IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
VYAIRE MEDICAL, INC. *et al.*,	Case No. 24-11217 (BLS) (Jointly Administered)
Debtors.[1]	**Hearing: January 29, 2025, at 10:30 a.m.** **Response Deadline: January 10, 2025**

MOTION OF MATHESON TRI-GAS, INC., FOR ALLOWANCE AND PAYMENT OF ADMINISTRATIVE EXPENSE CLAIM AGAINST VYAIRE MEDICAL, INC.

Matheson Tri-Gas, Inc. ("MTG"), by and through its attorneys, submits this motion (the "Motion") for the entry of an order substantially in the form attached hereto as **Exhibit A** (the "Proposed Order") (i) granting MTG an allowed administrative expense claim against Vyaire Medical, Inc. ("VMI"), pursuant to sections 105(a), 503(b)(1)(A), and 507(a)(2) of title 11 of the U.S. Code (the "Bankruptcy Code"), and (ii) requiring payment in full no later than 30 days after the entry of such Proposed Order. In further support of this Motion, MTG respectfully states as follows:

JURISDICTION, VENUE, AND STATUTORY PREDICATES

1. The U.S. Bankruptcy Court for the District of Delaware (the "Court") has jurisdiction to grant the requested relief pursuant to 28 U.S.C. §§157 and 1334 and the *Amended Standing Order of Reference* issued by the U.S. District Court for the District of Delaware on January 29, 2012, *In re Standing Order of Reference re: Title 11*.

2. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A–B, O).

[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 N. Riverwoods Blvd., Mettawa, IL 60045.

3. Venue is proper in this district under 28 U.S.C. §§ 1408–09.

4. The Court is authorized to grant the requested relief under sections 105(a), 503(b)(1)(A), and 507(a)(2) of the Bankruptcy Code.

RELEVANT FACTS

5. MTG and VMI entered into a Product Supply Agreement - Bulk effective May 8, 2018, as amended by that certain Amendment No. 1 to Product Supply Agreement - Bulk effective May 8, 2018 (as amended, collectively, the "Agreement"[2]), pursuant to which VMI agreed to purchase and MTG agreed to supply medical-grade nitrogen and oxygen (together, the "Products") in accordance with the terms and conditions of the Agreement.

6. The Agreement is a requirements contract.[3] Pursuant to the Agreement, MTG issued invoices to VMI for Products delivered to VMI at 510 Technology Dr., Irvine, CA 92618 (the "V7493 Account") or 1100 Bird Center Dr., Palm Springs, CA 92262 (the "V7498 Account"), which invoices came due 30 days after date of issuance.[4]

7. MTG also issued invoices to VMI for Products delivered to VMI at 26125 Riverwoods Blvd., Mettawa, IL 60045 (the "X5522 Account"), which invoices came due 60 days after date of issuance.

8. On November 18, 2020, MTG received a letter (the "Flexim Letter"[5]) from Stephen Cointre, chief executive officer of Flexim US Corp. ("Flexim"), providing as follows:

> [VMI] has nominated our company[,] Flexim US Corporation, represented by Mr Stephen Cointre in its quality of CEO, to manage and run the existing contracts that you have in place as of December 1, 2020.

[2] A true and correct copy of the Agreement is attached hereto as **Exhibit B**.

[3] *See* Agreement ¶ 1.

[4] *See id.* ¶ 5(b); *id.* at Exs. A-1–A-2.

[5] A true and correct copy of the Flexim Letter is attached hereto as **Exhibit C**.

> Therefore, kindly note that your existing contract(s) which is (are) currently in place with [VMI] will be transferred across to Flexim US Corporation as of December 1, 2020.
>
> Any Invoice for work performed on and after the date of December 1, 2020, should be addressed to the following location
>
> **Flexim US Corporation**
> **C/O: D. Ruben Fajardo Jr., CPA**
> **Fajardo &Associates, LLC**
> **1500 Madruga Avenue**
> **Suite 500,**
> **Coral Gables, FL 33146**

9. Thereafter, MTG continued to ship Products ordered by VMI under the Agreement to VMI but submitted invoices for such Products to Flexim for payment. Notwithstanding this billing arrangement, MTG did not consent to relieve VMI of its ultimate obligation under the Agreement to pay invoices issued for Products ordered by and delivered to VMI under the Agreement.

10. On June 9, 2024 (the "Petition Date"), VMI and its debtor affiliates (collectively, the "Debtors") commenced the above-captioned chapter 11 cases (the "Chapter 11 Cases") by filing voluntary petitions for relief under chapter 11 of the Bankruptcy Code.

11. VMI has continued to order and MTG has continued to supply Products to VMI pursuant to the Agreement from and after the Petition Date.

12. As of the date of this Motion, fifteen invoices for Products ordered by VMI after the Petition Date and delivered to VMI after the Petition Date under the V7493 Account (the "V7493 Invoices"[6]) remain overdue[7] and outstanding in the total aggregate amount of at least **$33,121.19** as follows:

[6] True and correct copies of the first eleven V7493 Invoices are attached hereto as **Exhibit D**.

[7] The final four V7493 Invoices identified in the below chart are outstanding but are not yet overdue as of the date of this Motion. VMI will provide copies upon request.

Invoice Number	**Invoice Date**	**Invoice Due Date**	**Invoice Amount**
29844340	6/13/2024	7/13/2024	$2,812.76
29933172	6/30/2024	7/30/2024	$2,483.31
30008474	7/19/2024	8/18/2024	$2,859.95
30083759	7/31/2024	8/30/2024	$2,483.31
30216691	8/28/2024	9/27/2024	$2,948.72
30234316	8/31/2024	9/30/2024	$2,483.31
30379154	9/30/2024	10/30/2024	$2,483.31
30428331	10/10/2024	11/9/2024	$592.63
30538936	10/31/2024	11/30/2024	$2,483.31
30541679	10/31/2024	11/30/2024	$471.53
30566208	11/6/2024	12/6/2024	$4,009.54
30677450	11/30/2024	12/30/2024	$2,483.31
30680044	11/30/2024	12/30/2024	$553.01
30704991	12/5/2024	1/4/2025	$3,512.19
30712131	12/8/2024	1/7/2025	$461.00
		TOTAL:	**$33,121.19**

13. From and after the Petition Date and through the date of this Motion, MTG has continued to supply Products to VMI under the V7493 Account, and VMI has knowingly accepted the benefit of such Products.

14. VMI has paid no invoices issued for Products supplied under the V7493 Account since May 1, 2024.

15. As of the date of this Motion, nine invoices for Products ordered by VMI after the Petition Date and delivered to VMI after the Petition Date under the V7498 Account (the "V7498 Invoices"[8]) remain overdue[9] and outstanding in the total aggregate amount of at least **$17,331.17** as follows:

Invoice Number	**Invoice Date**	**Invoice Due Date**	**Invoice Amount**
29933173	6/30/2024	7/30/2024	$2,540.73
30083760	7/31/2024	8/30/2024	$2,540.73
30234317	8/31/2024	9/30/2024	$2,786.61
30379155	9/30/2024	10/30/2024	$2,786.61
30538937	10/31/2024	11/30/2024	$2,786.61
30541680	10/31/2024	11/30/2024	$220.51
30677451	11/30/2024	12/30/2024	$2,786.61
30680045	11/30/2024	12/30/2024	$262.31
30712363	12/8/2024	1/7/2025	$620.45
		TOTAL:	**$17,331.17**

16. From and after the Petition Date and through the date of this Motion, MTG has continued to supply Products to VMI under the V7498 Account, and VMI has knowingly accepted the benefit of such Products.

17. VMI has paid no invoices issued for Products supplied under the V7498 Account since May 1, 2024.

[8] True and correct copies of the V7498 Invoices are attached hereto as **Exhibit E**.

[9] The final three V7498 Invoices identified in the below chart are outstanding but are not yet overdue as of the date of this Motion. VMI will provide copies upon request.

18. As of the date of this Motion, four invoices for Products ordered by VMI after the Petition Date and delivered to VMI after the Petition Date under the X5522 Account (the "X5522 Invoices"[10]) remain overdue[11] and outstanding in the total aggregate amount of at least **$4,706.46** as follows:

Invoice Number	**Invoice Date**	**Invoice Due Date**	**Invoice Amount**
30392864	10/2/2024	12/1/2024	$1,971.93
30473816	10/21/2024	12/20/2024	$1,059.71
30633606	11/21/2024	1/20/2025	$1,074.75
30692583	12/3/2024	2/1/2025	$600.07
		TOTAL:	**$4,706.46**

19. From and after the Petition Date and through the date of this Motion, MTG has continued to supply Products to VMI under the X5522 Account, and VMI has knowingly accepted the benefit of such Products.

20. VMI has paid no invoices issued for Products supplied under the X5522 Account since October 1, 2024.

21. The aggregate total amount outstanding under the V4793 Invoices, V4798 Invoices, and X5522 Invoices issued after the Petition Date for Products supplied to VMI after the Petition Date is at least **$55,158.82** (the "MTG Administrative Claim").

22. Flexim has advised that MTG must seek payment of the MTG Administrative Claim from VMI directly through the Chapter 11 Cases.

[10] True and correct copies of the first two X5522 Invoices are attached hereto as **Exhibit F**.

[11] The final two X5522 Invoices identified in the below chart are outstanding but are not yet overdue as of the date of this Motion. VMI will provide copies upon request.

23. On November 11, 2024, the Debtors filed the *Second Amended Joint Chapter 11 Plan of Vyaire Medical, Inc. and Its Debtor Affiliates* [Dkt. No. 719], as amended by the *Plan Supplement* [Dkt. No. 689], *First Amended Plan Supplement* [Dkt. No. 720], and *Second Amended Plan Supplement* [Dkt. No. 809] (as amended, collectively, the "Plan").

24. On November 14, 2024, the Court entered an order confirming the Plan [Dkt. No. 745] (the "Confirmation Order").

25. On November 27, 2024, the Debtors filed a notice [Dkt. No. 810] affirming that the Plan had gone effective on November 27, 2024 (the "Effective Date"), and establishing December 27, 2024, as the Administrative Claims Bar Date (as defined in the Plan).

26. The Plan provides as follows:

> Unless otherwise agreed to by the Holder of an Allowed Administrative Claim and the Debtors or the Wind-Down Debtors, as applicable, to the extent an Allowed Administrative Claim has not already been paid in full or otherwise satisfied during the Chapter 11 Cases, each Holder of an Allowed Administrative Claim . . . will receive in full and final satisfaction of its Allowed Administrative Claim in an amount of Cash equal to the amount of the unpaid portion of such Allowed Administrative Claim in accordance with the following: . . . (2) if such Administrative Claim is not Allowed as of the Effective Date, no later than 30 days after the date on which an order Allowing such Administrative Claim becomes a Final Order, or as soon as reasonably practicable thereafter; (3) if such Allowed Administrative Claim is based on liabilities incurred by the Debtors in the ordinary course of their business after the Petition Date, in accordance with the terms and conditions of the particular transaction or course of business giving rise to such Allowed Administrative Claim, without any further action by the Holder of such Allowed Administrative Claim; . . . or (5) at such time and upon such terms as set forth in a Final Order of the Bankruptcy Court.

Plan art. II.A.

27. The Agreement appears to have been automatically deemed rejected on the Effective Date because it was not assumed or rejected before such date. *See* Plan art. V.A.

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REQUESTED RELIEF

28. By this Motion, MTG respectfully requests the entry of the Proposed Order (i) allowing the MTG Administrative Claim against VMI in at least the total aggregate amount of **$55,158.82** pursuant to sections 105(a), 503(b)(1)(A), and 507(a)(2) of the Bankruptcy Code, and (ii) requiring payment in full no later than 30 days after the entry of the Proposed Order.

ARGUMENT

29. Section 503(b)(1)(A) of the Bankruptcy Code affords administrative status to claims for "the actual, necessary costs and expenses of preserving the estate." 11 U.S.C. § 503(b)(1)(A); *see also In re Energy Future Hldgs. Corp.*, 990 F.3d 728, 741–42 (3d Cir. 2021) (noting that "[a]n administrative expense claim is entitled to priority under [s]ection 503(b)(1)(A) if: (1) there was a post-petition transaction between the claimant and the estate, and (2) those expenses yielded a benefit to the estate" (internal quotation marks omitted)); *In re Goody's Fam. Clothing Inc.*, 610 F.3d 812, 817 (3d Cir. 2010) ("Post-petition obligations are ordinarily given payment priority as administrative expenses, though such claims must still go through standard procedures of notice and a hearing to demonstrate that the costs were actual, necessary expenses of preserving the estate."). Section 507(a)(2) of the Bankruptcy Code provides that "administrative expenses allowed under section 503(b)" are entitled to second-priority payment from the estate. 11 U.S.C. § 507(a)(2).

30. Where a vendor claims administrative priority for goods delivered after the petition date, "the correct standard for determination of an administrative claim . . . is simply whether the [v]endor[] provided a benefit to the estate post-petition. It does not require that there be a post-petition contract." *In re Bluestem Brands, Inc.*, No. 20-10566, 2021 WL 3174911, at *5 (Bankr. D. Del. July 27, 2021). "The burden of proof is on the claimant to establish that the goods or services provided actually benefitted the estate and were necessary to preserve the value of the

estate's assets." *Bluestem*, 2021 WL 3174911, at *2 (citing *In re O'Brien Env't Energy, Inc.*, 181 F.3d 527, 532–33 (3d Cir. 1999)). To establish administrative expense priority, the creditor must "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." *O'Brien*, 181 F.3d at 533.

31. "When certain goods or services will benefit the bankruptcy estate, administrative priority enables the debtor-in-possession to transact for that benefit in the same manner as a solvent enterprise. This requires paying the full and ordinary cost of such goods and services, including overhead and incidental expenses. Absent full payment, creditors would have little incentive to do business with the debtor-in-possession." *In re Whistler Energy II, LLC*, 931 F.3d 432, 443–44 (5th Cir. 2019).

32. The term "necessary costs" under section 503(b)(1)(a) is broadly construed and "should include costs ordinarily incident to operation of a business, and not be limited to costs without which rehabilitation would be impossible." *Pa. Dept. of Env't Res. v. Tri-State Clinical Labs., Inc.*, 178 F.3d 685, 689 (3d Cir. 1999) (quoting *Reading Co. v. Brown*, 391 U.S. 471, 483 (1968)).

33. If "a creditor can establish that its expenses are attributable to the actions of the bankruptcy estate through evidence of either a direct request from the debtor-in-possession or other inducement via the knowing and voluntary post-petition acceptance of desired goods or services," the creditor retains an administrative claim for the value of the benefit even if the underlying agreement was rejected. *See, e.g.*, *Whistler*, 931 F.3d at 443.

34. Here, the MTG Administrative Claim plainly satisfies the requirements for administrative status under section 503(b)(1)(a) of the Bankruptcy Code and should be entitled to

priority payment under section 507(a)(2). VMI's obligation arose out of post-petition transactions comprising VMI's ordering of Products from MTG and MTG's delivery of Products to VMI.

35. The Products delivered by MTG were incident to the operation of the debtor-in-possession's business and helped preserve its estate to maximize value for creditors regardless of whether the Plan seeks to liquidate or reorganize the Debtors. Indeed, to the extent the Agreement was deemed rejected on the Effective Date, VMI continues to order, receive, and utilize the Products.

36. Based on the foregoing, the MTG Administrative Claim constitutes "actual, necessary costs and expenses of preserving the estate" that should be allowed as an administrative expense under section 503(b)(1)(A) and paid with second priority under section 507(a)(2).

RESERVATION OF RIGHTS

37. Notwithstanding the foregoing, MTG expressly reserves (and 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 MTG and/or any other claim or proof of claim that may be filed in the future (collectively, the "Claims"); (b) the MTG Administrative Claim asserted in this Motion and/ or any further administrative expenses that MTG may hereafter assert (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 Motion in response to any submission by any party-in-interest, including without limitation any objection to this Motion or amendment thereto, and (e) the right to adopt any other pleadings filed by any other party related to the Claims, the MTG Administrative Claim, and any other Administrative Expenses that MTG may hereafter assert.

CONCLUSION

WHEREFORE, MTG respectfully requests the entry of the Proposed Order (i) allowing the MTG Administrative Claim against VMI in at least the total aggregate amount of **$55,158.82** pursuant to sections 105(a), 503(b)(1)(A), and 507(a)(2) of the Bankruptcy Code and (ii) requiring payment in full no later than 30 days after entry of the Proposed Order.

Dated: December 26, 2024

CLARK HILL PLC

/s/ Karen M. Grivner
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