

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

In re:	)	Chapter 11
	)	
VYAIRE MEDICAL, INC., <i>et al.</i> ,	)	Case No. 24-11217 (BLS)
	)	
Debtors.	)	Jointly Administered
	)	
	)	Related to Docket No. 256
	)	
	)	Obj. Deadline: 7/25/24 at 4:00 p.m. EST
	)	Hearing Date: TBD

**OBJECTION OF AIRGAS THERAPEUTICS, LLC TO DEBTORS' FIRST NOTICE
TO CONTRACT PARTIES OF POTENTIALLY ASSUMED AND ASSIGNED
EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

Airgas Therapeutics, LLC (“Airgas”), by and through its undersigned counsel, hereby files this objection (the “Objection”) to the *First Notice to Contract Parties of Potentially Assumed and Assigned Executory Contracts and Unexpired Leases* (Docket No. 256) (the “Assumption Notice”) filed by the above-captioned debtors and debtors-in-possession (collectively, the “Debtors”), and in support thereof, respectfully represents as follows:

BACKGROUND

1. On June 9, 2024 (the “Petition Date”), each of the Debtors filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (“Bankruptcy Code”).

2. Prior to the Petition Date, in late 2017, a predecessor of Airgas, Scott Medical Products, a division of Airgas USA, LLC, entered into an Agreement for Supply of Cylinder Products and Related Equipment (the “Agreement”) with one of the Debtors, Vyair Medical, Inc., pursuant to which Airgas¹ supplies certain gases to the Debtors. In addition, pursuant to the

¹ Effective on January 1, 2022, Scott Medical Products merged into Airgas.

Agreement, Airgas leases to the Debtors certain cylinders, pallets, and other items of equipment. As of the Petition Date, the Agreement (including all amendments thereto) is an “executory contract” as that term is used throughout the Bankruptcy Code, as both Airgas and the Debtors have ongoing obligations to one another under the Agreement.

3. On or about July 11, 2024, the Debtors filed the Assumption Notice, in which the Debtors state that they may be assuming and assigning the Agreement to the highest and best bidder in connection with the sale of the Debtors’ assets (the “Proposed Assignee”). To date, the Debtors have not identified the Proposed Assignee. The Assumption Notice also states that the cure amount to cure all defaults under the Agreement as of July 11, 2024 is \$0 (the “Proposed Cure Amount”).

OBJECTION AND BASIS THEREFOR

4. The Proposed Cure Amount is incorrect according to Airgas’s books and records. The correct amount that the Debtors owe to Airgas under the Agreement as of the date hereof is actually \$42,581.58.²

5. In addition, it is impossible to state with certainty now as to what the ultimate cure amount will be regarding the assumption and assignment of the Agreement since we do not know as of the date hereof when closing of the sale of the Debtors’ assets might occur, and when the Agreement might be assumed and assigned to the Proposed Assignee. Additional amounts may become due by the time the sale of the Debtors’ assets actually closes. In addition, under the Agreement, Airgas may be entitled to certain interest rates on unpaid amounts, as well as certain attorneys’ fees and costs. These amounts are currently unliquidated because as of the

² This amount only includes amounts owed to Airgas (Airgas Therapeutics, LLC) under the Agreement and does not include any other amounts that may be owed by the Debtors to any affiliates of Airgas, or under any contracts other than the Agreement.

date hereof, Airgas cannot be certain as to when the actual effective date for the assumption and assignment of the Agreement will occur. The actual cure amount for the Agreement should include the \$42,581.58 identified above, as well as all of the interest and attorneys' fees and costs to which Airgas is entitled under the Agreement, through the actual effective date of assumption and assignment of the Agreement (the "Actual Cure Amount").

6. Additionally, the Agreement provides that the Debtors must indemnify and hold Airgas harmless with respect to any damages that arise out of, result from, or are attributable to any negligence of the Debtors. Airgas's claims related to the Debtors' indemnification obligations may not become known until after the assumption and assignment of the Agreement. Accordingly, any order approving the assumption and assignment of the Agreement must provide that the assumption and assignment is pursuant to the terms of the Agreement, and that the Proposed Assignee will be responsible for all of the Debtors' indemnification obligations under the Agreement, regardless of when they arose.

7. Finally, Airgas reserves all rights to later object to the identity of the Proposed Assignee and/or its ability to perform adequately in the future under the Agreement, once the Proposed Assignee and its related financial and adequate assurance information is disclosed to Airgas.

WHEREFORE, for all of the foregoing reasons, Airgas respectfully requests that any order entered by the Court regarding the assumption and assignment of the Agreement set a cure amount in the Actual Cure Amount and be consistent with the relief requested herein, and that the Court grant Airgas such other and further relief as is just and proper.

Dated: July 24, 2024

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