

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

In re:

Vyera Pharmaceuticals, LLC, *et al.*,¹

Debtors.

Chapter 11, Subchapter V

Case No. 23-10605

(Joint Administration Requested)

MOTION OF THE DEBTORS FOR ENTRY OF AN ORDER AUTHORIZING THE DEBTORS TO FILE UNDER SEAL PORTIONS OF THE DEBTORS' CONSOLIDATED CREDITOR MATRIX AND LIST OF EQUITY SECURITY HOLDERS CONTAINING CERTAIN PERSONALLY IDENTIFIABLE INFORMATION

Vyera Pharmaceuticals, LLC and its above-captioned affiliated debtors and debtors in possession (collectively, the “Debtors”), by and through their proposed counsel, DLA Piper LLP (US), hereby submit this motion (the “Motion”) for entry an order, substantially in the form attached hereto as **Exhibit A** (the “Proposed Order”), (i) authorizing the Debtors to file a redacted version of the Debtors’ consolidated creditor matrix (the “Creditor Matrix”) and Debtor Phoenixus AG’s list of equity security holders, each filed contemporaneously herewith, (ii) authorizing the Debtors to file under seal an unredacted version of each, and (iii) granting related relief. In support of this Motion, the Debtors rely upon the *Declaration of Lawrence R. Perkins in Support of the Debtors’ Subchapter V Petitions and First Day Pleadings* (the “First Day Declaration”),² filed contemporaneously herewith. In further support of this Motion, the Debtors respectfully state as follows:

¹ The Debtors in these subchapter V cases, along with the last four digits of each Debtor’s federal tax identification number, if applicable, are as follows: Vyera Pharmaceuticals, LLC (1758); Oakrum Pharma, LLC (3999); SevenScore Pharmaceuticals, LLC (2598); Phoenixus AG (1091); Dermelix Biotherapeutics, LLC (4711); and Orpha Labs AG. The Debtors’ headquarters and the mailing address for the Debtors is 600 3rd Avenue, 19th Floor, New York, NY 10016.

² Capitalized terms used but not otherwise defined in this Motion shall have the meanings given to them in the First Day Declaration.

JURISDICTION AND VENUE

1. The United States Bankruptcy Court for the District of Delaware (the “Court”) has jurisdiction over these subchapter V cases, the Debtors, property of the Debtors’ estates, and this matter under 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 within the meaning of 28 U.S.C. § 157(b)(2)(A).

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

3. 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 (the “Local Rules”), the Debtors consent to entry of a final judgment or order by the with respect to this Motion if it is determined that the Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

4. The statutory bases for the relief requested in this Motion are sections 105(a) and 107(c)(1) of title 11 of the United States Code (the “Bankruptcy Code”), Rules 9018 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Local Rule 9013-1(m).

BACKGROUND

5. On the date hereof (the “Petition Date”), each Debtor filed with this Court a voluntary petition for relief under chapter 11 of the Bankruptcy Code and elected to proceed under subchapter V thereunder. Additional information about the Debtors’ businesses and the events leading to the commencement of these subchapter V cases can be found in the First Day Declaration, which is incorporated herein by reference.

6. The Debtors are continuing in possession of their respective properties and are continuing to operate and maintain their businesses as debtors in possession pursuant to sections

1107(a), 1108, and 1184 of the Bankruptcy Code. As of the date hereof, no subchapter V trustee has been appointed and no date has been set for a meeting pursuant to section 341 of the Bankruptcy Code.

RELIEF REQUESTED

7. By this Motion, pursuant to sections 105(a) and 107(c) of the Bankruptcy Code, Bankruptcy Rule 9018, and Local Rule 9018-1(d), the Debtors seek entry of an order (i) authorizing the Debtors to file a redacted version of the Debtors' consolidated Creditor Matrix and Debtor Phoenixus AG's list of equity security holders (the "Equity Holder List"), each filed contemporaneously herewith, (ii) authorizing the Debtors to file under seal an unredacted version of each, and (iii) granting related relief.

BASIS FOR RELIEF

8. Section 105(a) of the Bankruptcy Code codifies this Court's inherent equitable powers and authorizes it 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). Local Rule 9018-1(d) provides, in relevant part, that "[a]ny party who seeks to file documents under seal must file a motion to that effect."

9. Section 107(c)(1) of the Bankruptcy Code enables this Court to issue orders that protect parties from the potential harm that could result from disclosing personally identifiable information:

The bankruptcy court, for cause, may protect an individual, with respect to the following types of information to the extent the court finds that disclosure of such information would create undue risk of identity theft or other unlawful injury to the individual or the individual's property:

- (A) Any means of identification (as defined in section 1028(d) of title 18) contained in a paper filed, or to be filed, in a case under this title.

(B) Other information contained in a paper described in subparagraph (A).

11 U.S.C. § 107(c)(1).

Further, with regard to the definition of “means of identification”:

The term “means of identification” means any name or number that may be used, alone or in conjunction with any other information, to identify a specific individual, *including any*—

(A) name, social security number, date of birth, official State or government issued driver’s license or identification number, alien registration number, government passport number, employer or taxpayer identification number....

18 U.S.C. § 1028(d)(7) (emphasis added).

10. The proper interpretation of these two statutes is two-fold. First, while transparency is important to the bankruptcy process, through the enactment of section 107(c)(1) of the Bankruptcy Code, Congress provided an exception to transparency and intended to protect innocent individuals from foreseeable injury. Second, the language of both statutes dictates that Congress intended for each statute to keep open channels for protecting additional information not enumerated; both sections set out non-exhaustive lists. Specifically, section 107(c)(1)(B) of the Bankruptcy Code allows for “other information” apart from “means of identification,” as defined in 18 U.S.C. § 1028(d)(7). Further, under such definition, Congress specifically included the phrase “including any” to illustrate the non-exhaustive nature of the list of items that follows.

11. Accordingly, while an individual employee’s home address is not explicitly listed in the definition of “means of identification,” it most certainly is covered by the expansive language of both 11 U.S.C. § 107(c)(1)(B) and 18 U.S.C. § 1028(d)(7), especially when married

with other information disclosed in the context of the Creditor Matrix, the Debtors' various lists of equity security holder statements, and these subchapter V cases.

12. Courts in this District frequently authorize this relief. The Court in *In re Promise Healthcare Grp., LLC*, Case No. 18-12491 (CSS) [D.I. 221] (Bankr. D. Del. Dec. 4, 2018), expressed this dichotomy succinctly:

The issue is not one of morale; it is one of protection and protecting the identity of the employees.... [I]t becomes a balancing act: what are we trying to protect versus what are we trying to preserve. And certainly, preserving the transparency of a bankruptcy and the identity of the creditors being revealed is part of that.... [T]he other side of that, the risk to those employees, is quite high.

Transcript of Dec. 4, 2018 Hearing [D.I. 228], at 18:5–7, 19:7–10, 19:14–15.

13. In addition, in *In re Searchmetrics, Inc.*, Case No. 17-11032 (CSS) (Bankr. D. Del. May 9, 2017) [D.I. 27], the court authorized the debtors to seal the debtor's employees' home addresses under section 107 of the Bankruptcy Code. As was the case in *Searchmetrics*, revealing such information "raises privacy concern[s] and it's unnecessary to be publicly disclosed." *Transcript of May 11, 2017 Hearing* [D.I. 41] at 30:12-14.

14. The Debtors believe that no individual employee should be concerned with the risks associated with having her home address publicly disclosed, especially in the face of mounting work related to the filing of these subchapter V cases. With regard to the individual holders of equity securities of Phoenixus AG, in addition to the individual's name and address, the filing would also publicly disclose the individual's equity holdings, which may heighten the risk to such individuals.

15. The relief requested in this Motion is granted frequently in this District. *See, e.g., In re NewAge, Inc.*, Case No. 22-10819-LSS (LSS) [D.I. 154] (Bankr. D. Del. Sept. 29, 2022) (Waiving the requirement to file equity security holders list entirely); *In re Valeritas Holdings*,

Inc., Case No. 20-10290 (LSS) [D.I. 52] (Bankr. D. Del. Feb. 12, 2020) (authorizing the debtors to seal patient and employee home addresses); *In re Reva Medical, Inc.*, Case No. 20-10072 (JTD) [D.I. 65] (Bankr. D. Del. Feb. 10, 2020) (authorizing the debtors to seal employee and independent contractor home addresses); *In re Celadon Group, Inc.*, Case No. 19-12606 (KBO) [D.I. 57] (Bankr. D. Del. Dec. 10, 2019) (same); *In re Acahogen, Inc.*, Case No. 19-10844 (BLS) [D.I. 206] (Bankr. D. Del. May 20, 2019) (same); *In re L.K. Bennett U.S.A, Inc.*, Case No. 19-10760 (KG) [D.I. 46] (Bankr. D. Del. Apr. 9, 2019) (same); *In re Searchmetrics, Inc.*, Case No. 17-11032 (CSS) [D.I. 27] (Bankr. D. Del. May 9, 2017).³

16. While there is a “strong presumption in favor of public access to judicial records and papers...,” *In re Cont’l Airlines*, 150 B.R. 334, 341 (D. Del. 1993), that presumption is outweighed substantially by the risk of identity theft or injury to innocent individuals. *See also In re Avandia Mktg., Sales Practices & Prods. Liab. Litig.*, 924 F.3d 662, 672 (3d Cir. 2019) (finding that the presumption of access could be rebutted when the movant “show[s] ‘that the material is the kind of information that courts will protect and that disclosure will work a clearly defined and serious injury to the party seeking closure.’”) (quoting *Miller v. Ind. Hosp.*, 16 F.3d 549, 551 (3d Cir. 1994)); *Goldstein v. Forbes (In re Cendant Corp.)*, 260 F.3d 183 (3d Cir. 2001) (“Although the common law right to public access is a recognized and venerated principle, courts have also recognized the accompanying principle that ‘the right is not absolute.’”) (quoting *Littlejohn v. BIC Corp.*, 851 F.2d 673, 678 (3d Cir. 1988)).

17. The benefit of public access to the home addresses of the Debtors’ employees is limited, if existent at all, in the context of a bankruptcy case, when the Debtors’ addresses are

³ The referenced orders are voluminous in nature and, therefore, are not attached to this Motion; however, in accordance with Local Rule 7007-2, the Debtors’ proposed counsel has copies of each order and will make them available to this Court or to any party that requests them. Additionally, the orders are available on this Court’s CM/ECF PACER site at the cited docket numbers and on the dates specified above.

readily available and the claims and noticing agent in these subchapter V cases will maintain a separate, confidential mailing list for service to the employees and individual equity security holders at their residences for the benefit of all parties in interest desiring to serve such parties with pleadings or notices in these subchapter V cases. To publicly disclose each individual employee and equity holder's home address would create an undue risk of identity theft for those already grappling with the bankruptcy cases. Accordingly, despite the presumption in favor of public access, the privacy concerns at issue here tip the scales substantially towards sealing the home addresses of the Debtors' employees and the individual holders of Phoenixus AG's equity securities.

18. For the foregoing reasons, the Debtors respectfully request that this Court permit the Debtors to seal those portions of the Creditor Matrix containing the personal home address of current and former employees and portions of the Equity Holder List containing the personal home address of individual holders of Phoenixus AG's equity securities, with unsealed copies provided only upon request to this Court, the Office of the United States Trustee for Region 3 (the "U.S. Trustee"), the subchapter V trustee (once appointed), and any official committee of unsecured creditors appointed in these subchapter V cases.

NOTICE

19. Notice of this Motion will be provided in accordance with the Local Rules to: (i) the U.S. Trustee; (ii) the Delaware Secretary of State, (iii) the Office of the Attorney General of the states in which the Debtors operate; (iv) the Federal Trade Commission; (v) the United States Food and Drug Administration; (vi) the Internal Revenue Service; (vii) the Debtors' 30 largest unsecured creditors; (viii) the Banks; (ix) the subchapter V trustee (once appointed); and (x) all others that are required to be noticed in accordance with Bankruptcy Rule 2002 and Local Rule 9013-1(m).

Due to the nature of the relief sought, the Debtors respectfully submit that no other or further notice of this Motion is required.

WHEREFORE, the Debtors respectfully request entry of an order, substantially in the form of the Proposed Order attached to this Motion as **Exhibit A**, granting the relief requested herein and grant such other and further relief as this Court deems just and proper.

Dated: May 10, 2023
Wilmington, Delaware

Respectfully submitted,

DLA PIPER LLP (US)

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Proposed Counsel to the Debtors

EXHIBIT A

Proposed Order

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

In re:

Vyera Pharmaceuticals, LLC, *et al.*,¹

Debtors.

Chapter 11, Subchapter V

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(Jointly Administered)

**ORDER AUTHORIZING THE DEBTORS TO FILE UNDER SEAL PORTIONS OF
THE DEBTORS' CONSOLIDATED CREDITOR MATRIX AND LIST OF EQUITY
SECURITY HOLDERS CONTAINING CERTAIN PERSONALLY
IDENTIFIABLE INFORMATION**

Upon the motion (the "Motion"),² filed by the above-captioned debtors (collectively, the "Debtors") for entry of an order (i) authorizing the Debtors to file a redacted version of the Debtors' Creditor Matrix and Debtor Phoenixus AG's list of equity security holders, each filed contemporaneously herewith, (ii) authorizing the Debtors to file under seal an unredacted version of each, and (iii) granting related relief; all as further described in the Motion, and upon consideration of the First Day Declaration and the record of these subchapter V cases; and this Court having found that (i) this Court has jurisdiction to consider the Motion and the relief requested therein under 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 February 29, 2012, (ii) this Court may enter a final order consistent with Article III of the United States Constitution, (iii) this is a core proceeding under 28 U.S.C. § 157(b)(2)(A), (iv) venue of this proceeding and the

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² Capitalized terms used but not otherwise defined herein shall have the respective meaning ascribed to such terms in the Motion.

Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409, and (v) no further or other notice of the Motion is required under the circumstances; and on the record of these subchapter V cases; and having determined that the legal and factual bases set forth in the Motion and the First Day Declaration establish just cause for the relief granted in this Order; and this Court having found and determined that the relief sought in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED as set forth in this Order.
2. Pursuant to sections 105(a) and 107(c) of the Bankruptcy Code and Local Rule 9018-1(d), the Debtors are authorized to redact the home addresses of all current and former employees and individual equity security holders, and file: (i)(a) a redacted version of the Creditor Matrix that contains the home addresses of all current and former employees of the Debtors and (b) an unredacted version of the Creditor Matrix under seal; and (ii)(a) a redacted version of the Equity Holder List that contains individual equity security holders' respective home addresses and (b) an unredacted version of such list under seal.
3. The unredacted version of the Creditor Matrix shall remain under seal and not made available to anyone, except that copies shall be provided to this Court, the U.S. Trustee, the Subchapter V Trustee (once appointed), any official committee of unsecured creditors appointed in these subchapter V cases, and other parties upon request, unless the Court orders otherwise.
4. The Court will, and each other party receiving an unredacted version of the Creditor Matrix or the Equity Holder List shall, keep such information confidential.

5. To the extent any party provided with an unredacted version of the Creditor Matrix or the Equity Holder List files any responsive pleadings, such party shall redact from its pleadings any home addresses of the current or former employees or individual equity security holders, or any otherwise confidential or personally identifying information.

6. The claims and noticing agent in these subchapter V cases shall maintain a separate, confidential mailing list for service to the Debtors' employees and the individual equity security holders of Debtor Phoenixus AG at their respective residences for the benefit of all parties in interest desiring to serve such parties with pleadings or notices in these subchapter V cases, and shall serve the parties with such pleadings or notices on behalf of all parties in interest.

7. The terms and conditions of this Order shall be effective immediately and enforceable upon its entry.

8. The Court retains jurisdiction with respect to all matters arising from or related to the implementation or interpretation of this Order.