

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

In re:	:	Chapter 11
Vyaire Medical, Inc., et al. ¹ ,	:	
Debtors.	:	Case No.: 24-11217 (BLS)
	:	(Jointly Administered)
	:	Objection Deadline: January 13, 2025 at 4:00 p.m.
	:	Hearing Date: January 29, 2025 at 10:30 a.m.
	:	

**REQUEST FOR ALLOWANCE AND PAYMENT OF ADMINISTRATIVE EXPENSE
CLAIM OF CEVA FREIGHT, LLC AND AFFILIATES**

CEVA Freight, LLC, on behalf of itself and affiliates, including without limitation, CEVA International, Inc. and CEVA Contract Logistics U.S., Inc. (formally known as CEVA Logistics U.S., Inc.) (collectively “CEVA”), by and through its undersigned counsel, hereby files this *Request for Allowance and Payment of Administrative Expense Claim* (the “Motion”). In support of its Motion, CEVA respectfully states the following:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, 11 U.S.C. § 503, and the terms and provisions of the confirmed *Second Amended Joint Chapter 11 Plan of Vyaire Medical, Inc. and Its Debtor Affiliates* filed on November 11, 2024 [Docket No. 719] (the “Plan”).

2. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). The

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.

statutory predicates for the relief requested herein include 11 U.S.C. §§ 105 and 503.

3. Venue is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.

4. In accordance with Local Rule 9013-1(f), CEVA consents to entry of a final order by this Court with respect to this Motion and relief requested herein.

BACKGROUND

5. On June 9, 2024 (the “Petition Date”), the above-captioned debtors and debtors-in-possession (collectively, “Debtors”) filed voluntary petitions for relief under Chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”).

6. On November 14, 2024 the Court entered its *Findings of Fact, Conclusions of Law and Order Approving the Debtors’ Disclosure Statement for, and Confirming the Second Amended Joint Chapter 11 Plan of Vyaire Medical, Inc. and its Debtor Affiliates pursuant to Chapter 11 of the Bankruptcy Code* [Dkt. No. 745] (the “Confirmation Order”).

7. On November 27, 2024, a *Notice of (I) Entry of Confirmation Order, (II) Occurrence of Effective Date, and (III) Related Bar Dates* (the “Notice of Effective Date”) was filed.

8. The Notice of Effective Date sets December 27, 2024, as the deadline to file Requests for Payment of Administrative Claims.

9. As set forth more fully in the Confirmation Order and Plan, on the Effective Date, the Plan Administrator² is now appointed by each Debtor as the sole director and sole officer of the Wind-Down Debtor; has succeeded to the powers of such Debtors’ directors and officers; and is the sole representative of and shall act for each Wind-Down Debtor

² All capitalized terms not otherwise defined herein shall have the meaning so ascribed in the Plan and Confirmation Order.

with authority to authorize, make, or cause to be made payments in accordance with the Wind-Down Budget to satisfy claims, including payments of Allowed Administrative Expense Claims.

10. Vyair Medical, Inc. (“Vyair” or the “Debtor”) is indebted and liable to CEVA for amounts due for post-petition logistics and supply chain services (the “Logistics Services”) rendered by CEVA in the amount of at least \$478,810.36 (the “CEVA Administrative Expense Claim”). See **Exhibit A** attached hereto.³

11. CEVA asserts this Administrative Expense Claim pursuant to 11 U.S.C. § 503(b)(1) and under the terms and provisions of the Plan and Confirmation Order.

RELIEF REQUESTED

1. By this Motion, CEVA requests entry of an Order: (a) allowing the CEVA Administrative Expense Claim in the amount of \$478,810.36; (b) directing the Wind-Down Debtor and Plan Administrator to pay the CEVA Administrative Expense Claim as required in the Plan and Confirmation Order; and (c) granting such other and further relief as the Court deems just and proper.

ARGUMENT

2. Section 503 of the Bankruptcy Code provides, in relevant part, that:

“(b) After notice and a hearing, there shall be allowed administrative expenses, other than claims allowed under section 502(f) of this title, including –

³ The documentation further supporting this Motion (together, the “Documents”) may contain proprietary and/or confidential information. CEVA believes the Wind-Down Debtor and Plan Administrator are in possession of the Documents and CEVA will also make such Documents available upon written request sent to CEVA Contract Logistics U.S., Inc. c/o Tiffany Strelow Cobb, Vorys, Sater, Seymour and Pease LLP, 52 East Gay Street, Columbus, Ohio 43215. If copies of the Documents are required to be filed with the Court or requested by any other party in interest, CEVA reserves all rights, including, without limitation, the right to file the Documents under seal and/or to seek to protect such information as confidential pursuant to Bankruptcy Code section 107 or other applicable law.

(1)(A) the actual, necessary costs and expenses of preserving the estate, including wages, salaries, and commissions for services rendered after the commencement of the case.”

3. Section 503(b)(1)(A) “allows for the collection of administrative expenses from a bankruptcy estate...which ‘receive first priority in the distribution of assets of the debtor’s estate.’” *In re Energy Future Holdings Corp.*, 990 F.3d 728 (3d. Cir. 2021) (quoting *Former Emples. of Builders Square Retail Stores v. Hechinger Inv. Co. (In re Hechinger Inv. Co.)*, 298 F.3d 219, 224 (3d Cir. 2002)). The Third Circuit Court of Appeals further elaborates that this administrative priority exists where, as here, “(1) there was a ‘post-petition transaction between the claimant and the estate’ and (2) those expenses yielded a ‘benefit to the estate.’”) *Id.* at 741 (quoting *In re Women First Healthcare, Inc.*, 332 B.R. 115, 121 (Bankr. D. Del. 2005)); *see also Bonapfel v. Nalley Motor Trucks (In re Carpet Ctr. Leasing Co.)*, 991 F.2d 682, 685 (11th Cir. 1993) (together, Bankruptcy Code sections 507(a) and 503(b) “afford first priority to administrative expense ‘to encourage the provision of goods and services to the estate, and to compensate those who expend new resources attempting to rehabilitate the estate’”) (internal citation omitted).

4. Here, CEVA is entitled to its Administrative Expense Claim for the Logistics Services provided to Debtors post-petition because they were undeniably incurred for the “actual, necessary costs and expenses of preserving the estate.” 11 U.S.C. §503(b)(1)(A). On a post-petition basis, Debtors continued to seek and benefit from Logistics Services provided by CEVA, and the CEVA Administrative Expense Claim thus constitutes the actual and necessary costs of preserving the Debtors’ estates. *See* 11 U.S.C. §503(b)(1)(A).

5. Accordingly, CEVA is entitled to allowance and payment of its Administrative Expense Claim under sections 503(b)(1)(A) and 507(a)(1) of the Bankruptcy Code.

RESERVATION OF RIGHTS

6. CEVA expressly reserves all rights, claims, remedies and defenses against the Debtors, Wind-Down Debtor, Plan Administrator, and/or any other party in interest, whether at law or in equity, including, without limitation, the right to amend, modify, and/or supplement this Motion at any time for whatever reason, including, without limitation, to specify the amount of any contingent, unmatured, and/or unliquidated claims as they become non-contingent, matured and/or liquidated, as well as the right to request payment of any additional administrative expenses pursuant to Section 503(b) of the Bankruptcy Code, and nothing contained in this Motion shall be deemed a waiver, release, abridgment, alteration, modification, reduction or termination of any such rights, claims, remedies or defenses, whether at law or in equity, that CEVA may have.

WHEREFORE, CEVA respectfully requests entry of an Order in substantially the form attached hereto as **Exhibit B**: (a) allowing the Administrative Expense Claim in the full amount of **\$478,810.36**; (b) directing the Wind-Down Debtor and/or Plan Administrator to pay the CEVA Administrative Expense Claim as required in the Plan and Confirmation Order; and (c) granting such other and further relief as the Court deems just and proper.

Dated December 26, 2024

Respectfully submitted,

/s/ Michael D. DeBaecke

Michael D. DeBaecke (DE Bar No. 3186)

ASHBY & GEDDES P.A.

500 Delaware Avenue, Suite 800

Wilmington, DE 19801

Telephone: (302) 654-1888

MDeBaecke@ashbygeddes.com

and

VORYS, SATER, SEYMOUR AND PEASE LLP
Tiffany StreLOW Cobb (*pro hac vice to be filed*)
52 East Gay Street
Columbus, Ohio 43215
Telephone: (614) 464-8322
Facsimile: (614) 464-8322
E-mail: tscobb@vorys.com

*Counsel for CEVA Freight, LLC, on behalf of itself
and affiliates, including without limitation, CEVA
International, Inc. and CEVA Contract Logistics
U.S., Inc. (formally known as CEVA Logistics U.S.,
Inc.)*