

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

In re:

VYAIRE MEDICAL, INC., *et al.*,¹

Debtors,

Chapter 11

Case No. 24-11217 (BLS)

(Jointly Administered)

Re: Docket No. 310 and 505

**CERTIFICATION OF COUNSEL REGARDING JOINT STIPULATION
BETWEEN THE DEBTORS AND EWALD FLEET SOLUTIONS LLC
IN CONNECTION WITH TRUDELL SALE**

The undersigned hereby certifies as follows:

1. On June 9, 2024 (the “Petition Date”), the above-captioned debtors, Vyair Medical, Inc., et al. (collectively, the “Debtors”) commenced voluntary cases under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the District of Delaware (the “Court”).

2. Prior to the Petition Date, Ewald Fleet Solutions, LLC (“Ewald”), as Lessor, and Vyair Medical, Inc. (“Vyair”), as Lessee, entered into Master Lease No. 19-17941 dated February 13, 2019 (including any modifications, amendments, addendums, schedules, or related documents) (collectively, the “Ewald Master Lease Agreement”) whereby Ewald leased multiple vehicles to Vyair as set forth on various Schedule A’s that were expressly incorporated by reference and made part of the Ewald Master Lease Agreement. The Ewald Master Lease

¹ The last four digits of Debtor Vyair 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/Vyair>. The location of Debtor Vyair 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.

Agreement remains in effect and subject to assumption, assumption and assignment, or rejection by the Debtors.

3. 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 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. 249] (the “Bidding Procedures Order”).

4. Also on July 11, 2024, the Debtors filed the *First Notice to Contract Parties of Potentially Assumed and Assigned Executory Contracts and Unexpired Leases* [D.I. 256] (the “First Notice”). Exhibit A thereto listed Potentially Assumed and Assigned Contracts. Rows 2413 to 2428 on Exhibit A to the Notice of Potential Assumption and Assignment asserted multiple executory contracts and unexpired leases between Ewald and Vyaire.

5. On July 24, 2024, Ewald filed the *Limited Objection of Ewald Fleet Solutions LLC to First Notice to Contract Parties of Potentially Assumed and Assigned Executory Contracts and Unexpired Leases* [D.I. 310] (“Ewald’s Limited Objection to the First Notice of Potential Assumption and Assignment”). In sum, the Limited Objection asserted that: 1) the First Notice of Assumption and Assignment did not accurately identify the potentially assumed and assigned executory contract and unexpired lease which is the Master Lease Agreement; 2) the Debtors’ asserted cure amounts of \$0.00 as to Ewald were incorrect; and 3) any assumption and assignment of the Master Lease Agreement must be *cum onere*.

6. Thereafter, Ewald and the Debtors discussed appropriate revisions to the First Notice which resulted in the Debtors adding the Ewald Master Lease Agreement to the list of

Potential Assumed and Assigned Contracts, removing all of the Schedule A's therefrom, and removing the purported "Vehicle Lease" dated 2-08-2019. Ewald confirmed that no such vehicle lease was entered by the parties on 2-08-2019.

7. On August 24, 2024, the Debtors filed the *First Supplemental Notice to Contract Parties of Potentially Assume and Assigned Executory Contracts and Unexpired Leases* [Docket No. 462]. The Ewald Master Lease Agreement appears at Row 8249 thereon and the Debtors assert a cure amount of \$0.00.

8. On September 4, 2024, the Court entered the *Order (I) Approving the Trudell Asset Purchase Agreement and Authorizing the Sale of Certain Respiratory Diagnostic Assets of the Debtors Outside the Ordinary Course of Business, (II) Authorizing the Sale of Assets Free and Clear of All Liens, Claims, Interests, and Encumbrances, (III) Authorizing the Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection Therewith, and (IV) Granting Related Relief* [Docket No. 497] (the "Trudell Sale Order"), which among other things approved the entry into the asset purchase agreement between the Trudell Medical Limited ("Trudell") and the Debtors (the "Trudell APA").

9. On September 6, 2024, Ewald filed the *Objection of Ewald Fleet Solutions LLC to First Supplemental Notice to Contract Parties of Potentially Assumed and Assigned Executory Contracts and Unexpired Leases and Reservation of Rights* [Docket No. 505] ("Ewald's Objection to the Supplemental Notice of Assumption and Assignment") (together with Ewald Limited Objection to the First Notice of Assumption and Assignment, "Ewald's Objections")

10. The Debtors have advised Ewald that the Debtors intend to reject the Ewald Master Lease Agreement upon closing of the sale to Trudell (the "Trudell Closing") or November 30, 2024, whichever occurs first.

11. Pursuant to the Trudell APA, it is anticipated that certain Transferred Employees, as defined therein, will have their employment transferred from Vyair Medical, Inc., to Trudell, or an affiliate of Trudell, effective immediately after the Trudell Closing.

12. The Debtors understand from Ewald, that Ewald has finalized terms to enter a new master lease agreement with Jaeger Medical America, Inc., an affiliate of Trudell (“Jaeger”) (the “Master Lease Agreement with Jaeger”) on the effective date of rejection of the Ewald Master Lease Agreement. The Master Lease Agreement with Jaeger will enable Transferred Employees to continue uninterrupted use of the Ewald vehicles identified on the Schedule A’s thereto upon closing of the Trudell Sale while avoiding the unnecessary costs and process of the Debtors having to return those vehicles to Ewald upon rejection.

13. On July 11, 2024, the Court entered an order approving procedures for the rejection of executory contracts and unexpired leases and granting related relief [Docket No. 250] (the “Rejection Procedures Order”). Pursuant to the Rejection Procedures Order [Docket No. 250] entered on July 11, 2024, the Debtors are required to file a Rejection Notice and parties objecting to a proposed rejection thereon must file and serve a written objection so that such objection is filed with this Court on the docket of the Debtors’ chapter 11 cases no later than fourteen (14) days after the date the Debtors file and serve the relevant Rejection Notice. If no objection to the rejection of any Contract is timely filed, then the Debtors shall submit a proposed form of order substantially in the form attached as Exhibit B to the Rejection Notice approving the rejection of each Contract listed in the applicable Rejection Notice, for entry by the Court under certification of counsel.

14. In light of the foregoing circumstances regarding the timing of the Trudell Closing, the anticipated rejection of the Ewald Master Lease Agreement, and Ewald’s entry into a new Master Lease Agreement with Jaeger upon the Trudell Closing, the Debtors and Ewald

(together, the “Parties”) have entered the *Joint Stipulation Between the Debtors and Ewald Fleet Solutions LLC in Connection with Trudell Sale* (the “Stipulation”). The Stipulation and Order seek to establish an Effective Date of Rejection of the Ewald Master Lease Agreement on the Trudell Closing or November 30, 2024, whichever occurs first, and resolve Ewald’s Objections.

15. A copy of the Stipulation is attached as **Exhibit 1** to the proposed order (the “Order”) attached hereto as **Exhibit A** approving the Stipulation.

16. The Order has been reviewed by the Debtors and both Parties support entry of the Order.

WHEREFORE, the Parties respectfully request that the Court enter the Order approving the Joint Stipulation, substantially in the form attached hereto as **Exhibit A** at its earliest convenience.

Dated: November 12, 2024
Wilmington, Delaware

Respectfully submitted,

AUSTRIA LEGAL, LLC

/s/ Matthew P. Austria

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