IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	**Chapter 11**
VYAIRE MEDICAL, INC., et. al.,	**Case No. 24-11217 (BLS)**
Debtors.	**(Jointly Administered)**
	Hearing Date: August 15, 2024 at 2:00 PM **Sale Objection Date: August 2, 2024** **Contract Notice Objection Date: August 1,, 2024**
	Docket Nos. 16 & 256

ORACLE'S LIMITED OBJECTION TO AND RESERVATION OF RIGHTS REGARDING (A) DEBTORS' SALE MOTION AND (B) DEBTORS' FIRST NOTICE TO CONTRACT PARTIES OF POTENTIALLY ASSUMED AND ASSIGNED EXECUTORY CONTRACTS AND UNEXPIRED LEASES

Oracle America, Inc., successor in interest to PeopleSoft, Inc., JD Edwards and BigMachine ("Oracle"), a creditor and contract counterparty in the above-captioned jointly administered Chapter 11 cases, submits this limited objection and reservation of rights ("Rights Reservation") regarding (A) *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* [Dkt. No. 16] ("Sale Motion") and (B) *First Notice to Contract Parties of Potentially Assumed and Assigned Executory Contracts and Unexpired Leases* [Dkt No. 256] ("Assumption Notice").

I. INTRODUCTION

1. By the Sale Motion and the Assumption Notice, Vyaire Medical, Inc., et al. ("Debtors"), seek Bankruptcy Court authority to, among other things, assume and assign certain

executory contracts between the Debtors and Oracle. Oracle objects to the proposed assumption and assignment on multiple grounds.

i. First, Oracle's agreements with Debtors are, or pertain to, one or more licenses of intellectual property which are not assignable absent Oracle's consent pursuant to both the underlying license agreements and applicable law.

ii. Second, the Assumption Notice does not provide a complete description of the Oracle agreements the Debtors seek to assume and assign, rendering Oracle unable to confirm the cure amount owed until it has a better understanding about which contracts are being assumed and assigned.

iii. Third, at present, there is no stalking horse bidder and the bid deadline is after objections to the Assumption Notice are due. Therefore, Oracle is unable to determine whether the ultimate purchaser/assignee is capable of performing under the terms of the contracts which the Debtors seek to assume and assign.

iv. Finally, to the extent any Asset Purchase Agreement ("APA") indicates that both the Debtors and the eventual purchaser(s) may enter into a transition services agreement in connection with the proposed sale or another agreement which may allow any unauthorized, shared use of Oracle's licenses, Oracle objects to such use.

2. Accordingly, Oracle requests that the Court deny the Debtors' request for authority to assume and assign, transfer, or share use of any Oracle agreement without Oracle's consent.

II. FACTUAL BACKGROUND

3. The Debtors filed the above-captioned case on June 9, 2024, and an order directing joint administration was entered shortly thereafter. The Debtors continue to operate as debtors in possession.

4. On June 10, 2024, the Debtors filed their Sale Motion. Pursuant to the Sale Motion, the Debtors propose to sell substantially all, or one or more subsets, of the Debtors' assets. There is currently no stalking horse bidder.

5. On July 11, 2024, the Debtors filed the Assumption Notice. Exhibit "A" to the Assumption Notice identifies several Oracle agreements between Vyaire Medical, Inc. and Oracle ("Oracle Agreements"), each with a stated cure of $0.00. The Oracle Agreements are described as follows:

Unique Vendor Name	**Debtor Entity**	**Description**	**Cure**
Oracle America, Inc.	**Vyaire Medical, Inc.**	**Oracle CPQ Renewal Contract CRF-2021-001**	**$0.00**
Oracle America, Inc.	**Vyaire Medical, Inc.**	**Oracle Tech Support Renewal Contract 5144264**	**$0.00**
Oracle America, Inc.	**Vyaire Medical, Inc.**	**General Terms and Conditions US-OMA-1474330**	**$0.00**
Oracle America, Inc.	**Vyaire Medical, Inc.**	**Oracle 2017-08-01 IT Master Service & Amend1**	**$0.00**
Oracle America, Inc.	**Vyaire Medical, Inc.**	**Oracle 2017-08-04 IT Quote**	**$0.00**

6. On July 17, 2024, the Debtors filed a *Notice of Extension of Certain Key Dates and Deadlines* [Dkt No. 263] ("Notice"), extending certain sale related deadlines. It sets forth the following deadlines: (a) 14 days following service of any notice of potential assumption and assignment (i.e., July 25, 2024, for the Assumption Notice) as the assumption and assignment objection deadline; (b) August 5, 2024 at 5 p.m. (Eastern Time) is the bid deadline; (c) August 8, 2024 at 10:00 a.m. (Eastern Time) for the date and time of the auction; (d) August 8, 2024 (or as soon as reasonably practicable thereafter) as the deadline to file a notice of successful bidder; (e) August 9, 2024 at 4:00 p.m. (Eastern Time) for the post-auction objection deadline; and (f) August 15, 2024, for the proposed sale hearing.

7. This timeline requires that objections to the Assumption Notice be filed before the purchaser's identity is known and precludes interested parties from reviewing any sale-related documents, including the APA and any ultimate transitional services agreement proposed by the parties ("TSA").

8. As of the date of filing this Rights Reservation, the Debtors have not identified a stalking horse nor any other potential bidder, nor have they filed a proposed form of asset purchase

agreement. As such, Oracle is unable to determine how its rights may be affected by the sale or any potential APA entered into between the Debtors and the ultimate purchaser(s).

9. Therefore, Oracle reserves all rights to object to the APA, including a TSA or any proposed transitional or shared use of Oracle's agreements by the Debtors and the ultimate purchaser(s).

III. ARGUMENT

A. The Debtors May Not Assume And Assign Oracle's Agreements Absent Oracle's Consent Because They Pertain To Licenses Of Intellectual Property.

10. Section 365(c) of the Bankruptcy Code provides, in relevant part:

> The trustee may not assume or assign any executory contract ... of the debtor ... if (1)(A) applicable law excuses a party, other than the debtor, to such contract or lease from accepting performance from or rendering performance to an entity other than the debtor ..., whether or not such contract or lease prohibits or restricts assignment of rights or delegation of duties; and (B) such party does not consent to such assumption or assignment.

11. Federal law makes non-exclusive patent licenses non-assignable absent consent of the licensor. *See In re Catapult Entertainment, Inc.*, 165 F.3d 747 (9th Cir. 1999), *cert. dismissed*, 528 U.S. 924 (1999) (patent law renders non-exclusive patent licenses personal and non-assignable under Bankruptcy Code § 365(c)(1)); *In re Sunterra Corp.*, 361 F.3d 257, 271 (4th Cir. 2004) (holding that a debtor was statutorily barred by § 365(c)(1) from assuming a computer software license where contract counterparty did not consent to the assumption); *In re: West Elec., Inc.) 852 F. 2d 79 (3d Cir. 1988)* (holding that the "provision limiting assumption of contracts is applicable to any contract subject to a legal prohibition against assignment."), *In re Trump Entm't Resorts, Inc.*, 526 B.R. 116, 126 (Bankr. D. Del. 2015) ("Non-exclusive patent and copyright licenses create only personal and not property rights in the licensed intellectual property and so are not assignable."); *In re Rupari Holding Corp.*, 573 B.R. 111, 119 (Bankr. D. Del. 2017) (holding that

the debtor could not assume and assign a trademark license without the consent of the non-debtor licensor).

12. The Oracle Agreements are, or pertain to, non-exclusive licenses of copyrighted software. Therefore, pursuant to Bankruptcy Code section 365, the Debtors may not assume and assign the Oracle Agreements without Oracle's consent.

13. For the reasons discussed herein, Oracle does not consent to the Debtors' proposed assumption and assignment at this time.

B. The Debtors Have Not Identified The Oracle Agreements To Be Assumed and Assigned.

14. The Debtors' Assumption Notice generally describes the Oracle Agreements the Debtors seek to assume and assign, but the descriptions' generality renders Oracle unable to determine which contracts are at issue.

15. For example, in some instances the Assumption Notice fails to identify a support renewal and omits inclusion of an underlying master agreement. It is impermissible for the Debtors to segregate the underlying Oracle license agreement from the corresponding support agreement and master agreement for purposes of assumption and assignment, if that is the Debtors' intention. *See, e.g., In re Interstate Bakeries Corporation*, 751 F.3d 955, 963 (8th Cir. 2014); *In re Buffets Holdings*, 387 B.R. 115 (Bankr. D. Del. 2008). An executory contract must be assumed in its entirety and, "[c]orrespondingly, all of the contracts that comprise an integrated agreement must either be assumed or rejected, since they all make up one contract." *In re Taylor-Wharton Int'l LLC*, 2010 WL 4862723, at *3 (Bankr. D. Del. Nov. 23, 2010) (citing *In re Exide Techs.*, 340 B.R. 222, 228 (Bankr. D. Del. 2006)). Under California law,[1] made applicable by the Oracle

[1] *In re Hawker Beechcraft, Inc.*, No. 12-11873 (SMB), 2013 WL 2663193, at *3 (Bankr. S.D.N.Y. June 13, 2013) ("State law governs the question whether an agreement is divisible or indivisible for the purposes of assumption and rejection under Bankruptcy Code § 365.").

Agreements, "[s]everal contracts relating to the same matters, between the same parties, and made as parts of substantially one transaction, are to be taken together." Cal. Civ. Code § 1642.

16. Because the support agreements and master agreements relate to the underlying license agreements as part of substantially the same transaction, they constitute integrated contracts which may not be separately assumed and assigned.

17. In order to determine which contracts the Debtors wish to assume and assign, Oracle requests that the Debtors specify the targeted contracts' (a) name and date; (b) identification number; (c) any associated support or support renewals; and (d) the governing license agreement.

18. This information will enable Oracle to evaluate whether the Oracle Agreements are supported, expired, or in default, and, if in payment default, the appropriate cure amount. Additionally, the information will allow Oracle to assess whether Oracle may accept performance from an entity other than the Debtors.

19. Oracle reserves its right to be heard on this issue until after the Debtors specify the Oracle Agreements they seek to assume and assign.

C. The Debtors May Not Have Provided The Correct Cure Amount.

20. Before assuming and assigning any executory contract, the Debtors must cure (or provide adequate assurance of a prompt cure of) any default under the subject contracts. 11 U.S.C. § 365(b)(1).

21. The Debtors have identified a $0.00 cure for the Oracle Agreements listed in the Assumption Notice. Oracle's records currently reflect that it is owed not less than $168,379.07.

22. However, without a complete description of the Oracle Agreements, Oracle is unable to determine the correct cure amount.

23. Therefore, Oracle reserves its right to be heard further regarding the cure amount, until after the contracts the Debtors seek to assume and assign are identified with enough specificity to allow Oracle to determine the correct cure.

D. The Debtors Have Not Provided Adequate Assurance of Future Performance By the Assignee.

24. Before assuming and assigning any executory contract, the Debtors must provide adequate assurance of future performance. 11 U.S.C. § 365(b)(1).

25. There is currently no stalking horse bidder and the auction is *after* the deadline for Oracle to object to the Assumption Notice.[2]

26. To satisfy Bankruptcy Code section 365(b), Oracle requests that the Debtors provide the following information about the purchaser(s) to which Debtors propose to assume and assign the Oracle Agreements: (a) financial bona fides; (b) confirmation that the purchaser is not an Oracle competitor; and (c) confirmation that the purchaser(s) will (i) execute an Oracle Assignment Agreement and related documentation which identifies with specificity the Oracle Agreements to be assigned; and, if appropriate (ii) enter into an Oracle Master License Agreement.

27. Absent these assurances, Oracle cannot determine the proposed assignee's creditworthiness, its suitability as an Oracle customer, or its ability to adequately perform under the terms of the Oracle Agreements.

28. Until the information described above is provided, the Debtors have not complied with the requirements of section 365(b)(1)(C).

[2] Oracle understands that the last day to object to the identity of the successful bidder and adequate assurance is August 13, 2024 @ 4:00 p.m. (est). However, in order to avoid duplicate filings, Oracle incorporates its objection to adequate assurance here and reserves its right to be heard on this point if and when the ultimate purchaser is identified.

E. Oracle's Agreements Do Not Authorize Simultaneous Use By the Debtors and the Purchaser.

29. Oracle reserves all rights to object to the final APA between the Debtors and the ultimate purchaser(s), including to the extent the APA or any accompanying TSA includes any broad provisions regarding transitional use or shared use of the Oracle Agreements or Oracle-licensed software.

30. Simultaneous use of, and access to, Oracle's licensed software exceeds the scope of the permitted uses under the Oracle Agreements, and would potentially result in an unauthorized "splitting" of the licenses between the Debtors and the purchaser(s).

31. Oracle objects to the extent that any transitional use or shared use arrangement purports to grant to both the Debtors and purchaser(s) the right to shared use of the Oracle licenses beyond the license terms.

32. Oracle reserves all rights regarding any transitional use, including under any TSA, until after Oracle has had an opportunity to review the final TSA proposed, and to assess how that TSA may impact Oracle, including whether the use contemplated thereunder constitutes non-compliance under the terms of the Oracle Agreements.

IV. CONCLUSION

33. For the reasons set forth above, Oracle respectfully requests that the Court deny the Debtors' request for approval of the Assumption Notice, solely to the extent the Debtors seek to assume and assign, transfer or share use of any Oracle agreements. Oracle reserves its right to be heard on all issues set forth herein.

Dated: July 25, 2024
Wilmington, Delaware

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