IN 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: TBD Obj Deadline: September 6, 2024 at 4:00 pm (ET)

SUPPLEMENTAL OBJECTION TO FIRST SUPPLEMENTAL NOTICE TO CONTRACT PARTIES OF POTENTIALLY ASSUMED AND ASSIGNED EXECUTORY CONTRACTS AND UNEXPIRED LEASES FIRST NOTICE TO CONTRACT PARTIES OF POTENTIALLY ASSUMED AND ASSIGNED EXECUTORY CONTRACTS AND UNEXPIRED LEASES

Kuehne + Nagel Inc. ("**K+N**"), by its undersigned counsel, hereby submits this supplemental objection to the Debtors' First Supplemental Notice to Contract Parties of Potentially Assumed and Assigned Contracts and Unexpired Leases [Docket No. 462] (the "**Supplemental Assumption Notice**"). In support of its Supplemental Objection, K+N respectfully alleges as follows:

Factual 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. As the Court is aware, 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.

3. On July 11, 2024, the Debtor filed the Cure Notice with Exhibit A [Docket No. 256]. Exhibit A sets forth the contracts that the Debtors may potentially assume and assign as

part of their sale to a third-party buyer along with the proposed Cure Cost to be paid in order to effectuate the proposed assumption and assignment (the "**Initial Potential Assumption Notice**"). For the K+N Agreement, the Initial Potential Assumption Notice listed the cure cost as zero.

4. In response to the Initial Potential Assumption Notice, K+N filed it Objection to the Debtors' First Notice to Contract Parties of Potentially Assumed and Assigned Contracts and Unexpired Leases [Document No. 315] and its corresponding Exhibit A [Document 318] (together the "**Cure Objection**").[1] The Cure Objection established that as of July 15, 2024, the amount due to K+N under the Agreement was no less than $2,298,309.55.

5. On August 24, 2024, the Debtors filed their Supplemental Assumption Notice which updated the proposed cure cost necessary to assume and assign the K+N Agreement to $2,100,000. *See* pg. 7 of Supplemental Assumption Notice.

6. As of August 31, 2024, the cure cost related to the Agreement is in fact $2,424,864.44 as of August 30, 2024, and continuing to accrue.

Objection

7. Any assumption and assignment of the Agreement must be conditioned on the Debtors' compliance with the requirements of section 365 of the Bankruptcy Code, including, but not limited to, paying all amounts due and owing under the Agreement through the effective date of any assumption and assignment of the same

8. As evidenced in the secured of proof of claim filed on the official claims register on July 15, 2024 and designated as Claim No. 35, the Debtors owe K+N no less than $2,298,309.55 for services performed under the Agreement as of the date of the proof through June 2024 (the "**K+N POC**"). Since that time, the costs for continued warehousing of the inventory

[1] K+N respectfully incorporates by reference its previously filed Cure Objection as if reproduced in its entirety here.

have increased to no less than $2,424,864.44 through August 31, 2024. A copy of the K+N POC is attached to the Cure Objection as Exhibit A [Docket No. 318]. Attached hereto as **Exhibit 1** is an updated statement of account and invoice for the amounts accrued since the K+N POC was filed.

9. Thus, the total cure costs through August 31, 2024 is $2,424,864.44 plus accrued charges up to the date of any assignment and assumption (the "**Cure Amount**").

10. Pursuant to its possessory lien rights, K+N continues to warehouse the Debtors' goods consisting of medical device parts and inventory. A schedule of the K+N Collateral is attached as Exhibit A to its Limited Objection and Reservation of Rights previously filed at Docket No. 133. The debt owed to K+N 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.[2]

11. Pursuant to section 365 of the Bankruptcy Code, K+N is entitled to adequate assurance of any proposed assignee's future performance of the Agreement obligations, including but not limited to the assignee's financial wherewithal to meet its payment obligations. To the extent the Agreement is to be assumed and assigned, K+N requests that such information be promptly provided to K+N and its counsel. Moreover, K+N reserves its rights to object if it is not timely provided with adequate assurance of any proposed assignee's ability and intent to cure all defaults under the Agreement and to provide adequate assurance of future performance, or if the information provided is inadequate in any respect.

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[2] 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)

Reservation of Rights

12. Nothing in this Objection is intended to be, or should be construed as, a waiver by K+N of any of its rights as a possessory lien holder and secured creditor under the Agreement, the Bankruptcy Code, and applicable law. K+N expressly reserves all such rights, including, without limitation, the right to: (a) supplement and/or amend this Objection and to assert any additional objections with respect to the proposed cure amount and adequate assurance of future performance; (b) amend the Cure Amount; and (c) assert any further objections as it deems necessary or appropriate.

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Conclusion

WHEREFORE, K+N respectfully requests that this Court enter an Order: (a) sustaining this Objection; (b) in the event of any proposed assumption and assignment of the Agreement, requiring the Debtors and or the assignee to pay all amounts due and owing to K+N in the amount of $2,424,864.44 plus the costs accrued through the effective date of any assumption and assignment as well as providing evidence of adequate assurance of future performance by any proposed assignee; and (c) granting K+N such other and further relief as this Court deems just and proper.

Respectfully submitted,

Date: September 5, 2024
Wilmington, Delaware

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