

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

In re:	)	Chapter 11
	)	
VYAIRE MEDICAL, INC., <i>et al.</i> , ¹	)	Case No. 24-11217 (BLS)
	)	
Debtors	)	(Jointly Administered)
	)	
	)	Re: D.I. Nos. 256, 462

**OBJECTION AND RESERVATION OF RIGHTS OF
REAL STAFFING GROUP TO PROPOSED CURE AMOUNTS**

Real Staffing Group, a trading division of Specialist Staffing Solutions, Inc. (“Real Staffing”), files this objection and reservation of rights with respect to the *First Notice to Contract Counterparties of Potentially Assumed and Assigned Executory Contracts and Unexpired Leases* (Dkt. No. 256, the “First Cure Notice”) and the *First Supplemental Notice to Contract Counterparties of Potentially Assumed and Assigned Executory Contracts and Unexpired Leases* (Dkt. No. 462, the “Supplemental Cure Notice”). In support of its objection, Real Staffing further states as follows:

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 its *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*

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.

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 (Dkt. No. 249, the “Bid Procedures Order”).

3. Also on July 11, 2024, pursuant to the Bid Procedures Order, the Debtors filed the First Cure Notice, which identifies the following executory contracts (the “Contracts”) with Real Staffing:

Row #	Vendor	Debtor	Description	Cure Amount
5929	Real Staffing Group	Vyaire Medical, Inc.	Real Staffing Group 2022-04-18 Schedule - Design Assurance Engineer 1	\$0.00
5930	Real Staffing Group	Vyaire Medical, Inc.	Real Staffing Group 2022-11-14 Schedule - Design Assurance Engineer 2	\$0.00
5931	Real Staffing Group	Vyaire Medical, Inc.	Real Staffing Group 2021-12-17 Exhibit A - Jasmol Dhesi	\$0.00
5932	Real Staffing Group	Vyaire Medical, Inc.	Real Staffing Group 2022-04-11 Schedule - Biocom Engineer	\$0.00
5933	Real Staffing Group	Vyaire Medical, Inc.	Real Staffing Group 2018-07-23 Exhibit A Brandon Lee	\$0.00
5934	Real Staffing Group	Vyaire Medical, Inc.	Real Staffing Group 2018-02-13 MSA T&Cs	\$204,598.75
5935	Real Staffing Group	Vyaire Medical, Inc.	Real Staffing Group 2022-10-26 Schedule - Manuf Engineer	\$0.00
5936	Real Staffing Group	Vyaire Medical, Inc.	Real Staffing Group 2022-10-17 Schedule - Labeling Specialist	\$0.00
5937	Real Staffing Group	Vyaire Medical, Inc.	Real Staffing Group 2019-05-27 Exhibit A Shiv Parikh	\$0.00
5938	Real Staffing Group	Vyaire Medical, Inc.	Real Staffing Group 2022-01-12 Exhibit A - Tim Wood	\$0.00
5939	Real Staffing Group	Vyaire Medical, Inc.	Real Staffing Group 2018-07-25 MSA	\$0.00

4. On August 24, 2024, the Debtors filed the Supplemental Cure Notice, which contains the following revision to the First Cure Notice:

Row #	Vendor	Debtor	Description	Cure Amount
5934	Real Staffing Group	Vyaire Medical, Inc.	Real Staffing Group 2018-02-13 MSA T&Cs	\$204,598.75

5. On August 29, 2024, pursuant to an agreement with the Debtors to extend the proof of claim deadline, Real Staffing filed proof of claim no. 172 (the “POC”) in the Vyaire Medical, Inc. (“Vyaire Medical”) bankruptcy case.

6. As set forth in the POC, Real Staffing and Vyaire Medical are parties to a *Master Staffing Agreement* (the “MSA”), pursuant to which Real Staffing provides staffing and personnel placement related recruiting services to Vyaire Medical.

7. Though the First Cure Notice and the Supplemental Cure Notice purport to differentiate between the MSA and the other Contracts, the relationship between Real Staffing and Vyaire Medical is governed first and foremost by the MSA, which the other Contracts merely supplement.

8. In fact, most of the other Contracts are no longer in effect, and the First Cure Notice and the Supplemental Cure Notice omit other supplementary agreements pursuant to which Real Staffing is currently providing employees to Vyaire Medical.

9. The POC demonstrates that the pre-petition amount due under the MSA (and therefore the other Contracts and all unlisted supplementary agreements) is \$394,276.00. Vyaire Medical has also failed to pay \$155,363.71 that has come due post-petition.

ARGUMENT AND AUTHORITIES

10. Section 365(b)(1) of the Bankruptcy Code provides, which governs the assumption of executory contracts and unexpired leases, provides in relevant part:

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 other than a default that is a breach of a provision relating to the satisfaction of any provision (other than a penalty rate or penalty provision) relating to a default arising from any failure to perform nonmonetary obligations under an unexpired lease of real property, if it is impossible for the trustee to cure such default by performing nonmonetary acts at and after the time of assumption ...; and

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

11 U.S.C. § 365(b)(1). The powers and obligations of a trustee under this section apply with equal force to a debtor in possession. 11 U.S.C. § 1107(a).

11. The purpose of Section 365(b)(1) is to restore the debtor-creditor relationship to a pre-default condition and bring it back into compliance with the terms of the contract. *In re DBSI, Inc.*, 405 B.R. 698, 704 (Bankr. D. Del. 2009); *In re Rowland*, 292 B.R. 815, 818 (Bankr. E.D. Pa. 2003) (“There is no dispute that in order for a debtor to assume an executory contract, it must cure existing defaults.”). When assuming a contract, the debtor must do so *cum onere*, with all the burdens as well as the benefits. *N.L.R.B. v. Bildisco & Bildisco*, 465 U.S. 513, 531 (1984) (“[s]hould the debtor in possession elect to assume the executory contract, ... it assumes the contract cum onere”). The requirement to cure all defaults or to provide adequate assurance of a prompt cure exists “to insure that the contracting parties receive the full benefit of their bargain if they are forced to continue performance.” *In re Ionosphere Clubs, Inc.*, 85 F.3d 992, 999 (2d Cir. 1996) (quoting *In re Superior Toy & Mfg. Co.*, 78 F.3d 1169, 1174 (7th Cir. 1996)).

12. To date, the Debtors have not filed anything with the Court indicating whether they actually intend to assign any agreements with Real Staffing. To the extent the Debtors do intend to assume and assign the MSA, the other Contracts, or any other agreements with Real Staffing, they may not do so without curing all defaults, including the existing monetary default of

\$549,639.71. Real Staffing therefore objects to the cure amounts set forth in the First Cure Notice and the Supplemental Cure Notice.

RESERVATION OF RIGHTS

13. Real Staffing reserves the right to amend and/or supplement this objection, including, without limitation, by adding and supplementing objections to the First Cure Notice and the Supplemental Cure Notice. Real Staffing reserves the right to assert any amounts that may come due and owing prior to the proposed assumption of the MSA, the other Contracts, or any other agreements with Real Staffing. Real Staffing also reserves the right to seek allowance and payment of administrative claims for amounts coming due post-petition under the MSA, the other Contracts, or any other agreements with Real Staffing.

RESPECTFULLY SUBMITTED the 6th day of September, 2024.

Dated: September 6, 2024
Wilmington, Delaware

WOMBLE BOND DICKINSON (US) LLP

/s/ Matthew P. Ward

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