IN UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
	)	Case No. 24-11217 (BLS)
VYAIRE MEDICAL, INC, *et al*.,	)	
	)	(Jointly Administered)
Debtors.	)	
	)	Hearing Date: July 9, 2024 at 10:00 am
	)	Obj Deadline: July 2, 2024 at 4:00 pm

LIMITED OBJECTION AND RESERVATION OF RIGHTS OF KUEHNE + NAGEL INC. 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

Kuehne + Nagel Inc. ("**K+N**"), by its undersigned counsel, hereby submits this limited objection and reservation of rights to the 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**"). In support of the Limited Objection, K+N respectfully alleges as follows:

Limited Objection and Reservation of Rights

1. K+N is one of the world's largest sea and air freight logistics companies in the world and has operated in the U.S for more than a half century with 90 offices across the country. Starting in the pre-petition period, the Debtors employed the services of K+N pursuant to that certain Logistics Services Agreement dated June 1, 2019 (as amended) between K+N and the Debtors (the "**Agreement**"). Under the Agreement, K+N provided logistics and warehousing services to the Debtor.

2. Currently, the Debtors owe K+N $1,723,630.68 for services performed under the Agreement (the "**K+N Debt**"). Pursuant to its possessory lien rights, K+N is holding the Debtors' goods consisting of medical device parts and inventory with an estimated commercial value of approximately $16,253,195.02 (the "**K+N Collateral**") at a warehouse facility located in Redwood, California. A scheduled of the K+N Collateral is attached as **Exhibit A**. The K+N Debt continues to accrue warehousing costs related to the K+N Collateral, including, but not limited to, monthly rent and cost of labor to maintain the goods in the facility.

3. As part of their "first day motions", the Debtors sought interim and final relief authorizing them to pay claims of possessory lien holders like K+N in an effort to ensure, among other things, uninterrupted access to the goods that may be held by such creditors. (the "**Lien Creditors Motion**")[1]. The Court approved the Lien Creditors Motion on an interim basis by Order dated June 11, 2024 [Document No. 89] and set July 9, 2024 as the date of the final hearing on the Lien Creditors' Motion [Document No. 97].

1. *See Motion of Debtors Seeking Entry of Interim and Final Orders (I) Authorizing Debtors to Pay Prepetition Claims of Certain Critical Vendors, Foreign Vendors, 503(b)(9) Claimants, and Lien Claimants (II) Confirming Administrative Expense Priority of Outstanding Orders, and (III) Granting Related Relief* [Docket No. 7]

4. Unfortunately, despite the interim authority granted to the Debtors to address issues such as the K+N Debt, no progress has been made to enable the K+N Collateral to be released. Although K+N does not object to the Sale Motion in general, given the pending Sale Motion, K+N is compelled to interpose the instant limited objection to the extent the K+N Collateral is part of any sale of the Debtors' assets.

5. It is undisputed that K+N is a secured creditor due by virtue of its possession of the K+N Collateral under the Agreement, applicable state law, including but not limited to, sections 7-209, 7-210, and 9-333 of the Uniform Commercial Code, and the common law on possession of freight forwarders and warehousemen. A possessory lien holder's collateral cannot be sold free and clear under section 363 of the Bankruptcy Code unless such entity's claim is satisfied or otherwise consents. *See* 11 U.S.C. 363(f)(2).

6. Accordingly, and in an abundance of caution, K+N puts all parties on notice of its possessory lien rights with respect to the K+N Collateral and objects to any sale of the Debtors' assets involving the K+N Collateral without payment of the K+N Debt.

7. K+N expressly reserves all of its rights to supplement or amend its Limited Objection.

Conclusion

WHEREFORE, K+N objects to the Sale Motion to the extent it includes a sale of the K+N Collateral without full payment of the K+N Debt in an amount no less than $1,723,630.68, and prays that the Court grant K+N such other and further relief as may be just and proper.

Respectfully submitted,

Date: July 2, 2024
Wilmington, Delaware

BIELLI & KLAUDER, LLC

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