

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

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

**LIMITED OBJECTION OF COGNIZANT TO FIRST NOTICE TO CONTRACT
PARTIES OF POTENTIALLY ASSUMED AND ASSIGNED EXECUTORY
CONTRACTS AND UNEXPIRED LEASES**

Cognizant Worldwide Limited and Cognizant Technology Solutions U.S. Corp. (collectively “Cognizant”), by and through its undersigned counsel, hereby files this Limited Objection to the *First Notice to Contract Parties of Potentially Assumed and Assigned Executory Contracts and Unexpired Leases* (the “Assumption Notice”) (ECF No. 256) filed by Vyaire Medical, Inc. and its affiliates (the “Debtors”).² In support of this Limited Objection, Cognizant states as follows:

BACKGROUND

1. Pursuant to a Master Services Agreement, as amended from time to time, and various statements of work and work orders issued thereunder (collectively, the “Agreement”),

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

² The Debtors extended Cognizant’s deadline to object to the Assumption Notice to, and including, August 22, 2024.

Cognizant agreed to provide certain services to the Debtors and the Debtors agreed to pay for such services as invoiced.

2. On June 9, 2024 (the “Petition Date”), the Debtors filed for bankruptcy.

3. As of the Petition Date, the Debtors owed \$2,021,738.23 to Cognizant under the Agreement for services rendered prior to the Petition Date.

4. Following the Petition Date, Cognizant has continued to provide services to the Debtors pursuant to the terms of the Agreement. As part of any cure, the Debtors must pay both the \$2,021,738.23 pre-petition amount owed to Cognizant and any amount the Debtors owe to Cognizant under the Agreement for post-petition services.

5. On July 11, 2024, the Debtors filed the Assumption Notice. *See* ECF No. 256. The Assumption Notice identifies a cure amount of \$1,870,550.57. It is unclear if the Assumption Notice proposes to assume the entire Agreement (which is what the Bankruptcy Code requires) or portions of the Agreement.

LIMITED OBJECTION

6. A debtor must assume or reject an executory contract in its entirety under 11 U.S.C. § 365(a). *See, e.g., In re Contract Research Sols., Inc.*, No. 12-11004 (KJC), 2013 Bankr. LEXIS 1784, at *4 (Bankr. D. Del. May 1, 2013) (“Assumption or rejection of an executory contract or unexpired lease must be done in its entirety”); *In re MF Global Holdings Ltd.*, 466 B.R. 239, 241 (Bankr. S.D.N.Y. 2012) (“An executory contract may not be assumed in part and rejected in part.”).

7. In addition, “a debtor cannot assume such a contract unless the debtor satisfies several statutory conditions designed to make the non-debtor contracting party whole.” *ReGen Capital I, Inc. v. Halperin (In re Wireless Data, Inc.)*, 547 F.3d 484, 489 (2d Cir. 2008); *see also In re G-I Holdings, Inc.*, 580 B.R. 388 (Bankr. D.N.J. 2018). In particular, the debtor must “cure

the default, or provide adequate assurance that it will promptly cure it[.]” *Id.* This “strives to restore the debtor-creditor relationship . . . to pre-default conditions . . . bringing the contract back into compliance with its terms[.]” *Id.* (internal citations omitted).

8. The Agreement constitutes one integrated contract. By the Assumption Notice, it is unclear as to what the Debtors are proposing to do with respect to the Agreement. To the extent that the Debtors are attempting to not assume the Agreement in its entirety, Cognizant objects to such proposed partial assumption and/or assignment.

9. In addition, as part of any assumption, all pre-petition *and* post-petition amounts owed under the Agreement must be paid in full. Cognizant objects to the cure amounts and the proposed assumption and assignment to the extent that the Debtors are not proposing to pay all amounts that are owed.

RESERVATION OF RIGHTS

10. Cognizant reserves the right to make such other and further objections as may be appropriate, and does not waive and hereby reserves all of its rights, remedies, and arguments with respect to the Assumption Notice (and any other proposed assumption and assignment of the Agreement that the Debtors have filed and/or may file in the future).

WHEREFORE, Cognizant respectfully requests that the Court:

- (A) Order the Debtors to assume the Agreement in its entirety;
- (B) Order the Debtors to pay all amounts outstanding as set forth herein (both pre-petition and post-petition and well as the amounts that continue to come due) as cure costs; and
- (C) Grant such other and further relief as is just and appropriate under the circumstances.

Dated: August 22, 2024
Wilmington, DE

Respectfully submitted,

/s/ R. Craig Martin

R. Craig Martin (DE 5032)
Matthew S. Sarna (DE 6578)
1201 North Market Street, Suite 2100
Wilmington, Delaware 19801
Tel: (302) 468-5700
Fax: (302) 394-2341
Email: craig.martin@us.dlapiper.com
matthew.sarna@us.dlapiper.com

and

Dale K. Cathell
Virginia R. Callahan
DLA Piper LLP (US)
650 South Exeter Street, Suite 1100
Baltimore, Maryland 21202
Telephone: (410) 580-3000
Facsimile: (410) 580-3001
Email: Dale.Cathell@us.dlapiper.com
virginia.callahan@us.dlapiper.com

*Counsel for Cognizant Worldwide Limited and
Cognizant Technology Solutions U.S. Corp.*