

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

In re:

VYAIRE MEDICAL, INC., et al.,¹

Debtors.

Chapter 11

Case No. 24-11217 (BLS)

(Jointly Administered)

Re: D.I. 256, 462

**DECLARATION OF KEVIN RAMIREZ IN SUPPORT OF THE LIMITED OBJECTION
OF SALESFORCE, INC. TO THE PROPOSED ASSUMPTION AND ASSIGNMENT OF
CERTAIN EXECUTORY CONTRACTS AND CURE COSTS, IN CONNECTION
WITH THE SALE AND RESERVATION OF RIGHTS**

I, Kevin Ramirez, declare as follows:

1. I am the Manager, Global Bad Debt for Salesforce, Inc. (f/k/a salesforce.com, inc.) ("**Salesforce**") and I am authorized to execute this Declaration on behalf of Salesforce (as identified hereinafter). If called to testify, I could and would competently testify to the facts set forth herein based on my personal knowledge of those facts, events and transactions.²

2. Salesforce is a Delaware corporation, and, among other activities, it provides on-demand customer relationship management and software application services (collectively, the "**Salesforce Services**") to Salesforce's business customers (individually, a "**Salesforce Customer**" and, collectively, "**Salesforce Customers**").

3. Salesforce provides the **Salesforce Services** pursuant to the agreements and orders identified on Exhibit "A" attached hereto (collectively, the "**Salesforce Contracts**") and

¹ The last four digits of Debtor Vyair 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/Vyair>. The location of Debtor Vyair 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 Capitalized terms used in this Declaration, but which are not defined herein, shall have the meanings ascribed to them in the Assumption and Assignment Objection filed by Salesforce concurrently herewith.

Exhibit “A” is incorporated by referenced into this Declaration as if fully set forth.

4. This Declaration is filed in support of the *Limited Objection of Salesforce, Inc. to the Proposed Assumption and Assignment of Certain Executory Contracts and Cure Costs, in Connection with the Sale and Reservation of Rights* (the “**Assumption and Assignment Objection**”) filed by Salesforce with respect to: (A) the potential assumption and/or assignment of the Salesforce Contracts by the Debtors; (B) Salesforce’s reservation of rights related to the assumption and/or assignment of the any executory contract (i) to which Salesforce is a counterparty and (ii) is not identified on Exhibit “A” attached to this Declaration) or in the *Notices of Assumption and Assignment of Contracts* (the “**Cure Notices**”); and (C) any and all monetary and other defaults that exist with respect to the Salesforce Contracts to the extent that the assumption and/or assignment of the Salesforce Contracts and/or an Additional Salesforce Contracts is approved without providing the relief requested by the Assumption and Assignment Objection.

MAINTENANCE OF BUSINESS RECORDS

5. In my official capacity, I have personal knowledge of the method by which Salesforce maintain permanent records of their transactions (individually, a “**Transaction**” and, collectively, the “**Transactions**”) with their customers and, thereupon, I declare and state that Salesforce maintains permanent records of all Transactions in a computerized accounting system. All amounts due and owing to Salesforce with respect to any Transaction with a Salesforce Customer including, but not limited to, payments related to Salesforce Services, taxes, interest owed with respect to any Salesforce Services or agreement, fees, and other charges (individually, an “**Obligation**” and, collectively, the “**Obligations**”), are entered in this accounting system at, or near, the time such Obligations are incurred. Likewise, all payments made by a Salesforce Customer with respect to any Obligation or Transaction, and all other credits and debits related to any Obligation or Transaction, are entered in this accounting system at, or near, the time such payment is received and/or such credit or debit is made or incurred. Each such entry is made in the regular course of business

by employees of Salesforce who process these payments, receipts, credits, and debits. If necessary, Salesforce can print hard copies of all entries.

6. I have personal knowledge of the manner by which Salesforce maintain records of their written contracts, statements of work, schedules and any other documents related to such contracts, and all amendments to any contract, statement of work, schedule, and/or any other document (individually, a “**Salesforce Agreement**” and, collectively, the “**Salesforce Agreements**”) with their customers. As a regular part of its business, Salesforce maintain permanent records of the Salesforce Agreements and these records are compiled at the time, or near the time, that a Salesforce Agreement is received or processed.

THE SALESFORCE CONTRACT

7. I have personally reviewed Salesforce’ records relating to the Debtors, including the Transactions, the Obligations, the Salesforce Agreements, the Salesforce Contracts, and I am personally familiar with Salesforce’s account(s) with the Debtor.

8. The Debtors entered into those certain Order Forms (which are identified on the Cure Amount Summary attached hereto as Exhibit “A”)³ with Salesforce that are governed by certain *Master Subscription Agreements* (the “**MSAs**” and, together with the Order Forms, collectively referred to as the “**Salesforce Contracts**”).⁴

9. Pursuant to the **Salesforce Contracts**: (i) the Debtors ordered certain Salesforce Services and became obligated to pay in full the aggregate amounts due pursuant to this contract with respect to such services; (ii) Salesforce became obligated to provide Salesforce Services to the Debtors; (iii) Salesforce have provided such services to the Debtors; and (iv) the Debtors accepted and utilized Salesforce Services provided pursuant to the Salesforce Contract.

³ The Cure Amount Summary is attached hereto as Exhibit A and is incorporated by reference as if fully set forth herein.

⁴ Due to the confidentiality provisions of the MSAs, a copy of the Salesforce Contract and related invoices (the “**Invoices**”) are not attached to this Declaration. However, subject to appropriate non-disclosure protections, a copy of the Salesforce Contract and the Invoices will be made available to the Debtors and the Official Committee of Unsecured Creditors (the “**Committee**”) in connection with this Assumption Objection.

BANKRUPTCY CASE

10. Based upon information and belief, I am informed that, on June 9, 2024,(the “**Petition Date**”) Vyaire Medical, Inc. and the above captioned Debtors each filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code in the United States Bankruptcy Court for the District of Delaware (the “**Court**”) and, thereby, commenced their individual cases under chapter 11 (collectively, the “**Bankruptcy Cases**”). On June 11, 2024, the Court entered the Joint Administration Order⁵ directing the joint administration of the Debtors’ cases.

11. Based on information and belief, I am informed that, on or about July 11, 2024, the Court entered an order (the “**Sale Procedures Order**”)⁶ authorizing the Debtors to establish procedures for sale of certain of the Debtors’ assets and procedures related to the assumption, assumption and assignment, and/or transfer of executory contracts and unexpired leases in connection with a sale of the Debtors’ assets.

12. Based on information and belief, I am informed that, on or about July 11, 2024, the Court entered an order (the “**Sale Order**”)⁷ authorizing the sale of certain of the Debtors’ assets and the assumption, assumption and assignment, and/or transfer of executory contracts and unexpired leases in connection with a sale of the Debtors’ assets.

13. Based on information and belief, I am informed that, on or about July 11, 2024, pursuant to the Sale Procedures Order, the Debtors filed the: *First Notice to Contract Parties of Potentially Assumed and Assigned Executory Contracts and Unexpired Leases* [D.I.

⁵ See, Order (I) Directing Joint Administration of Chapter 11 Cases And (II) Granting Related Relief [D.I. 84] (the “**Joint Administration Order**”).

⁶ See, Order (I) Approving Bidding Procedures and Bid Protections, (II) Scheduling Certain Dates and Deadlines with Respect Thereto, (III) Approving the Form and Manner of Notice Thereof, (IV) Establishing Notice and Procedures for the Assumption and Assignment of Contracts and Leases, (V) Authorizing the Assumption and Assignment of Contracts and Leases, (VI) Authorizing the Sale of Assets; and (VII) Granting Related Relief [D.I. 249], (the “**Sale Procedures Order**”).

⁷ See, Order (I) Authorizing and Approving Procedures to Reject Executory Contracts and Unexpired Leases and (II) Granting Related Relief [D.I. 250]. (the “**Sale Order**”).

256] (“First Cure Notice”). Salesforce informally objected to the First Cure Notice and the Debtors agreed to modify the contract descriptions, and the Debtors and Salesforce agreed upon the correct cure amount.

14. Based upon information and belief, I am informed that on August 24, 2024, the Debtors filed the *First Supplemental Notice of Contract Parties of Potentially Assumed and Assigned Executory Contracts* [D.I. 462] (“**Supplemental Cure Notice**”) (collectively, with the the First Cure Notice, the “**Assumption and Assignment Notices**”).

15. The **Assumption and Assignment Notices** filed by the Debtors identify: (A) certain Contracts that the Debtors have designated for assumption and assignment including the following executory contracts to which Salesforce are counterparties (the “**Cure Notices Contracts**”), and (B) the amount of any monetary default (the “**Debtors’ Proposed Cure Amount**”) that it contends must be cured as a condition of the assumption of these Cure Notice Contracts:

FIRST CURE NOTICE (D.I. 256 Filed July 11, 2024).

NO.	CONSOLIDAT E VENDOR NAME	VENDOR/AGE NCY/COMPA NY	DESCRIPTION	WORKS TREAM	PROPOSED CURE AMOUNT	ASSIGNEE	ASSUMPTI ON DATE
6235	SFDC	SFDC	SalesForce 2017- 07- 14 IT Master Service		\$267,052.43		7/11/2024
6236	SFDC	SFDC	Salesforce.com, Inc. 2020- 08- 14- 2020		\$ 0.00		7/11/2024
6237	SFDC	SFDC	Salesforce.com, Inc. 2020- 07- 16 Order For		\$ 0.00		7/11/2024
6238	SFDC	SFDC	Salesforce 2017- 07- 17 IT Order		\$ 0.00		7/11/2024
6239	SFDC	SFDC	Purchase Order PO PS 070689		\$ 0.00		7/11/2024
6240	SFDC	SFDC	Purchase Order PO PS 070690		\$ 0.00		7/11/2024
6241	SFDC	SFDC	Purchase Order Quote Q- 07416306		\$ 0.00		7/11/2024
6242	SFDC	SFDC	Purchase Order Quote Q- 07764587		\$ 0.00		7/11/2024

SUPPLEMENTAL CURE NOTICE (D.I. 462 Filed August 24, 2024).

NO.	CONSOLIDAT E VENDOR NAME	VENDOR/AGE NCY/COMPA NY	DESCRIPTION	WORKS TREAM	PROPOSED CURE AMOUNT	ASSIGNEE	ASSUMPTI ON DATE
8265	SFDC	SFDC	Purchase Order Quote Q-07842041		\$ 0.00		8/24/2024
8266	SFDC	SFDC	Purchase Order Quote Q-07187278		\$ 0.00		8/24/2024
8267	SFDC	SFDC	Purchase Order Quote Q-07114790		\$ 0.00		8/24/2024

16. The **Supplemental Cure Notice** states that counterparties to the **Cure Notices Contracts** must file an objection to the proposed assumption and assignment of the **Cure**

Notices Contracts (including to the proposed Cure Amount) no later than September 6, 2024 (the “**Assumption and Assignment Objection Deadline**”). The Debtors further extended Salesforce’s objection deadline to September 13, 2024 (the “**Assumption and Assignment Objection Deadline**”).

THE CURE AMOUNT

17. Based upon my review of Salesforce’s books and records that are pertinent to the Debtor’s account, I declare and state that: (A) the **Cure Notice Contracts** scheduled on the **Assumption and Assignment Notices** do not match the description of the Salesforce Contracts as listed on Salesforce’s records⁸; (B) the **Salesforce Contracts** are correctly identified on the Cure Amount Summary attached to this Declaration as Exhibit “A” and incorporated herein by this reference; and (C) as of the date of this Declaration, Salesforce’s records show that the Debtor has failed to pay all amounts due and owing pursuant to the **Salesforce Contracts** and, accordingly, the Debtor must cure the aggregate amount of not less than **US\$ 277,052.76** (the “**Salesforce Cure Amount**”) with respect to Salesforce Services, and such amount must be paid by the Debtor as a condition of the assumption of the Salesforce Contracts.

18. Additionally, with respect to the Salesforce Services to be provided in the future, not less than an aggregate amount of US\$ 19,327.03 (*i.e.*, the Future Payments) will become due and owing pursuant to the **Salesforce Contracts**.

19. Further, it is possible that the **Salesforce Cure Amount** may be increased once executory contracts to be assumed are determined by Salesforce, the Debtor and the Buyer.⁹

⁸ Accordingly, the Salesforce Assumption Objection requests the Debtors provide further information concerning all of the Orders, and any professional service agreement and/or master subscription agreement that they propose may be assumed pursuant to the Sale.

⁹ By the Salesforce Assumption Objection, Salesforce reserves all rights with respect to any and all executory contracts not identified in the Cure Notice that, ultimately, are assumed and assigned to the Buyer pursuant to the Sale.

I declare under penalty of perjury that the foregoing is true and correct.

9/9/2024

Executed this ____ day of September 2024 at San Francisco, California

DocuSigned by:

Kevin Ramirez

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Kevin Ramirez