IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
VYAIRE MEDICAL, INC., *et al.,*[1]	Case No. 24-11217 (BLS)
Debtors.	(Jointly Administered)
	RE: D.I. 462

AUGUSTA HITECH SOFT SOLUTIONS, LLC'S CURE OBJECTION AND RESERVATION OF RIGHTS REGARDING DEBTORS' FIRST SUPPLEMENTAL NOTICE TO POTENTIALLY ASSUMED AND ASSSIGNED CONTRACTS

COMES NOW Augusta Hitech Soft Solutions, LLC ("Augusta"), a creditor and contract counter-party in the above-captioned Chapter 11 cases, submits this Cure Objection and Rights Reservation in response to the proposed assumption of Augusta's contracts in connection with the *First Supplemental Notice to Contract Parties of Potentially Assumed and Assigned Executory Contracts and Unexpired Leases* (Dkt. 462) (the "Notice of Cure Amount") filed by Vyaire Medical, Inc., et. al. (the "Debtors"). In support of the Cure Objection and Rights Reservation, Augusta states:

I. RESERVATION OF RIGHTS

1. The Debtors have approval from the Bankruptcy Court to assume and assign the executory contracts between the Debtors and Augusta. As discussed herein, Augusta objects to the proposed assumption of its agreements as the Debtors and the proposed buyers have not cured all outstanding amounts owed under the contracts, nor provided adequate assurance that such

[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.

amounts will be paid. Accordingly, Augusta objects and reserves all of its rights regarding the Debtors' proposed assumption of Augusta's contracts.

II. FACTUAL BACKGROUND

2. The above captioned case was filed on June 9, 2024 ("Petition Date").

3. Augusta develops custom software solutions for customers and, pursuant to agreements, provides software-related products, technical support, maintenance, educational materials, and programs, as well as cloud-based and point of sale services. Prior to the Petition Date, Augusta and the Debtors entered into several agreements for cloud and database services ("Augusta Agreements").

4. On June 10, 2024, Debtors filed their *Motion for Entry of an Order (I) Approving Bidding Procedures…(V) Approving Procedures for the Assumption and Assignment of Contracts, (IV) Approving the Sale of the Debtors' Assets Free and Clear, and (VII) Granting Related Relief* [Dkt. 16].

5. On July 11, 2024, the United States Bankruptcy Court for the District of Delaware (the "Court") entered the *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. 249] (the "Bidding Procedures Order").

6. On August 24, 2024, the Debtors filed the Notice if Cure Amount listing the proposed cure amount in the amount of $1,893,923.38 for the assumption and potential assignment of the Augusta Agreements.

7. On September 4, 2024, the Court entered orders approving the sale of assets to buyers.

8. Pursuant to the sale orders, the Debtors have the right to potentially assume and assign the Augusta Agreements to the buyers.

9. The Debtors and buyers must pay all sums owed in cure, including any post-petition amounts which may have come due under the Augusta Agreements. As of filing this Cure Objection and Rights Reservation, Augusta is owed not less than $2,887,616.72.[2] The pre-petition amount owed is $1,889,243.37 (which is close to the Debtor's proposed cure amount). The post-petition amount owed equals (1) $702,205.94, (2) estimate for August services is $296,167.41 and (3) additional monies dues for post-petition services provided through the closing date of the sales.

III. ARGUMENT

A. To Assume the Augusta Agreements, the Debtors and Buyers Must Cure All Arrearages.

10. Before assuming an unexpired executory contract, a debtor must (1) cure (or provide adequate assurance of a prompt cure of) any defaults under the subject contracts, and (2) provide adequate assurance of future performance under the contract. *See* 11 U.S.C. § 365(b)(1). Absent the foregoing, a debtor may not assume an executory contract.

11. At present, the cure amount is not less than $2,887,616.72. Absent Debtors' cure of the outstanding amounts due Augusta, the Debtors may not assume Augusta's agreements.

B. Unless the Debtors Provide Adequate Assurance of Future Performance, the Court Should Not Permit Assumption of Augusta's Contracts.

12. In addition to requiring that defaults be cured, Section 365(b)(2) of the Bankruptcy Code obligates a debtor to provide adequate assurance of future performance under the contract

[2] Invoices will be available to Debtors upon request. Augusta is providing ongoing post-petition services so additional monies will be due and owing through the closing date of the sale of the assets to the buyers.

before the executory contract may be assumed. *See* 11 U.S.C. § 365(b)(2). The buyers have a $5,000,000 cure cap in place and the Debtors promised to pay any cure amount above that cap. Debtors have not indicated whether there will be sufficient funds to pay any overage. In light of the Debtors' failure to provide either adequate assurance of prompt payment of the cure or future performance under the contract, Augusta is unable to determine whether Debtors have complied, or will comply, with all of the requirements of section 365(b) of the Bankruptcy Code. Accordingly, Augusta reserves its rights to be heard regarding all assumption and cure issues.

IV. CONCLUSION

For the reasons set forth above, Augusta respectfully requests that the Court deny the Debtors' request for authority to assume any Augusta contract absent cure of all outstanding amounts due and owing to Augusta, and provision of adequate assurance regarding the proposed assumptions.

Dated: September 6, 2024

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