVATION OF RIGHTS

14. Fischer hereby reserves its rights to make such other and further objections as may be appropriate, including, but not limited to, objecting regarding adequate assurance of future performance under 11 U.S.C. § 365.

CONCLUSION

15. For the reasons set forth above, Fischer respectfully requests that this Court: (i) sustain this Objection; (ii) require the Debtor to correctly identify the purchase orders subject to assumption and assignment as described herein; (iii) require as a condition of assumption that the Debtor pay $114,708.19 (the "Cure Amount") to cure the outstanding obligations as they exist as of the date of the Cure Notice, plus pay all additional amounts that will become due prior to the

effective date of any assumption of any purchase orders between the parties; and (iv) grant Fischer such further relief as this Court deems proper.

Date: August 1, 2024
Wilmington, Delaware

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