

**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)

Objection Deadline:
January 13, 2025 at 4:00 p.m. (ET)

Hearing Date:
January 29, 2025 at 10:30 a.m. (ET)

**REQUEST FOR ALLOWANCE AND PAYMENT OF
ADMINISTRATIVE EXPENSE CLAIM OF SALESFORCE, INC.**

Salesforce, Inc. (“Salesforce”), by and through the undersigned counsel, hereby moves (the “Administrative Expense Request”) for the entry of an order substantially in the form attached hereto as **Exhibit A** (the “Administrative Expense Order”) (a) allowing an administrative expense in an amount not less than **US \$207,783.78** (the “Administrative Expense Claim”) incurred in connection with the provision of the Salesforce Services² (as hereinafter identified) provided by Salesforce to Vyair Medical, Inc. (the “Debtor”), and the acceptance and use of the Salesforce Services by the Debtor, from and after Petition Date through the date that the Salesforce Contract is assumed or rejected by the Debtor, pursuant to the Salesforce Contract, (b) directing the Administrative Expense Claim be paid in full as soon as practicable after entry of the Administrative Expense Order, or at such time as the Court otherwise orders, (c) approving the

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, along with the last four digits of their U.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 All capitalized terms shall have the meaning as set forth in this *Request for Allowance and Payment of Administrative Expenses* and, if not defined herein, as set forth in the Ramirez Declaration filed in support of this request.

Reservation of Rights asserted hereinafter, and (d) granting such other and further relief as may be deemed just and proper under the circumstances of this case.

This Administrative Expense Request is brought pursuant to 11 U.S.C. §§503(b)(1)(A) and 507(a)(2), and is based on the matters set forth herein, the *Declaration of Kevin Ramirez in Support of the Request for Allowance and Payment of Administrative Expense of Salesforce, Inc.* (the “Ramirez Declaration”) filed in support hereof, the files and the records in this case, and such other and further evidence as may be submitted at or before the trial on this matter.

Salesforce requests that the Court take judicial notice of the pleadings filed in this case and the facts set forth in the Court’s orders, findings of fact and conclusions of law pursuant to Rule 201 of the Federal Rules of Evidence (as incorporated by Rule 9017 of the Federal Rules of Bankruptcy Procedure).

JURISDICTION AND VENUE

1. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (B) and (O).
2. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

BACKGROUND

3. 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 its business customers (individually, a “Salesforce Customer” and, collectively, “Salesforce Customers”). See Ramirez Declaration at ¶2.

THE SALESFORCE CONTRACT

4. Prior to June 9, 2024, the Debtor entered into those certain Order Forms (the “Order Forms”),³ which are governed by an applicable *Master Subscription Agreement* (the

³ The Administrative Expense Claim Summary is attached to the Ramirez Declaration as Exhibit A and is incorporated by reference here in as if fully set forth.

“MSA” and, together with the Order Forms, collectively the “Salesforce Contract”).⁴ Pursuant to the Salesforce Contract: (i) the Debtor 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 the Salesforce Services to the Debtor; (iii) Salesforce has provided such services to the Debtor; and (iv) the Debtor accepted and utilized, and continue to accept and utilize, the Salesforce Services provided pursuant to the Salesforce Contract. See Ramirez Declaration at ¶¶ 7 and 8.

BANKRUPTCY CASE

5. On June 9, 2024 (the “Petition Date”) the Debtor 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 this case under chapter 11 (the “Bankruptcy Case”).

6. On November 27, 2024, the Debtor filed its *Notice of (I) Entry of Confirmation Order, (II) Occurrence of Effective Date, and (III) Related Bar Dates* [D.I. 810] (the “Notice of Effective Date”) listing the Effective Date, as defined in the Plan, as having occurred on November 27, 2024, and the deadline to file Administrative Claims as December 27, 2024 (the “Administrative Claims Bar Date”).

The Administrative Expense Claim

7. From and after the Petition Date, the Debtor knowingly accepted the Salesforce Services provided, and that provision of such services was in the ordinary course of business of the parties. See Ramirez Declaration at ¶11.

8. From the commencement of the Salesforce Contract, the Debtor has failed to pay all post-petition Fees due and owing pursuant to the Salesforce Contract and, more specifically, an amount of not less than **US \$207,783.78**, (the “Administrative Expense Claim”) ⁵ remains due and

⁴ Due to the confidentiality provisions of the MSA, a copy of the Salesforce Contract and related invoices (the “Invoices”) are not attached to the Ramirez Declaration. However, subject to appropriate non-disclosure protections, a copy of the Salesforce Contract and the Invoices will be made available to the Debtor in connection with this Administrative Expense Request.

⁵ See, the Administrative Expense Claim Summary which is attached to the Ramirez Declaration as Exhibit A and is

owing to Salesforce pursuant to the Salesforce Contract for services arising on or after the Petition Date and any time prior to the Rejection Date. *See Ramirez Declaration* at ¶12.

LEGAL AUTHORITY

Administrative Expenses Are Allowed for Actual, Necessary Costs And Expenses of Preserving the Estate.

9. The Bankruptcy Code provides administrative status to claims for “the actual, necessary costs and expenses of preserving the estate,” including wages, salaries, or commissions for services rendered after the commencement of the case. *In re Goody’s Fam. Clothing Inc.*, 610 F.3d 812, 817 (3d Cir. 2010), *cert. denied*, 562 U.S. 1064, 131 S. Ct. 662, 178 L.Ed. 2d 483 (2010); *accord*, *In re Pinnacle Brands, Inc.*, 259 B.R. 46, 50 (Bankr. D. Del. 2001) *citing* 11 U.S.C. § 503(b).⁶ In the Third Circuit, the phrase “actual, necessary costs and expenses of preserving the estate . . . *should include costs ordinarily incident to operation of a business*, and not be limited to costs without which rehabilitation would be impossible.” *Pennsylvania Dept. of Env’t Res. v. Tri-State Clinical Laboratories, Inc.*, 178 F.3d 685, 689-90 (3d Cir. 1999) (emphasis added) (*citing Reading Co. v. Brown*, 391 U.S. 471, 483, 88 S. Ct. 1759, 20 L. Ed. 2d 751 (1968)). It is well established that “if a debtor in possession elects to continue to receive benefits from the other party to an executory contract pending a decision to reject or assume a contract, the debtor in possession is obligated to pay for the reasonable value of those services.” *See NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 531, 104 S.Ct. 1188, 79 L.Ed.2d 482 (1984).

10. “To establish administrative expense priority the burden is on the claimant to demonstrate that the obligation claimed as administrative expenses (1) arose out of a post-petition transaction with the debtor in possession and (2) directly and substantially benefitted the estate. *Calpine Corp. v. O’Brien Env’t Energy, Inc. (In re O’Brien Env’t Energy, Inc.)*, 181 F.3d 527, 532-33 (3d Cir. 1999). The principal purpose of 11 U.S.C. § 503 is to induce entities to do business with a debtor after bankruptcy by ensuring that those entities receive payment for services

incorporated by reference here in as if fully set forth.

⁶ *Accord*, *In re Valley Media, Inc.*, 279 B.R. 105, 141 (Bankr. D.Del. 2002); *In re Unidigital, Inc.*, 262 B.R. 283, 288 (Bankr. D. Del. 2001); *In re Mid-Am. Waste*, 228 B.R. 816, 821 (Bankr. D. Del 1999).

rendered. Section 503(b) contemplates some *quid-pro-quo* wherein the estate accrues debt in exchange for some consideration necessary to the operation of the estate. *Pennsylvania Dept. of Env't Res.*, 178 F.3d at 689-90.

11. Thus, if a non-debtor party confers a benefit on a bankruptcy estate after the petition date pursuant to an executory contract, the non-debtor counterparty to that contract holds an administrative expense claim to the extent of the post-petition benefit conferred on the estate. *Sharon Steel Corp. v. National Fuel Gas Distrib. Corp.*, 872 F.2d 36 (3d Cir. 1989); *In re Waste Sys. Int'l, Inc.*, 280 B.R. 824, 826 (Bankr. D. Del. 2002) (citing *NLRB v. Bildisco*, 465 U.S. 513, 531, 104 S.Ct. 1188, 79 L.Ed.2d 482 (1984)). Any other result would improperly confer a benefit on the bankruptcy estate while permitting the estate to escape the contract's burdens.

12. Salesforce submits that its right to allowance and payment of the Administrative Expense Claim is clear: (A) Salesforce provided the Salesforce Services from and after the Petition Date pursuant to the Salesforce Contract; (B) the Debtor (in its capacity as debtor-in-possession) knowingly and willingly accepted the Salesforce Services; (C) the Salesforce Services were supplied to and beneficial to the debtor in possession in the operation of its business; and, (D) regardless whether, ultimately, the estate is liquidated or its business operations are sold as a going concern, utilization of the Salesforce Services by the Debtor preserves the Debtor's estate. Salesforce further submits that access to the account, and usage of the Salesforce Services, directly and substantially benefitted the Debtor's estate by permitting the Debtor's continued post-petition operations without interruption.

13. Based on all these facts and circumstances, Salesforce submits that the provision of the Salesforce Services, unquestionably, constitutes "actual, necessary costs and expenses of preserving the estate" that should be allowed as administrative expenses, 11 U.S.C. §503(b)(1)(A), and should receive the highest priority in payment in this bankruptcy proceeding pursuant to 11 U.S.C. §507(a)(1).

RESERVATION OF RIGHTS

14. Notwithstanding the foregoing, Salesforce expressly reserves (and hereby

expressly does not waive) (a) all rights, claims, counterclaims, defenses, interests, actions and/or other remedies (collectively, its “Rights”) including, without limitation, the right to amend, modify and/or supplement (A) any proof of claim already filed by Salesforce and/or any other claim or proof of claim that may be filed in the future (collectively, the “Claims”), (B) the Administrative Expense Claim asserted hereby and/ or any further administrative expenses as may be asserted hereinafter (collectively, the “Administrative Expenses”), (C) a judicial determination of the amount(s) due and owing with regard to the Claims and/or the Administrative Expenses, (D) this Administrative Expense Request in response to any submission by any party-in-interest including, without limitation, any objection to this Administrative Expense Request or an amendment to it, and (E) the right to adopt any other pleadings filed by any other party related to the Claims, this Administrative Expense Claim, any other Administrative Expenses or the Administrative Expense Requests as may be filed hereinafter (collectively, the “Reservation of Rights”).

WHEREFORE, Salesforce respectfully requests the Court enter its Administrative Expense Order –

(A) Allowing an administrative expense claim, in the amount not less than of **US \$207,783.78** pursuant to the Salesforce Contract for Salesforce Services provided from on or after the Petition Date;

(B) requiring the Debtor to pay the Administrative Expense Claim, in full, as soon as practicable after entry of the Administrative Expense Order, or at such time as the Court otherwise orders;

(C) approving the Reservation of Rights; and granting such other and further relief as may be deemed just and proper under the circumstances of this case.

Dated: December 27, 2024
Wilmington, Delaware

Respectfully submitted,

WHITE AND WILLIAMS LLP

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