

**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)

Objections Due: January 20, 2025 at 4:00 p.m.

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

**MOTION OF PAVESE AG PRAZISIONSMECHANIK
FOR ALLOWANCE AND PAYMENT OF ADMINISTRATIVE
EXPENSE CLAIM PURSUANT TO 11 U.S.C. §§ 503**

PAVESE AG PRAZISIONSMECHANIK, (hereinafter referred to as PAVESE”), by and through its undersigned attorneys, hereby requests the entry of an order, pursuant to 11 U.S.C. §§ 503(b), allowing PAVESE an administrative expense claim in the amount of \$33,177.96. This Motion is timely submitted pursuant to the Notice of (I) Entry of Confirmation Order, (II) Occurrence of Effective Date, and (III) Related Bar Dates, (Dkt. No. 810) which states that “all requests for payment of an Administrative Claim (other than DIP Claims, Professional Fee Claims or claims subject to section 503(b)(1)(D) of the Bankruptcy Code) must be Filed with the Bankruptcy Court and served on the Wind-Down Debtors no later than **December 27, 2024** (which is the Administrative Claims Bar Date or thirty days after the Effective Date).” In support of the relief requested, PAVESE asserts the following:

¹ The last four digits of Debtor Vyaire Medical, Inc. tax identification number are 6495 Due to the large number of debtor entities in these chapter 11 cases, which are jointly administered, a complete list of the debtor entities and the last four digits of their federal tax identification numbers are not provided herein.

I. BACKGROUND

1. On June 9, 2024 (the “**Petition Date**”), the Debtor Vyaire Medical, Inc. (“**Vyaire**”) and its affiliated each filed a voluntary petition for relief under Chapter 11 of title 11 of the Unites States Code (the “**Bankruptcy Code**”).

2. 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**”).

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

4. PAVESE is a corporation, duly established under the laws of Switzerland, a manufacturer of medical device accessories and supplier to Vyaire. See Declaration of Ms. Beate Reichle, Chief Financial Officer of PAVESE.

5. Vyaire is indebted and liable for goods delivered by PAVESE on June 2, 2024 in the ordinary course of Vyaire’s business. See Exhibit 1 and 2 to the Declaration Ms. Beate incorporated herein by reference.

6. No protest or objection has been made by Vyaire with regard to the products supplied by PAVESE.

II. JURISDICTION

7. This Court has subject matter jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order of Reference from the United States District Court for the District of Delaware dated as of February 29, 2012. This is a core

proceeding pursuant to 28 U.S.C. §157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§1408 and 1409.

8. The statutory predicates for the relief requested herein is contained in 11 U.S.C. §§ 507 and 503(b).

9. PAVESE consents, pursuant to Rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (“Local Rules”), to the entry of a final order by this Court in connection with this Motion to the extent that it is later determined that this Court, absent consent of the parties, cannot enter final orders or judgment in connection herewith consistent with Article III of the United States Constitution.

III. RELIEF REQUESTED

10. By this Motion, PAVESE seeks an Order from this Court pursuant to Section 503(a) of the Bankruptcy Code directing the allowance and payment of an administrative claim in the amount of \$33,177.96.

IV. BASIS FOR RELIEF

Section 503 of the Bankruptcy Code

11. Section 503(a) of the Bankruptcy Code provides in relevant part that an entity “may timely file a request for payment of an administrative expense.” Section 503(b)(9) then provides in relevant part that “[a]fter notice and a hearing, there shall be allowed administrative expenses, other than claims allowed under section 502(f) of this title, including . . . the value of any goods received by the debtor within 20 days before the date of commencement of a case under this title in which the goods have been sold to the debtor in the ordinary course of such debtor’s business . . . ”

12. As set forth in the Declaration, Vyaire purchased certain goods delivered to Debtors within 20 days of the commencement of Debtors' bankruptcy proceeding in the ordinary course of their businesses in the amount of \$33,177.96, and such amount remains past-due and owing to PAVESE. "[R]eceipt as used in 11 U.S.C. § 503(b)(9) requires physical possession by the buyer or its agent," and it is well-established that "common carriers do not qualify as agents." *In re World Imports, Ltd*, 862 F.3d 338, 345-346 (3d Cir. 2017). Accordingly, this claim is properly characterized as an administrative expense under Section 503(b)(9) of the Bankruptcy Code. Therefore, PAVESE is authorized to seek the payment of the invoice pursuant to Section 503(b)(9) of the Bankruptcy Code.

V. NO PRIOR REQUEST

13. No previous application for the relief sought herein has been made to this or to any other Court.

VI. RESERVATION OF RIGHTS

14. PAVESE reserves the right to amend, modify or supplement this Motion as necessary and appropriate, and nothing herein shall prevent PAVESE from asserting and pursuing any additional claims against any of the Debtors, Wind-Down Debtor, Plan Administrator, and/or any other party in interest, whether at law or in equity, in these chapter 11 cases. Nothing in this Motion shall be deemed a waiver, release, abridgment, alteration, modification, reduction or termination of any such rights, claims, remedies, or defense, whether at law or in equity, that PAVESE may have.

WHEREFORE, PAVESE requests entry of an Order allowing administrative claim in favor of PAVESE and directing payment pursuant to Section 503(a) as an Administrative Expense Claim and granting any further relief that is just and proper.

Dated: December 27, 2024

OFFIT | KURMAN

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