IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
VYAIRE MEDICAL, INC.,[1]	)	Case No. 24-11217 (BLS)
Liquidating Debtor.	)	
	)	**Hearing Date:** TBD
	)	**Obj. Deadline:** May 27, 2025

PLAN ADMINISTRATOR'S OMNIBUS OBJECTION TO (I) PROOF OF CLAIM NO. 132 FILED BY QUAD DBC HOLDINGS LLC AND (II) QUAD DBC HOLDINGS LLC MOTION FOR ALLOWANCE OF ADMINISTRATIVE EXPENSE CLAIM

David M. Barse, solely in his capacity as the Plan Administrator of Vyaire Medical, Inc., *et al.* (the "Plan Administrator"), appointed pursuant to the *Second Amended Joint Chapter 11 Plan of Vyaire Medical, Inc. and Its Debtor Affiliates* [Docket No. 719] (the "Plan"), which was confirmed by the Order of the United States Bankruptcy Court for the District of Delaware (the "Court") on November 14, 2024 [Docket No. 745] (the "Confirmation Order"),[2] hereby files this omnibus objection (the "Objection") to (i) Proof of Claim No. 132 (the "General Unsecured Claim") filed by Quad DBC Holdings LLC ("Landlord") in the amount of $24,439,923.00 and (ii) Landlord's *Motion For Allowance of Administrative Expense* (the "Motion") seeking allowance of an administrative claim in the amount of $2,685,021.30 (the "Administrative Claim"). In support of the Objection, the Plan Administrator respectfully represents as follows:

[1] This chapter 11 case is now being administered by the Plan Administrator pursuant to the terms of the *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* [Docket No. 745] (the "Confirmation Order"). The Plan Administrator's mailing address is Vyaire Medical, Inc., Attn: David M. Barse, Plan Administrator, c/o Cole Schotz P.C., 500 Delaware Avenue, Suite 1410, Wilmington, DE 19801

[2] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Confirmation Order or Plan, as applicable.

PRELIMINARY STATEMENT[3]

1. Landlord is not entitled to a General Unsecured Claim or an Administrative Claim against the Debtors' Estates. To the contrary, it is the Plan Administrator that has material and significant claims *against the Landlord* for, among other things, Landlord's breach of the Lease, fraudulent transfer, unjust enrichment, and/or other remedies due to Landlord's improper draw on a $4 million Letter of Credit in November 2023. The Plan Administrator intends to pursue claims against the Landlord and other third parties for the windfall that it received at the Debtors' expense.

2. In the meantime, Landlord should not receive an Allowed General Unsecured Claim or Administrative Claim in any amount. Initially, the General Unsecured Claim should be disallowed in its entirety under section 502(d) of the Bankruptcy Code as the Landlord is in possession of property which is recoverable under section 550 of the Bankruptcy Code and/or the transferee of a transfer voidable under section 544 or 548 of the Bankruptcy Code.

3. Even if the General Unsecured Claim can be allowed, at best, it may be a claim for unpaid rent totaling $713,051, which amount is subject to defenses and material offsets. Landlord is not entitled to:

- "twelve-month" rejection damages because, *inter alia*, the asserted amount was premature, Landlord did not suffer any damages, and Landlord failed to mitigate its damages under applicable law.
- any amounts for unsupported "construction," "improvements, letter of credit, and free rent," "building obligations," or "restoration" costs because (i) some or all of the Premises were relet to ZOLL Medical Corporation the buyer of the Debtors' ventilation business who would use the Premises in the same manner as the Debtors and (ii) the Proof of Claim provides no support or details for the amount asserted.

3 Capitalized terms used in this Preliminary Statement shall have the meanings ascribed to such terms elsewhere in this Objection.

4. In addition, the Court should disallow any balance for the General Unsecured Claim and the asserted Administrative Claim of $2,685,021.30. The Plan Administrator has material claims against Landlord, including rights of recoupment and setoff that eliminate Landlord's entitlement to either the remaining General Unsecured Claim or the Administrative Claim. Moreover, even if Landlord is entitled to a General Unsecured Claim or an Administrative Claim, it should be compelled to apply the $4 million Letter of Credit that it improperly drew and applied under the Court's equitable marshalling principles to any unpaid rent. In any event, Landlord's Administrative Claim and General Unsecured Claim are unsupported and significantly overstated, and the Motion should be denied until Landlord can provide the Plan Administrator and the Court with an accurate accounting.

5. To make matters worse, Landlord also seeks payment of more than $100,000 in unsupported attorneys' fees. Landlord is not entitled to payment of attorneys' fees *in any amount* under the terms of the Lease and applicable law.

6. For these reasons, and the reasons discussed below, the Court should disallow the General Unsecured Claim and the Motion for allowance of an Administrative Claim.

BACKGROUND

I. General Background

7. On June 9, 2024, Vyaire Medical, Inc. ("Vyaire") and its affiliated debtors (collectively, the "Debtors") each commenced a voluntary case under title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the "Bankruptcy Code") with the Court.

8. The Debtors operated their business and managed their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

9. On November 14, 2024, the Court entered the Confirmation Order.

10. On November 27, 2024 (the "Effective Date"), the Plan became effective in accordance with its terms [Docket No. 810].

11. On the Effective Date, David M. Barse, in his capacity as Plan Administrator, became the sole representative of the Debtors' estates for the purpose of, *inter alia*, reconciling claims filed against the Debtors' estates and facilitating distributions in accordance with the Plan. *See* Plan, Art. II.A., IV.E., VII.

12. On January 25, 2025, the Court entered a *Final Decree Closing Certain Cases* [Docket No. 974], *inter alia*, closing all the Debtors' cases other than the above-captioned case and authorizing that relief in connection with any of the Debtors be filed in the above-captioned case.

13. The deadline to object to all Claims, other than administrative claims, is May 27, 2025. *See* Plan, Art. VII.E.

14. On February 11, 2025, the Court entered an *Order Approving the Plan Administrator's First Motion to Extend the Administrative Claims Objection Deadline* [Docket No. 987], pursuant to which the (i) Administrative Claims Objection Bar Date was extended to May 27, 2025, and (ii) deadline to respond to any motions or requests for payment of an administrative claim was extended May 27, 2025.

II. The Lease and Landlord's Improper Draw on the Letter of Credit

15. On October 3, 2017, the Landlord and Vyaire entered into that certain lease (the "Lease") relating to (a) Suite Nos. 100, 200 and 300 of 510 Technology Drive, Irvine, California 92618 and (b) Suite Nos. 100, 200, 300 and 400 of 520 Technology Drive, Irvine, California 92618 (together, the "Premises"). A copy of the Lease is attached to the Motion as Exhibit A. The Lease was rejected effective as of October 10, 2024 [Docket No. 676].

16. The Premises comprised of two buildings, 510 Technology Drive and 520 Technology Drive. Vyaire only ever occupied a single floor at 510 Technology Drive. Prior to the Petition Date, Vyaire had sought to negotiate new terms with the Landlord to reduce its occupancy to 510 Technology Drive, but the Landlord refused. Minimum monthly rent was bifurcated between the two addresses as follows, \$271,011 for 510 Technology Drive and \$361,299 for 520 Technology Drive.

17. Section 4.3 of the Lease, titled "Letter of Credit," provides as follows:

> Tenant shall deliver to Landlord, concurrently with Tenant's execution of this Lease, a letter of credit in the amount stated in Item 9 of the Basic Lease Provisions, which letter of credit shall be in form and with the substance of **Exhibit I** attached hereto. The letter of credit shall be issued by a financial institution acceptable to Landlord with a branch in Orange County, California, at which draws on the letter of credit will be accepted. The letter of credit shall provide for automatic yearly renewals throughout the Term of this Lease and shall have an outside expiration date (if any) that is not earlier than 30 days after the expiration of the Lease Term. In the event the letter of credit is not continuously renewed through the period set forth above, or **upon any breach under this Lease by Tenant, including specifically Tenant's failure to pay Rent or to abide by its obligations under Sections 7.1 and 15.2 below, Landlord shall be entitled to draw upon said letter of credit by the issuance of Landlord's sole written demand to the issuing financial institution.** Any such draw shall be without waiver of any rights Landlord may have under this Lease or at law or in equity as a result of any Default hereunder by Tenant.

Lease § 4.3 (emphasis added).

18. Notably, section 4.3 of the Lease provides that the posted letter of credit could be drawn against, for among other things, "any breach under this Lease by Tenant, including specifically Tenant's failure to pay Rent." *Id.* Nevertheless, the Plan Administrator anticipates that the Landlord will take the position that the posted letter of credit could not be used to offset any rent, common area maintenance charges or operating expenses, and was exclusively posted to support construction costs regarding the Premises. Nowhere in this section 4.3 (or elsewhere in

the Lease) does it indicate that the letter of credit was to be used exclusively for the purpose of funding construction costs.

19. In connection with the First Amendment (defined below), on June 6, 2019, Tenant delivered to Landlord an irrevocable letter of credit with Bank of America in the amount of $4,000,000 (as amended on August 10, 2023, the "Letter of Credit").[4]

20. Under section 14.1(d) of the Lease, Landlord may call a "Default" under the Lease, but only upon thirty (30) days' written notice to Tenant. Section 14.1(d) provides as follows:

> **14.1. Tenant's Defaults**. In addition to any other event of default set forth in this Lease, the occurrence of any one or more of the following shall constitute a "**Default**" by Tenant:
>
> (d) Except where a specific time period is otherwise set forth for Tenant's performance in this Lease (in which event the failure to perform by Tenant within such time period shall be a Default), **the failure or inability by Tenant to observe or perform any of the covenants or provisions of this Lease to be observed or performed by Tenant**, other than as specified in any other subsection of this Section 14.1, **where the failure continues for a period of 30 days after written notice from Landlord to Tenant**. However, if the nature of the failure is such that more than 30 days are reasonably required for its cure, then Tenant shall not be deemed to be in Default if Tenant commences the cure within 30 days, and thereafter diligently pursues the cure to completion.

Lease § 14.1 (emphasis added).

21. Upon information and belief, on or about November 10, 2023 – *without notice to Vyaire as required by section 14.1(d) of the Lease and an opportunity to cure* – Landlord drew the full $4,000,000 Letter of Credit. At the time of the draw, the Lease had neither expired nor terminated, and Vyaire was current on all obligations under the terms of the Lease. Landlord never provided Vyaire with a reason for the draw. As a result of the improper drawdown, on or about

[4] Tenant provided Landlord with an initial letter of credit following execution of the Lease in 2017 that was subsequently amended in connection with the First Amendment.

November 15, 2023, Vyaire was required to and did reimburse Bank of America for the full $4,000,000 drawn by Landlord, in accordance with the terms of the Letter of Credit.

22. The Landlord received the benefit of Vyaire's payment to Bank of America having retained the Letter of Credit, but did not provide Vyaire with any value in exchange for such benefit.

III. Landlord Obtains a $4 Million Windfall from Letter of Credit Draw

23. On July 31, 2018, Landlord and Vyaire entered into that certain *First Amendment to Lease* (the "First Amendment") that, among other things, modified the term of the Lease and contained a new provision concerning Tenant Improvements (as defined in the Lease). A copy of the First Amendment is attached hereto as **Exhibit A**. That provision, titled, "Phased Construction; Letter of Credit," provides as follows:

> Tenant intends to construct the Tenant Improvements for a portion of the second floor and all of third and fourth floors of the 520 Technology Building (the "520 Technology Phased Improvements") in a later phase after completing construction of the initial Tenant Improvements for the remainder of the Premises. **Tenant has requested, and Landlord agrees, that the entire Landlord's Contribution shall be available for disbursement to Tenant for the initial Tenant Improvement Work that excludes the 520 Technology Phased Improvements**; *provided, however,* that as a condition to Landlord's approval of the design of the initial Tenant Improvements that excludes the 520 Technology Phased Improvements, Tenant agrees that, notwithstanding anything to the contrary in Section 4.3 of the Lease, the amount of the Letter of Credit shall not be eligible for reduction (either automatically or by satisfaction of the LC Reduction Conditions) unless and until the 520 Technology Phased Improvements have been substantially completed and all governmental approvals required for occupancy in connection therewith have been received. The design, construction, and (if applicable) funding of the 520 Technology Phased Improvements shall be subject to all of the terms and conditions of Sections II and III of the Work Letter, except that (i) the requirement to approve the Preliminary Plan and Preliminary Cost Estimate for the 520 Technology Phased Improvements by the Plan Approval Date shall not apply, (ii) the Commencement Date shall not be accelerated by Tenant Delay as set forth in Section II.F (it being understood that the Commencement Date shall be fixed on November 12, 2018 for the entire Premises), and (iii) if any portion of the Moving Allowance is utilized in connection with the 520 Technology Phased Improvements, the reimbursement submittal deadline shall be 6 months after the substantial completion of the 520

> Technology Phased Improvements. Tenant shall fully approve the design and cost of the 520 Technology Phased Improvements and authorize Landlord to substantially complete the 520 Technology Phased Improvements prior to the expiration or earlier termination of the Lease, and the failure to do so shall constitute a Default that will permit Landlord to draw upon the Letter of Credit to fund the cost of performing 520 Technology Phased Improvements.

First Amendment § III.C (emphasis added).

24. "Landlord's Contribution" is defined in the Lease as up to $14,236,222.00 which is the "maximum amount Landlord will pay toward Tenant Improvements, and not by way of limitation, any partitions, modular office stations, fixtures, cabling, furniture and equipment requested by Tenant are not in event subject to payment as part of Landlord's Contribution except as provided herein below." Lease, Ex. X, § III.B.

25. Notwithstanding Landlord's commitment to fund more than $14 million for Tenant Improvements, upon information and belief, only $8 million was funded.

26. Moreover, prior to the Petition Date, on March 28, 2024, Vyaire entered into a sublease agreement with Inari Medical Inc. ("Inari") pursuant to which it subleased the third floor of the 510 Technology Drive. Upon information and belief, Inari has entered into a direct lease with the Landlord expanding its occupancy to an additional floor and now occupies two of the three floors of 510 Technology Drive.

27. In addition, following the filing of the chapter 11 cases, Vyaire brought to Landlord a new tenant in Zoll Medical Corporation ("ZOLL"), which purchased the Debtors' ventilation business and entered into a new lease agreement with the Landlord to occupy the remaining floor at 510 Technology Drive previously occupied by Vyaire. Thus, Landlord is not required to "refit" the building already constructed for a new tenant and Vyaire is not aware of any need by the Landlord to draw on the Letter of Credit to fund its construction costs. Indeed, as Landlord had

not exceeded, and was in fact, well below the required Landlord Contribution, Landlord received a windfall of $4 million when it drew on the Letter of Credit.

28. Further, in 2023, Vyaire brought to Landlord two potential sub-tenants for 520 Technology Drive which would have resulted in a rent reduction to Vyaire and permanent tenancy to the Landlord for the unoccupied building. Upon information and belief, the Landlord refused the subtenants without a reasonable basis and placed both subtenants into another building owned by Landlord to the detriment of Vyaire and improperly inflating the Landlord's damages. Prior to the Petition Date in 2024, the Debtors engaged Jones Lang LaSalle ("JLL") to assist with subleasing the Premises. Upon information and belief JLL procured two additional prospective tenants, but the Landlord also refused these subtenants.

IV. The Proof of Claim

29. On August 1, 2024, Landlord filed the General Unsecured Claim. A copy of the General Unsecured Claim is attached hereto as **Exhibit B**. By the General Unsecured Claim, Landlord asserts an unsecured claim of $24,439,923.00, broken down as follows:

510 Technology Drive

	Unpaid Prepetition Rent	$295,084.00
	Unamortized Costs Related to Tenant Improvements, Letters of Credit, and Free Rent	$4,174,499.00
	Restoration Costs	$3,809,142.00
	Twelve Month Damages	$3,910,329.00
	TOTAL	**$12,189,054.00**

520 Technology Drive

	Unpaid Prepetition Rent	$417,967.00
	Unamortized Costs Related to Tenant Improvements, Letters of Credit, and Free Rent	$1,904,724.00

Restoration Costs	$535,663.00
Twelve Month Damages	$5,213,081.00
TOTAL	**$16,205,869.00**

30. In the aggregate, Landlord asserts a General Unsecured Claim of $28,394,923.00, plus an additional unsupported $45,000 related to legal expenses. Landlord reduces the asserted General Unsecured Claim by the $4 million Letter of Credit that Landlord asserts is currently being held by an escrow agent, reducing the General Unsecured Claim to $24,439,923.00.

31. The General Unsecured Claim did not include any support whatsoever for the amounts asserted therein. Other than unpaid prepetition rent, the entire General Unsecured Claim appears to include a prospective assertion of rejection damages before the Lease was rejected and any such damages were known or could be ascertained. Without documentation, it is unclear whether all the amounts asserted are subject to the statutory cap codified in section 502(b)(6) of the Bankruptcy Code as damages resulting from termination of the Lease or what the Letter of Credit was actually applied to.

32. The Letter of Credit certainly could not have been applied to a rejection damages claim, if any, until at least October 10, 2024. Therefore, any such application was improper. Indeed, the Letter of Credit, could only have been applied to properly accounted for claims, which at the time, at best could only be for unpaid rent.

33. In addition, at the time the Lease was rejected on October 10, 2024, the Landlord had already been in negotiations with ZOLL or its affiliate for a new lease which the Debtors understand the parties shortly thereafter entered into on or about November 1, 2024. Despite this fact, the Landlord has never amended the General Unsecured Claim to account for the new lease.

V. Landlord's Motion for Allowance of Administrative Claim

34. On December 27, 2024, Landlord filed the Motion seeking allowance and payment of an administrative claim.

35. By the Motion, Landlord seeks allowance of: (a) charges attributable to 510 Technology Drive of $936,905.65, Mot. ¶ 17; (b) charges attributable to 520 Technology Drive of $1,681,355.64, Mot. ¶ 18; and (c) legal expenses of $66,760.01, Mot. ¶ 19. In sum, Landlord seeks allowance of an administrative claim of $2,685,021.30. Mot. ¶ 20. Attached as Exhibit B to the Motion is a breakdown of all unpaid charges asserted by Landlord.

36. The Administrative Claim includes "Minimum Rent" for July and August 2024 totaling approximately $722,598.00, which Vyaire already paid to the Landlord reducing any potential claim to at least $1,962,423.30 before considering other defenses and offsets.

OBJECTION

37. The Plan Administrator objects to the General Unsecured Claim and the Motion for allowance and payment of the Administrative Claim for the reasons discussed below. Further, in both cases, Landlord is not entitled to any attorneys' fees under the terms of the rejected Lease and applicable law.

I. THE GENERAL UNSECURED CLAIM MAY BE DISALLOWED

38. The Plan Administrator believes he has viable claims against the Landlord under sections 544 and 548 of the Bankruptcy Code based on theories of fraudulent conveyance related to Vyaire's payment to Bank of America in connection with the Landlord's improper drawdown on the Letter of Credit. The Plan Administrator's claims are recoverable under section 550 of the Bankruptcy Code.

39. Section 502(d) of the Bankruptcy Code provides in the relevant part that "the court shall disallow any claim of any entity from which property is recoverable under section…550 of

this title or that is a transferee of a transfer avoidable under section…544 [or] 548…of this title, unless such entity or transferee has paid the amount, or turned over the property, for which such entity or transferee is liable under section…550 [ ] of this title. *See* 11 U.S.C. § 502(d).

40. Based on the foregoing, the General Unsecured Claim may be disallowed pursuant to section 502(d) of the Bankruptcy Code and therefore no application of the Letter of Credit to such claim can be had until the Plan Administrator's claims are adjudicated.

II. THE GENERAL UNSECURED CLAIM SHOULD BE SIGNIFICANTLY REDUCED

41. When asserting a claim against a bankrupt estate, a claimant must allege facts that, if true, would support a finding that the debtor is legally liable to the claimant. *In re Allegheny Int'l, Inc.*, 954 F.2d 167, 173 (3d Cir. 1992); *see also In re Int'l Match Corp.*, 69 F.2d 73, 76 (2d Cir. 1934) (finding that a proof of claim should at least allege facts from which legal liability can be seen to exist). Where the claimant alleges sufficient facts to support its claim, its claim is afforded prima facie validity. *Allegheny*, 954 F.2d at 173. A party wishing to dispute such a claim must produce evidence in sufficient force to negate the claim's prima facie validity. *Id.* In practice, the objecting party must produce evidence that would refute at least one of the allegations essential to the claim's legal sufficiency. *Id.* at 173–74. Once the objecting party produces such evidence, the burden shifts back to the claimant to prove the validity of his or her claim by a preponderance of the evidence. *Id.* at 174. Ultimately, the burden of persuasion is on the claimant. *Id.*; *In re Tribune Media Co.*, 616 B.R. 475, 486 (Bankr. D. Del. 2020) (discussing and applying the burden-shifting approach from *Allegheny*).

A. The Portion of the General Unsecured Claim For "Twelve-Month Damages" Should be Disallowed

42. The portion of the General Unsecured Claim for "twelve-month damages" should be disallowed in full because the Landlord has not established that it was damaged by the rejection

of the Lease and failed to mitigate its damages under applicable California law. Presumably, Landlord calculated its rejection damages for 510 Technology Drive at $3,910,329.00 and 520 Technology Drive at $5,213,081.00 by applying the one-year "cap" on rejection damages contained in section 502(b)(6) of the Bankruptcy Code. 11 U.S.C. § 502(b)(6). For the reasons discussed below, however, both amounts should be disallowed in full.

43. First, the claim had not even accrued at the time the General Unsecured Claim was filed, and thus there was no basis to even assert it. Vyaire had not yet rejected the Lease. Thus, the rejection damages claim was speculative at best at the time filed and does not fairly and accurately reflect Landlord's rejection damages.

44. Second, even if the rejection damages portion of the General Unsecured Claim were accurate, Landlord did not suffer any damages caused by rejection of the lease because ZOLL, which purchased the Debtors' ventilation business in the chapter 11 cases, entered into a new lease agreement with the Landlord to occupy the portion of the Premises previously occupied by Vyaire and Inari is believed to occupy the remaining two floors at 510 Technology Drive. With tenants in place following the rejection date of October 10, 2024, the Landlord has not provided any evidence as to what, if any, rejection damages it suffered that would otherwise be capped by section 502(b)(6) of the Bankruptcy Code.

45. Third, prior to the Petition Date, Vyaire sought to sublease the unoccupied portions of the Premises to numerous subtenants which could have resulted in permanent occupancy of those parts of the Premises and substantial savings to the Debtors during the Lease pre-rejection period. Instead, Landlord refused the subtenants without any reasonable basis and moved some of them into other premises owned by the Landlord to the detriment of Vyaire.

46. Fourth, even if Landlord could claim an entitlement to rejection damages, Landlord failed to undertake reasonable efforts to mitigate its damages as required by California law. Under section 1951.2 of the California Civil Code, a lessor may recover damages only to the extent unpaid rent exceeds "the amount of such rental loss that the lessee proves could have been reasonably avoided." Cal. Civ. Code § 1951.2(a)(2), (a)(3); *Lu v. Grewal*, 130 Cal. App. 4th 841, 849-850 (Cal. Ct. App. 2005). Under California law, Landlord's duty to mitigate its damages will "require that the property be relet at a rent that is more or less than the rent provided in the original lease." *Id.* "The test in each case is whether the lessor acted reasonably and in good faith in reletting the property." *Id.* Simply, Landlord "cannot be compensated for damages for which [it] could have avoided by reasonable effort or expenditures." *Id.*

47. Here, Landlord was on notice that the Debtors intended to vacate the space it occupied going back to at least the Petition Date when Vyaire indicated that it was intending to pursue a sale of substantially all its assets. As a result, Landlord had more than four (4) months to take reasonable steps to mitigate its damages under California law by, among other things, renovating the Premises for future use, reletting the Premises to a third party, and/or obtaining multiple estimates for construction work on the Premises that must be undertaken before it can be re-occupied. In addition, the Landlord was well aware that Vyaire had no intentions to occupy 520 Technology Drive even prior to the Petition Date as Vyaire sought to amend the Lease to reduce space and also brought to Landlord potential subtenants for that space.

48. The Plan Administrator does not believe that the Landlord undertook reasonable efforts to mitigate its damages. Rather, the Plan Administrator believes that the Landlord "dragged its feet" by refusing to entertain other tenants (some of which were proposed by Vyaire prepetition) in the hopes of obtaining a significant claim against the Debtors.

49. Because the Premises were relet to ZOLL and Inari, and the Landlord cannot be compensated for damages that could have been avoided by reasonable effort,[5] the General Unsecured Claim should be reduced by $9,123,410.00 to $19,271.513.00.

B. The Portion of the General Unsecured Claim For "Restoration Costs" Should be Disallowed

50. Pursuant to Bankruptcy Rule 3001(c)(1), "when a claim . . . is based on a writing, a copy of the writing shall be filed with the proof of claim." Bankruptcy Rule 3001(c)(1). In the absence of a writing with sufficient documentation to support the amounts asserted in a validly filed proof of claim, the proof of claim is not entitled to *prima facie* validity under Bankruptcy Rule 3001(f) and the burden of proof on those items remains on the claimant. *See Acthar Ins. v. Mallinckrodt plc (In re Mallinckrodt plc)*, 2002 U.S. Dist. LEXIS 147924, *10-11 (D. Del. Aug. 18, 2022)[6]; *In re O'Brien*, 440 B.R. 654, 667 (Bankr. E.D. Pa. 2010) (finding that lack of a *prima facie* evidentiary effect through Bankruptcy Rule 3001(f), and the failure of claimant to come forward with additional evidence to support the claim, warranted disallowance).

51. The Landlord has provided no support or documentation as to the "Restoration Costs" of approximately $4,344,805.00 identified in the General Unsecured Claim. Given the lack of documentation, the burden of proof on those costs remains on the Landlord. *See In re Mallinckrodt plc*, 2002 U.S. Dist. LEXIS 147924, at *10-11. Without such support, neither the Court nor the Plan Administrator can determine whether the Landlord actually incurred such costs or whether it was entitled to recover on account of such costs under the Lease.

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[5] To this end, the Plan Administrator intends to take discovery from the Landlord to obtain information concerning what, if any, efforts it took to relet the Premises and related matters.

[6] *In re Mallinckrodt Plc*, 2022 WL 3545583, at *2 (D. Del. Aug. 18, 2022).

52. In addition, as set forth above, the Debtors secured ZOLL as a new tenant for the Premises. ZOLL purchased the Debtors' ventilation business and effectively stepped into the Debtors' operational shoes at the Premises. Therefore, it is unclear how if at all, any "restoration" or refitting costs were required by the Landlord.

53. Based on the above, the General Unsecured Claim should be further reduced by an additional $4,344,805.00, further reducing the claim to approximately, $14,926,708.00.

C. Landlord Has Failed to Provide Sufficient Documentation to Support the Other Damages and Construction Costs Identified in the Claim

54. Similar, to the rejection damages and restoration costs asserted, the Landlord has provided no documentation, let alone, sufficient documentation to support the costs identified as "unamortized costs related to tenant improvements, letters of credit, and free rent" or "building obligations" in the General Unsecured Claim. Given the lack of documentation, the burden of proof on those costs again, remains on the Landlord. *See In re Mallinckrodt plc*, 2002 U.S. Dist. LEXIS 147924, at *10-11. Landlord's failure to provide documentation also make it impossible for the Plan Administrator or the Court to determine whether there are prepetition damages payable under the terms of the Lease. Absent sufficient documentation to support the costs, the Claim must be reduced accordingly.

55. Notably, the Landlord includes in the General Unsecured Claim just over $6 million in costs related to tenant improvements and free rent. This amount is strikingly similar to the same $6 million remaining obligation of the Landlord under the Lease for the Landlord Contribution towards the construction of two buildings. The Landlord was required to fund approximately $14.2 million, but only funded approximately $8 million leaving a balance on the Landlord Contribution of approximately $6.2 million. The Landlord now seeks to recast that obligation onto Vyaire.

56. In addition, the Landlord asserts "building obligations" owed by Vyaire in the General Unsecured Claim totaling approximately $8,134,434.00. The Landlord has provided no support for these obligations or any basis as to why Vyaire owes such amount.

D. All of the Damages Asserted in the General Unsecured Claim May be Subject to the Statutory Cap Under Section 502(b)(6) of the Bankruptcy Code

57. As set forth above, the Landlord has failed to meet its burden for allowance of a claim as the Proof of Claims lacks any documentation or evidentiary support. Therefore, neither the Court nor the Plan Administrator can determine whether the damages asserted are subject to the statutory cap set forth under section 502(b)(6) as "damages resulting from the termination of a lease." This is notable, because if these damages are considered part of the Landlord's section 502(b)(6) claim, the General Unsecured Claim would be significantly reduced and there would not have been any claim to apply the Letter of Credit to until at the earliest October 10, 2024, when the Lease was rejected. Thus, the only application of the Letter of Credit would have been for past due rents and the Landlord cannot now retroactively apply the Letter of Credit to different potential damages.

58. In summary, after removing the amounts which should be disallowed for reasons set forth above, the maximum amount of the General Unsecured Claim should be limited to the amount of asserted unpaid minimum rent totaling $713,051.00 (the "Remaining GUC"), and an inappropriate request for attorneys' fees. Although the Remaining GUC and attorneys' fees should be disallowed for reasons discussed more fully below, even if valid, the Letter of Credit is more than sufficient to satisfy the Remaining GUC and asserted Administrative Claim. Any balance should be left to Vyaire.

III. THE COURT SHOULD DENY THE MOTION FOR AN ADMINISTRATIVE CLAIM AND DISALLOW THE REMAINING GUC

A. The Plan Administrator's Rights of Recoupment and Setoff Eliminate Landlord's Entitlement to any Claims

59. Landlord is not entitled to the Remaining GUC or an Administrative Claim in any amount because the Plan Administrator has material claims against the Landlord that will reduce the amount asserted by Landlord to zero. Section 558 of the Bankruptcy Code expressly preserves the Plan Administrator's right to exercise the common law rights of setoff and/or recoupment that justify reduction of the Remaining GUC and Landlord's asserted Administrative Claim in full, meaning it is entitled to nothing.

60. "The doctrines of 'setoff' and 'recoupment' had their origins in the era of common law pleading, under which the scope of a 'case' was far less inclusive than it is today, and under which the claim of joinder was far narrower." *Lee v. Schweiker*, 739 F.2d 870, 875 (3d Cir. 1984). These doctrines served the important function of permitting countervailing claims to be asserted together, rather than having to proceed on reciprocal claims in separate trials, when in effect, the damages would net. *Id.*

1. Recoupment

61. Section 558 of the Bankruptcy Code preserves the Plan Administrator's common law right to assert a defense of recoupment to any debt asserted against them. *In re Papercraft Corp.*, 126 B.R. 926, 931 (Bankr. W.D. Pa. 1991). Indeed, the right to assert recoupment is a longstanding one in the bankruptcy context. *See In re Monongahela Rye Liquors*, 141 F.2d 864 (3d Cir. 1944). The doctrine of recoupment applies where the parties are debtors vis-à-vis each other as part of the same transaction (i.e., the reciprocal obligations arise from the same transaction). *In re Univ. Med. Center*, 973 F.2d 1065, 1079 (3d Cir. 1992) ("Recoupment is the

setting up of a demand *arising from the same transaction* as the plaintiff's claim or cause of action, strictly for the purpose of abatement or reduction of such claim." (internal quotations omitted)).

62. In effect, recoupment is a defense to a creditor's claim under a transaction, rather than a mutual obligation. *Lee v. Schweiker,* 739 F.2d at 875 (citing *In re Monongahela Rye Liquors,* 141 F.2d at 869). To be eligible for recoupment, the relevant claims need not have yet crystalized. Instead, recoupment may be applied for advance payments based on estimates of what would be owed, subject to subsequent correction. *In re Univ. Med. Center,* 973 F.2d at 1079 (quoting *In re B&L Oil Co.,* 782 F.2d 155, 157 (10th Cir. 1986)).

63. Additionally, the Plan Administrator is free to assert recoupment where prepetition amounts are owed to the Debtors against any postpetition arrears. Section 558 contains no restriction on applying the doctrine of recoupment to postpetition obligations, including rental arrearages. *In re Prince Sports, Inc.,* 2013 WL 6906717, at *2 (Bankr. D. Del. Dec. 11, 2013) (allowing debtor, under theory of recoupment, to apply prepetition credit to reduce postpetition administrative rent claim under section 365(d)(3)). "Because both setoff and recoupment are equitable remedies, [the debtor's] right to assert those remedies is not impaired by the Lease provisions." *Id.; see also CDI Trust v. U.S. Electronics, Inc. (In re Commc'n Dynamics, Inc.),* 382 B.R. 219, 226 (Bankr. D. Del. 2008) ("Setoff and recoupment are not dependent on the parties' contract; rather, they are equitable remedies available independent of any contractual remedy." (citing *In re Univ. Med. Center,* 973 F.2d at 1080)). Recoupment's "same transaction" test is loose and does not constrain parties to a single event in time. *See B&L Oil Co.,* 782 F.2d at 156.

64. The standard is easily met here. The Plan Administrator believes it has viable claims against the Landlord arising from the Landlord's conduct under the Lease for, among other things, breach of contract, fraudulent transfer, unjust enrichment, and/or other remedies.[7]

65. More specifically the Landlord breached the Lease by drawing upon the Letter of Credit (i) when Vyaire was current on its obligations and (ii) prior to providing Vyaire adequate notice and opportunity to cure. The breach resulted in the premature funding of $4 million by Vyaire to Bank of America, which issued the Letter of Credit.

66. In addition, the Plan Administrator has claims against the Landlord under theories of fraudulent conveyance based on Vyaire's required reimbursement to Bank of America in the amount of $4 million. The payment to Bank of America was a result of the improper draw down on the Letter of Credit, which payment the Landlord benefitted from without providing Vyaire any value in exchange.

67. Last, as an alternative or in addition to the breach of contract claims, the Landlord has been unjustly enriched by having received a significant and improper windfall from its $4 million draw on the Letter of Credit. The Landlord was required to complete certain tenant improvements and fund approximately $14,236,222 towards such improvements. To the best of Vyaire's knowledge, only $8 million was ever funded. Thus, the Landlord avoided at least $6.2 million in construction obligations, and at the same time drew on a $4 million letter of credit to support the construction of the Premises in favor of its bank. Moreover, as set forth above, none of the Landlord's claims, other than potentially rent, are supported or supportable. Thus, its retention and application of the Letter of Credit are wholly improper.

[7] The summary of claims set forth in this Objection is not meant to be an exhaustive list of potential claims or relevant facts and the Plan Administrator reserves all rights to all claims against the Landlord as well as the right to assert such claims by way of separate contested matter or adversary proceeding.

68. In summary, because the Debtors' Lease obligations, including rent payments, are contractually linked to the Plan Administrator's affirmative claims, such amounts "aris[e] from the same transaction" and qualify for recoupment. *In re Univ. Med. Center*, 973 F.2d at 1079. Through recoupment, the Landlord's Remaining GUC and asserted Administrative Claims will be reduced in total by the amounts it owes the Plan Administrator. Such a result is lawful and equitable insofar as any amounts owed to the Landlord would be returned to the Plan Administrator in connection with the adjudication of the affirmative claims noted above.

2. Setoff

69. Similar to recoupment, the common law right to setoff allows the Plan Administrator to reduce any debt the Debtors owe a party by the amount such party owes to the Debtors. *See In re Univ. Med. Center*, 973 F.2d at 1079; *see also Citizens Bank of Maryland v. Strumpf*, 516 U.S. 16, 18 (1995) (setoff avoids "the absurdity of making A pay B when B owes A."). Claims to be setoff, in effect, represent mutual obligations in bankruptcy. *Lee v. Schweiker*, 739 F.2d at 875.

70. Mutuality of obligations exists between the Debtors and the Landlord. In this Circuit, mutuality merely means there are debts "owing from a creditor directly to the debtor and, in turn, owing from the debtor directly to that creditor." *In re Orexigen Therapeutics, Inc.*, 990 F.3d 748, 754 (3d Cir. 2021). Here, mutual debts exist as a result of the asserted rental arrears and other claims on the one hand and the affirmative claims under the Lease on the part of the Plan Administrator on the other. Because the mutual debts are by and among the Debtor parties to the Lease and the Landlord, the parties then incurred the debts in the same capacities such that setoff is available. Further, because the Plan Administrator retains all defenses available to it prepetition

pursuant to section 558, they are not precluded from meeting mutuality by their status as debtors in possession. 11 U.S.C. § 558.

71. Like recoupment, a debtor's setoff rights emanate from state law and are incorporated into chapter 11 via section 558 of the Bankruptcy Code. *See* 11 U.S.C. § 558 ("The estate shall have the benefit of any defense available to the debtor as against any entity other than the estate . . . ."). Unlike a creditor's setoff rights, which are restricted by section 553, "there is no such restrictive language in section 558 and, consequently, courts have concluded that a debtor may set off pre-petition claims against post-petition obligations it owes." *In re Women First Healthcare, Inc.*, 345 B.R. 131, 134 (Bankr. D. Del. 2006). This conclusion plainly applies to section 365(d)(3) claims, and courts in this circuit have allowed debtors to use prepetition credits to setoff against postpetition rent obligations. *In re Prince Sports, Inc.*, 2013 WL 6906717, at *2 (Bankr. D. Del. Dec. 11, 2013) ("[I]t does not matter that [the debtor] seeks setoff of a post-petition rent claim, so long as there are valid, mutual debts between the same two parties.").

72. Because the Plan Administrator may set off from any allowed Administrative Claim or the Remaining GUC, amounts that can be recovered for affirmative claims against the Landlord, the Plan Administrator's right to setoff preempts Landlord's entitlement to an Administrative Claim or the Remaining GUC. Accordingly, any amounts that may be owed to Landlord on account of the Remaining GUC or postpetition rent and other charges must be reduced by the damages obtained by the Plan Administrator on account of the affirmative claims against Landlord. To preserve the Plan Administrator's setoff rights, Landlord should not be entitled to an allowed Administrative Claim unless and until the Plan Administrator has an opportunity to adjudicate and recovery on his claims for, among other things, breach of contract, fraudulent transfer, unjust enrichment, and/or other remedies against Landlord.

B. Landlord Should be Compelled to Apply to the $4 Million it Drew on the Letter of Credit to the Remaining GUC or Any Administrative Claim Under Court's Equitable Marshaling Principles

73. The Court should also exercise its equitable powers and compel the Landlord to apply the $4 million letter of credit that it drew upon in November 2023 to the Remaining GUC or any allowed Administrative Claim.

74. Section 105(a) of the Bankruptcy Code authorizes this Court to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a). Under this provision and this Court's inherent powers, this Court has broad authority to fashion appropriate relief based on the facts before it. *See, e.g., In re Cont'l Airlines*, 203 F.3d 203, 211 (3d Cir. 2000) ("Section 105(a) of the Bankruptcy Code supplements courts' specifically enumerated bankruptcy powers by authorizing orders necessary or appropriate to carry out provisions of the Bankruptcy Code."). Invoking such power is particularly appropriate where, as here, it will assist the Court's administration of the estate. *See, e.g., In re W.R. Grace & Co.*, 386 B.R. 17, 31-32 (Bankr. D. Del. 2008).

75. Courts across the country have long used their equitable and inherent powers pursuant to section 105(a) to compel creditors with two paths to recovery to choose the one that did not diminish the amount of the *res* available to other creditors. Section 105(a) gives a bankruptcy court ample authority to channel creditor recovery in this way. *In re A.H. Robins Co., Inc.*, 880 F.2d 694, 701-02 (4th Cir. 1989) ("We think the ancient but very much alive doctrine of marshaling of assets is analogous here. A creditor has no right to choose which of two funds will pay his claim. The bankruptcy court has the power to order a creditor who has two funds to satisfy his debt to resort to the fund that will not defeat other creditors."). Exercising equitable relief akin to marshalling would prevent an undue double recovery to the Landlord at the expense of other

holders of Administrative Claims without access to two funds. Accordingly, to the extent that Landlord is entitled to any payment after first applying setoff or recoupment, as applicable, this Court should not countenance the Landlord's decision to deplete a shared fund when a dedicated means of recovery is available to it.

76. In addition, as discussed above, substantially all of the Landlord's claims in the General Unsecured Claim may be a result of termination of the Lease. Therefore, the only logical application of the Letter of Credit which was prematurely drawn upon was an application for unpaid rent as no other claims would have accrued by that time.

C. Landlord's Administrative Claim is Significantly Overstated

77. In addition to being subject to setoff, recoupment, and equitable marshalling, the Administrative Claim sought by the Landlord is significantly overstated. Set forth below is the Plan Administrator's summary of Landlord's calculation of charges asserted by Landlord, broken down by property:

Property 520								
Months	**CAM**	**Insurance**	**Minimum Rent**	**CAM Tax**	**CAM Rec**	**Late Fees**	**Others**	**Total**
June	19,052.88	2,494.80	185,466.82	-	-	-		207,014.50
July	21,318.20	4,876.00	361,299.00	56,623.93	-	-		444,117.13
August	39,692.00	4,876.00	361,299.00	23,898.00	(21,107.98)	-		408,657.02
September	39,692.00	4,876.00	361,299.00	23,898.00		21,488.25	1,500.00	452,753.25
October (Prorated)	12,803.87	1,572.90	116,548.06	7,709.03		21,488.25	8,691.62	168,813.73
	132,558.95	18,695.70	1,385,911.88	112,128.96	(21,107.98)	42,976.50	10,191.62	**1,681,355.63**

Property 510								
Months	**CAM**	**Insurance**	**Minimum Rent**	**CAM Tax**	**CAM Rec**	**Late Fees**	**Others**	**Total**
June	15,697.22	1,871.61	139,118.98	8,890.00	-	-	-	165,577.81
July	31,388.00	3,658.00		17,926.00	-	-	318.78	53,290.78
August	31,388.00	3,658.00		17,926.00	(36,434.18)	12,884.05	193,566.86	222,988.73
September	32,434.27	3,779.93	280,044.70	18,523.53		16,199.15		350,981.58
October	10,125.16	1,180.00	87,422.90	5,782.58		16,199.00	23,357.10	144,066.74
	121,032.65	14,147.54	506,586.58	69,048.11	(36,434.18)	45,282.20	217,242.74	**936,905.64**

78. As to the "Minimum Rent" asserted, which makes up the largest portion of the asserted Administrative Claim, Landlord fails to take into account that, according to the Plan Administrator's books and records, rent was paid for 520 Technology Drive for the months of July and August in full. As a result, even if the Court entertains allowance of an Administrative Claim

at this time, Landlord's asserted Administrative Claim must be reduced by at least $722,598.00, which amount represents "Minimum Rent" paid to Landlord for July and August 2024.

79. In addition, the Landlord's asserted Administrative Claim for the "stub" rent period totaling $372,592.31 is also overstated. Unlike other postpetition rent obligations, claims for postpetition rent during the "stub" period are not allowed administrative expenses under section 365(d) of the Bankruptcy Code. *In re Sportsman's Warehouse, Inc.,* 436 B.R. 308, 310 (Bankr. D. Del. 2009). Instead, a landlord is subject to the same heavy burden of proof to establish an administrative claim under section 503(b) of the Bankruptcy Code. *Id.* ("it was inappropriate for this Court to apply a *per se* rule in *Goody's Family Clothing* that the use and occupancy of the premises confers a benefit to the estate. Rather, the Court must analyze the evidence submitted and determine, on a case by case basis, the amount of the benefit to the estate")

80. Section 503(b)(1) of the Bankruptcy Code provides in the relevant part that:

> (b) after notice and a hearing, there shall be allowed, administrative expenses…including –
>
> (1)(A) the actual, necessary costs and expenses of preserving the estate. …

11 U.S.C. § 503(b)(1).

81. Section 503 of the Bankruptcy Code allows for the collection of administrative expenses from a bankruptcy estate with first priority in distribution of the assets of a debtor. *In re Hechinger Inv. Co. of Delaware*, 298 F.3d 219, 224 (3d Cir. 2002). Section 503(b)(1) is intended to limit priority to solely those claims that are actual and necessary, to avoid "the estate being consumed by administrative expenses" and to "preserve[] the estate for the benefit of creditors." *In re Marcal Paper Mills, Inc.*, 650 F.3d 311, 315 (3d Cir. 2011).

82. Thus, in interpreting this provision, the Third Circuit has held that to qualify for administrative priority, the claimant has the heavy burden of establishing that the expenses need

to both (1) arise from a postpetition transaction with the debtor-in-possession and (2) must be beneficial to the debtor-in-possession in the operation of its business. *Marcal Paper Mills,* 650 F.3d at 314-15; *In re O'Brien Env't Energy, Inc.*, 181 F.3d 527, 533 (3d Cir. 1999). In addition, the Third Circuit has further explained that the benefit "must be *actual*, not hypothetical." *In re Energy Future Holdings Corp.*, 990 F.3d 728, 742 (3d Cir. 2021).

83. Here, the Landlord has not and cannot meet its burden for the stub rent period. As discussed above, Vyaire only occupied one floor at the Premises located at 510 Technology Drive and sublet one floor in the same building to Inari. Vyaire did not occupy or benefit from any other portion of the Premises. In addition, the Landlord refused other subtenants, instead putting those subtenants into other buildings owned by the Landlord to the detriment of Vyaire. Since Vyaire, at best, only benefitted from two floors at 510 Technology Drive, the Administrative Claim should be reduced accordingly by $262,207.10[8] reducing the claim to at most $1,700,216.20 before considering the Landlord's unsupported request for attorneys' fees.

84. Last, Landlord has also not met its burden of establishing the validity or administrative priority of the amounts asserted for "Common Area Maintenance" charges, insurance, taxes, utilities, work orders, credits, reconciliations, unapplied payments, furniture removal, FF&E removal, sign removal, repairs, and late fees. Landlord failed to provide support for the calculation of the additional charges asserted in the Motion. Until the Plan Administrator and the Court have an opportunity to review and challenge the validity of the amounts asserted, no Administrative Claim should be awarded at this time.

[8] This amount is calculated as follows: one third (1/3) of amounts asserted by Landlord for stub period as to 510 Technology Drive, or $55,192.60, plus all amounts asserted by Landlord for stub period as to 520 Technology Drive, or $207,014.50 for a total of $262,207.10.

IV. LANDLORD IS NOT ENTITLED TO PAYMENT OF ATTORNEYS' FEES

85. Landlord improperly seeks allowance of legal expenses of $66,760.01 in the Motion and $45,000 in the General Unsecured Claim. Neither request is accompanied with supporting detail nor payable under applicable law.

86. It is unclear from the Motion which Bankruptcy Code section Landlord relies upon in seeking allowance of the attorneys' fees as administrative claims. The Plan Administrator, however, presumes that the Landlord is taking the misguided position that the attorneys' fees fall within section 365(d)(3) of the Bankruptcy Code. Section 365(d)(3) of the Bankruptcy Code provides that "the trustee shall timely perform all the obligations of the debtor, except those specified in section 365(b)(2), arising from and after the order for relief under any unexpired lease of nonresidential real property, until such lease is assumed or rejected, notwithstanding section 503(b)(1) of this title." 11 U.S.C. § 365(d)(3).

87. Relying on the phrase "all of the obligations of the debtor" in this section, some courts have allowed as administrative expenses a landlord's attorneys' fees under section 365(d)(3) of the Bankruptcy Code if such fees were (1) reasonably incurred for the purpose of enforcing performance under the lease, (2) authorized under the terms of the lease, and (3) supported by detailed invoices. *See, e.g.*, *In re Pelican Pool & Ski Ctr., Inc.*, 2009 Bankr. LEXIS 4623, at *43-50 (Bankr. D.N.J. July 27, 2009) ("*Pelican Pool*") (allowing post-petition, pre-rejection attorneys' fees pursuant to section 365(d)(3), pending the court's determination of the reasonableness of such fees); *In re Pac-West Telecomm, Inc.*, 377 B.R. 119, 126 (Bankr. D. Del. 2007) (court agrees to consider payment of attorneys' fees under section 365(d)(3) upon the submission of detailed invoices). Bankruptcy courts being asked to approve fees have "a duty to examine the reasonableness of all fees requested[.]" *In re Pac. Sea Farms, Inc.*, 134 B.R. 11, 16 (Bankr. D. Haw.) (citing *Matter of Daylight Transp., Inc.*, 42 B.R. 20 (Bankr. E.D.N.Y. 1984)

(finding that time entries such as "research", "conference" or "telephone call" was insufficient to support payment of attorneys' fees under section 365(d)(3) of the Bankruptcy Code).

88. The court's decision in *Pelican Pool* is instructive here. 2009 Bankr. LEXIS 4623, at *43-50. There, a landlord filed a motion for summary judgment seeking entry of an order allowing an administrative claim for, *inter alia*, attorneys' fees incurred through the landlord's efforts to enforce obligations under the lease. *Id.* at *43. The landlord in *Pelican Pool* relied upon a provision in the lease stating that "the occurrence of default will be treated as a breach of the lease agreement, thereby giving the landlord the right to bring suit for the collection of both rent and damages, including reasonable attorney's fees." *Id.* at *43-44. The court first looked at whether attorney's fees can be considered an "obligation" under section 365(d)(3) as to warrant the payment of such fees to the landlord. *Id.* at *44. Applying the Third Circuit's reasoning in *Centerpoint Props. v. Montgomery Ward Holding Corp. (In re Montgomery Ward),* 268 F.3d 205, 211 (3d Cir. 2001), the court concluded that "where authorized by a provision in the lease enforceable under state law, a landlord is entitled to attorney's fees when such fees are reasonably incurred for the purpose of enforcing performance under the lease." *Id.* at *46. As a result, the court found that, because the lease provides for attorney's fees and is enforceable, the landlord was entitled to pre-rejection attorney's fees pursuant to section 365(d)(3) "as a matter of law pending the court's determination of the reasonableness of such fees." *Id.* at *47. However, because the certification provided by the landlord's attorney was missing certain details to support the payment of attorney's fees, such as the novelty and difficulty involved in the work, the time and labor required, and the billing rate of the attorney, the landlord's counsel was required to submit a certification of fees relating solely to the enforcement of pre-rejection obligations within twenty (20) days. *Id.* at *48.

89. Consistent with *Pelican Pool* and the Third Circuit's decision in *Montgomery Ward*, Landlord here is only entitled to the payment of attorneys' fees as a component of its damages if the attorneys' fees were (1) authorized by a provision in the lease enforceable under state law, (2) "reasonably incurred for the purpose of enforcing performance of the lease," *id.* at *46, and (3) supported by detailed invoices.

90. *First*, there is nothing in the Lease that provides for payment of attorneys' fees sought by the Landlord and Landlord points to none. *Second*, Landlord has not made any attempt to establish that the fees were incurred for the purpose of enforcing performance of the lease. And *third*, Landlord has not provided the Court with copies of the detailed invoices supporting the attorneys' fees sought in the Motion or in the Claim. Thus, the Court should disallow the request for payment of attorneys' fees in the Motion and in the Claim.

RESERVATION OF RIGHTS

91. The Plan Administrator hereby reserves the right to amend, modify, and supplement this Objection prior to the hearing before the Court on this Objection, if any; *provided*, *however*, that nothing in this Objection shall affect the Plan Administrator's right to object to the claims at a future date on a basis other than as set forth in this Objection as permitted by bankruptcy and nonbankruptcy law, subject to any limitations set forth in the Local Rules or in the Order.

92. In addition, the Plan Administrator reserves the right to seek discovery with regard to the Motion and the General Unsecured Claim. The Plan Administrator further reserves the right to pursue any and all rights and remedies against the Landlord with regard to the Lease, including commencing an adversary proceeding against the Landlord for, among other things, breach of contract, fraudulent transfer, unjust enrichment, and/or other remedies.

CONCLUSION

WHEREFORE, the Plan Administrator respectfully requests that the Court (i) enter an order denying the Motion, and (ii) grant such other relief as the Court may deem just and proper.

Dated: April 7, 2025
Wilmington, Delaware

COLE SCHOTZ P.C.

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