

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

In re:

Vyera Pharmaceuticals, LLC, *et al.*,<sup>1</sup>

Debtors.

Chapter 11, Subchapter V

Case No. 23-10605

(Joint Administration Requested)

**MOTION OF THE DEBTORS FOR ENTRY OF AN ORDER (I)  
AUTHORIZING THE CONTINUED USE OF THE DEBTORS' CASH MANAGEMENT  
SYSTEM, (II) AUTHORIZING CONTINUED INTERCOMPANY TRANSFERS  
AMONG DEBTORS, AND (III) GRANTING RELATED RELIEF**

Vyera Pharmaceuticals, LLC (“Vyera”) 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, but not directing, the Debtors to continue to use their current cash management system, existing bank accounts, and business forms, including authorizing the Debtors to open and close bank accounts in the ordinary course of business and authorizing all banks participating in the cash management system to honor certain transfers and charge bank fees and certain other amounts; (ii) authorizing continued intercompany transfers in the ordinary course of business (the “Intercompany Transfers”); 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*

---

<sup>1</sup> 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, 19<sup>th</sup> Floor, New York, NY 10016.

(the “First Day Declaration”),<sup>2</sup> filed contemporaneously with this Motion. In further support of this Motion, the Debtors respectfully state as follows:

### **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 of these cases in this District is proper under 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 the entry of a final judgment or order 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 herein are sections 105, 363, 1107, 1108, and 1184 of title 11 of the United States Code (the “Bankruptcy Code”), Rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Local Rules 2015-2 and 9013-1.

### **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

---

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

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 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.

**A. The Cash Management System**

7. Prior to the Petition Date, in the ordinary course of the Debtors' businesses, the Debtors employed a largely deconsolidated cash management system to collect, transfer, and disburse funds generated by their operations through several bank accounts (the "Cash Management System"). The Cash Management System facilitates each Debtor's respective cash monitoring, forecasting, and reporting, and enables the Debtors to maintain control over their Bank Accounts (defined below). Given the deconsolidated nature of the Cash Management System, each Debtor maintains its own bank accounts; revenues are collected into and disbursed from such accounts.

8. Subject to certain exceptions, one Debtor does not rely on funds collected by another Debtor to fund its operations. For example, Debtor Vyera Pharmaceuticals, LLC does not rely on Debtor Oakrum Pharma, LLC's cash collections to make appropriate disbursements to its trade vendors. The exception arises from various, infrequent, Intercompany Transfers (defined below) by and among the Debtors to fund, among other things, certain overhead expenses and significant acquisitions or projects.

9. Ultimately, the Cash Management System is narrowly tailored to meet the Debtors' operating needs and enables the Debtors to control and monitor the collection and disbursement of funds, ensure cash availability and liquidity, meet various federal and state licensing and regulatory requirements, and reduce administrative expenses and other costs by facilitating the movement of funds and the development of accurate account balances.

**B. The Debtors' Bank Accounts**

10. Prior to the Petition Date, the Debtors maintained twelve (12) bank accounts, which were held either at Credit Suisse (Switzerland) Ltd and PostFinance AG (each of which are Swiss banks), or BCB Bank (a domestic bank in New Jersey). As part of the discussions leading up to the filing of these subchapter V cases, the Debtors and their professionals diligently followed the news regarding various bank failures. Predicting heightened scrutiny by the Office of the United States Trustee for Region 3 (the "U.S. Trustee") with respect to the maintenance of debtor-in-possession accounts, the Debtors took several steps to open new bank accounts at institutions on the list of authorized bank depositories for the District of Delaware (the "Authorized Depository List"). That process remains ongoing as of the date hereof, as discussed further below.

11. As of the Petition Date, the Debtors still maintain twelve (12) bank accounts (collectively, the "Bank Accounts"): six (6) at BCB Bank, one (1) at PostFinance AG, and five (5) at Credit Suisse (Switzerland) Ltd. A complete list of bank accounts, along with corresponding information, is attached to this Motion as **Exhibit B** (collectively, the "Bank Accounts"). In the aggregate, as of the Petition Date, the Debtors' Bank Accounts held \$10,515,644.64. A breakdown of the funds contained in the Debtors' Bank Accounts as of the Petition Date is as follows:

- (a) Vyera Pharmaceuticals, LLC – Commercial Checking: \$7,757,001.25
- (b) Vyera Pharmaceuticals, LLC – Money Market: \$50,474.37
- (c) Oakrum Pharma, LLC – Commercial Checking: \$1,027,451.82
- (d) Oakrum Pharma, LLC – Money Market: \$50,471.90

- (e) SevenScore Pharmaceuticals, LLC – Commercial Checking: \$288,379.13
- (f) SevenScore Pharmaceuticals, LLC – Money Market: \$50,471.90
- (g) Phoenixus AG – Brokerage Account: \$0
- (h) Phoenixus AG – USD Account: \$733,718.22
- (i) Phoenixus AG – CHF Account: CHF \$364,742.12<sup>3</sup>
- (j) Phoenixus AG (Orphan Star AG) – CHF Account: CHF \$30,037.65
- (k) Orpha Labs AG – USD Account: \$134,634.31
- (l) Orpha Labs AG – CHF Account: CHF \$28,261.98

12. Under the programs set forth in the Customer Programs Motion,<sup>4</sup> filed contemporaneously herewith, certain customers have historically been entitled to unilaterally debit the applicable Debtor’s Bank Account with BCB Bank in connection with rebates or product returns. However, prior to the Petition Date, the Debtors, in consultation with BCB Bank, have disabled this functionality, now requiring affirmative Debtor consent for the debiting of Bank Accounts.

### **C. The Debtors’ Intercompany Arrangements<sup>5</sup>**

13. As noted above, as and when needed, the Debtors initiate Intercompany Transfers to cover certain overhead costs and major acquisitions and projects. These Intercompany Transfers result in intercompany receivables and payables (collectively, the “Intercompany Claims”). Historically, the Debtors have formally documented each of these Intercompany Transfers pursuant to various loan agreements and promissory notes. In that vein, the Debtors track all

---

<sup>3</sup> As noted, the Swiss Debtors have certain Bank Accounts denominated in Swiss currency. For purposes of payments to foreign vendors, the Debtors will likely need to keep such Bank Accounts open with such denominations.

<sup>4</sup> The full title of the Customer Programs Motion is: *Motion of the Debtors for Entry of an Order (I) Authorizing the Debtors to Honor Obligations to Customers and Related Third Parties and to Otherwise Continue Customer Programs; (II) Granting Related Relief from the Automatic Stay to Permit Setoff in Connection with Customer Programs; (III) Authorizing Financial Institutions to Honor and Process Related Checks and Transfers; and (IV) Granting Related Relief* (the “Customer Programs Motion”).

<sup>5</sup> This Motion provides an illustrative overview of the Debtors’ typical Intercompany Transfers. The relief requested herein is applicable to all Intercompany Transfers and is not limited to those described specifically in this Motion. To the extent there are any outstanding prepetition transactions related to Intercompany Transfers not described in this Motion, the Debtors, out of an abundance of caution, seek authority to continue such transactions.

Intercompany Transfers in their accounting system and these transactions are recorded concurrently on the applicable Debtor entity's balance sheet.

14. Additionally, at times throughout the Debtors' history, including in the months leading up to the filing of these subchapter V cases, certain Debtors have made Intercompany Transfers by way of subordination agreements. In general, Swiss law requires a company to report to the Swiss government a year-end balance sheet showing over-indebtedness pursuant to Art. 725b para 1 of the Swiss Code of Obligations. Notification will typically lead to the initiation of bankruptcy proceedings under Swiss law. Accordingly, entry into various subordination agreements over the years has safeguarded an involuntary bankruptcy proceeding against the Debtors in Switzerland.

15. For example, on June 10, 2021, Debtors Phoenixus AG and Orpha Labs AG entered into a subordination agreement, pursuant to which Phoenixus AG subordinated claims against Orpha Labs AG totaling USD \$2,511,855.67 to all other existing and future claims against Orpha Labs AG. Similarly, and to facilitate a smooth transition into these subchapter V cases in the United States and not an involuntary proceeding under Swiss law, on March 13, 2023, Debtors Vyera Pharmaceuticals, LLC and Phoenixus AG entered into a subordination agreement, pursuant to which Vyera Pharmaceuticals subordinated claims against Phoenixus AG totaling CHF \$14,096,577 to all other existing and future claims against Phoenixus AG.

16. While likely unnecessary given the initiation of these voluntary proceedings under the Bankruptcy Code, in an abundance of caution, by this Motion, the Debtors seek to continue making Intercompany Transfers in the ordinary course of business, including through subordination agreements to comply with Swiss law, to the extent necessary.

**D. Compliance with U.S. Trustee Guidelines and Section 345 of the Bankruptcy Code**

17. To the best of the Debtors' knowledge, the Debtors' domestic Bank Accounts are maintained at a Bank that is insured by the Federal Deposit Insurance Corporation (the "FDIC") and, therefore, complies with section 345(b) of the Bankruptcy Code. For those Bank Accounts maintained at Credit Suisse (Switzerland) Ltd and PostFinance AG, the Debtors submit that Credit Suisse is a well-capitalized, highly rated bank that is insured by an FDIC-equivalent system of depository insurance.<sup>6</sup>

18. The U.S. Trustee has established certain operating guidelines (the "U.S. Trustee Guidelines") for debtors in possession. *See Guidelines for Chapter 11 Cases*, U.S. Department of Justice, United States Trustee Program, Region 3, at p. 2. Among other requirements, the U.S. Trustee Guidelines generally require debtors to: (a) close all existing bank accounts; (b) open new accounts designated as "debtor in possession" accounts; and (c) include the words "debtor in possession" and certain other information on all checks. *See* 28 U.S.C. § 586 and U.S. Trustee Guidelines.

19. The Debtors' Bank Accounts are not maintained at Banks identified on the Authorized Depository List. Immediately prior to the Petition Date, the Debtors endeavored to open up new Bank Accounts at Citizens, N.A., chosen specifically in consultation with the Debtors' advisors, to satisfy the U.S. Trustee Guidelines and provide peace of mind to the Debtors and parties in interest regarding the maintenance of their Bank Accounts. However, due to the strict KYC guidelines at Citizens, N.A. and certain complications with the receiver for Martin

---

<sup>6</sup> The Debtors are aware that recently, Credit Suisse and UBS entered into a merger agreement following intervention of the Swiss Federal Department of Finance, the Swiss National Bank, and the Swiss Financial Market Supervisory Authority, and that UBS will be the surviving entity upon closing of the merger transaction. *See* [Credit Suisse and UBS to Merge \(credit-suisse.com\)](https://www.credit-suisse.com/merger). The Debtors are further aware that Credit Suisse will continue to conduct its business in the ordinary course. *Id.*

Shrkeli's shares of Debtor Phoenixus AG, the Debtor has been unable to open any new accounts. Notwithstanding, the Debtors will continue their efforts to open new bank accounts with banks on the Authorized Depository List.

20. In consultation with the Debtors' Swiss counsel, the Debtors understand that certain of the Swiss Bank Accounts must remain to prevent violation of Swiss law. Notwithstanding, for such Banks, the Debtors will use their good-faith efforts to cause such Banks to execute a Uniform Depository Agreement with the U.S. Trustee.

### **RELIEF REQUESTED**

21. By this Motion, the Debtors are seeking entry of an order, substantially in the form of the Proposed Order, (i) authorizing, but not directing, the Debtors to continue to use their current Cash Management System, existing Bank Accounts, and business forms, including authorizing the Debtors to open and close bank accounts in the ordinary course of business and authorizing all Banks participating in the Cash Management System to honor certain transfers and charge bank fees and certain other amounts; (ii) authorizing continued Intercompany Transfers in the ordinary course of business; and (iii) granting related relief.

### **BASIS FOR RELIEF**

**A. The Debtors' continued use of the existing Cash Management System, Bank Accounts, and Business Forms is essential to their ongoing businesses and is in the best interests of the Debtors' estates and creditors.**

#### **Cash Management System**

22. The Debtors are seeking authority to continue to use their Cash Management System consistent with their prepetition business practices and procedures. The Cash Management System is an ordinary course, essential business practice of the Debtors. Absent the requested relief, the Debtors would have to significantly alter their Cash Management System in order to



comply with the U.S. Trustee Guidelines. The Cash Management System currently in place enables the Debtors to: (a) control and monitor corporate funds of the Debtors, (b) ensure cash availability, and (c) reduce administrative expenses by facilitating the movement of funds.

23. Section 363(c)(1) of the Bankruptcy Code authorizes a debtor to “use property of the estate in the ordinary course of business without notice or a hearing.” 11 U.S.C. § 363(c)(1). The purpose of this section is to provide a debtor with the flexibility to engage in the ordinary transactions required to operate its business without excessive oversight by its creditors or the court. Bankruptcy courts treat requests for authority to continue utilizing existing cash management systems as a relatively “simple matter.” *See, e.g., In re Columbia Gas Sys. Inc.*, 136 B.R. 930, 934 (Bankr. D. Del. 1992), *aff’d in part and rev’d in part*, 997 F.2d 1039 (3d Cir. 1993); *In re Collins & Aikman Corp.*, 401 B.R. 900, 902 (Bankr. E.D. Mich. 2009) (noting that the court authorized the debtors’ continued use of a cash management system which the debtors characterized as critical to their operations and necessary to efficiently and effectively operate their large and complex business operations).

24. As a result, courts have concluded that the requirement to maintain all accounts separately “would be a huge administrative burden and economically inefficient.” *Columbia Gas*, 997 F.2d at 1061; *see also Southmark Corp. v. Grosz (In re Southmark Corp.)*, 49 F.3d 1111, 1114 (5th Cir. 1995) (observing that a cash management system allows a debtor “to administer more efficiently and effectively its financial operations and assets”); *In re Sandridge Energy, Inc.*, No. 16-32488, 2018 WL 889357, at \*3 (Bankr. S.D. Tex. Feb. 5, 2018) (stating that maintaining a centralized cash management system allows the debtors to manage the cash of operating units in a cost-effective, efficient manner).

25. Additionally, this Court may rely on its equitable powers to grant the relief requested herein. Specifically, section 105(a) of the Bankruptcy Code authorizes the 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 section 105(a) of the Bankruptcy Code and the doctrine of necessity, the Court may exercise its broad grant of equitable powers to approve this Motion. *In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002) (noting that the doctrine of necessity is necessary to carry out the provisions of the bankruptcy code because debtors in possession are fiduciaries of the estate); *see also In re All Trac Transp., Inc.*, 306 B.R. 859, 876 (Bankr. N.D. Tex. 2004). Therefore, it is within the Court’s equitable power under section 105(a) of the Bankruptcy Code to approve the continued use of the Cash Management System.

26. The Debtors’ Cash Management System constitutes an ordinary course and essential business practice, providing significant benefits to the Debtors, including the ability for each Debtor to control its corporate funds, ensures the maximum availability of funds when and where necessary, and ensures accurate cash monitoring and forecasting. Any disruption in the Debtors’ cash management procedures may disrupt payments to key vendors and employees that rely on the transfer of funds among the Debtors. Therefore, it is essential that the Debtors be permitted to continue to use their Cash Management System in accordance with their existing cash management procedures.

27. The Debtors respectfully submit that under the circumstances, the maintenance of the Debtors’ Cash Management System in substantially the same form as it existed prior to the Petition Date is in the best interests of the Debtors’ estates and creditors. In particular, given the Debtors’ goal of emerging from these subchapter V cases in an expedited manner through the plan process, preserving a “business as usual” atmosphere will (a) facilitate the Debtors’ stabilization

of their postpetition business operations, (b) assist the Debtors in their efforts consummate a 363 sale, applicable, or confirm the proposed *Debtors' Joint Subchapter V Plan of Reorganization and Liquidation* (the "Plan"), filed contemporaneously herewith, and (c) preserve the going-concern value of the Debtors by minimizing disruption.

#### Bank Accounts

28. As set forth above, the Debtors currently maintain multiple Bank Accounts in the ordinary course of their businesses. As part of their request to maintain their Cash Management System, the Debtors hereby request that they be permitted to continue to use their Bank Accounts with the same account numbers. Absent this relief, the U.S. Trustee Guidelines would require the Debtors to close all of their prepetition Bank Accounts and open new accounts, which will disrupt the Debtors' relationships with vendors and other key counterparties, all of whom are accustomed to working with the current Cash Management System. Not only that, but given the Debtors' significant efforts immediately prior to the Petition Date to open up new accounts at Banks on the Authorized Depository List, requiring the closing of such Bank Accounts only to open up new "debtor in possession" accounts would double expenses and render such efforts superfluous. Allowing the Debtors to continue to use their prepetition Bank Accounts will assist the Debtors in accomplishing a smooth transition to operating in subchapter V.

29. Courts in this District have waived the U.S. Trustee Guidelines when they may be disruptive to a debtor's postpetition business and restructuring efforts. *See e.g., In re Clover Technologies Group, LLC*, No. 19-12680 (KBO) (Bankr. D. Del. Jan. 21, 2020); *In re Forever 21, Inc.*, No. 19-12122 (KG) (Bankr. D. Del. Oct. 28, 2019); *In re PES Holdings, LLC*, No. 19-11626 (KG) (Bankr. D. Del. Aug. 20, 2019); *In re Blackhawk Mining LLC*, No. 19-11595 (LSS) (Bankr. D. Del. Aug. 9, 2019); *In re Z Gallerie, LLC*, No. 19-10488 (Bankr. D. Del. Apr. 9, 2019).

Business Forms

30. Local Rule 2015-2(a) provides that a court may permit a debtor to use its existing checks without the designation "Debtor in Possession" and use its existing Bank Accounts. To minimize expenses to their estates, the Debtors seek authorization to continue using all pre-printed checks substantially in the forms existing immediately prior to the Petition Date, without reference to the Debtors' status as debtors in possession; *provided, however*, that once the Debtors' existing checks have been used, the Debtors will, when reordering checks, add the "Debtor in Possession" designation and the corresponding bankruptcy case number on all such checks. The Debtors also seek authority to use all correspondence and other business forms (including, without limitation, letterhead, purchase orders, and invoices) (collectively, the "Preprinted Forms") without reference to the Debtors' status as debtors in possession.

31. Modifying the Debtors' existing checks and Preprinted Forms would be expensive, unnecessary, and burdensome to the Debtors' estates, particularly given the Debtors' intent to expeditiously emerge from subchapter V. Further, such changes would disrupt the Debtors' business operations and would not confer any benefit upon parties that deal with the Debtors, all of whom will have received adequate notice of these subchapter V cases. For these reasons, the Debtors request that they be authorized in accordance with Local Rule 2015-2(a) to use their existing check stock and Preprinted Forms.

**B. The Court should authorize Banks participating in the Cash Management System to honor certain transfers and charge Bank Fees and certain other amounts.**

32. Contemporaneously herewith, the Debtors have filed motions for authorization to pay certain prepetition claims. With respect to some of these claims, prior to the Petition Date, the Debtors may have issued checks that have yet to clear the banking system and, but for the entry of an order of the Court, such checks would not clear. With respect to other prepetition debt, the

Debtors intend to issue checks postpetition on account of such debt once the Court enters an order permitting the Debtors to take such action. The Debtors intend to inform their Banks regarding which prepetition checks should be honored pursuant to orders of the Court authorizing such payments. Additionally, the Debtors intend to stop payment on all prepetition checks, if any, for which the Debtors will not seek the Court's authorization for payment.

33. Accordingly, the Debtors request that the Banks be authorized to accept and honor all representations from the Debtors as to which checks, drafts, wires, or automatic clearing house transactions ("ACH Transfers") should be honored or dishonored consistent with any order of this Court and governing law, whether such checks, drafts, wires or ACH Transfers are dated prior to, on, or subsequent to the Petition Date. Pursuant to the relief requested in this Motion, the Banks will not be liable to any party on account of: (a) following the Debtors' instructions or representations as to any order of this Court; (b) the honoring of any prepetition check or item in a good-faith belief that the Court authorized such prepetition check or item to be honored; or (c) an innocent mistake made despite implementation of reasonable item-handling procedures. Such relief is reasonable and appropriate because the Banks are not in a position to independently verify or audit whether a particular item may be paid in accordance with a Court order or otherwise.

34. Finally, the Debtors request authority for the Banks to charge, and the Debtors to pay or honor, customary fees and expenses associated with the nature of the deposit and cash management services rendered to the Debtors, whether arising prepetition or postpetition (the "Bank Fees"),<sup>7</sup> and further, to charge back to the appropriate accounts of the Debtors any amounts resulting from returned checks or other returned items, including, without limitation, returned items that result from ACH Transfers, wire transfers, or other electronic transfers of any kind

---

<sup>7</sup> Based on historical Bank Fees charged to the Debtors, the Debtors believe that any Bank Fees that have accrued prepetition are *de minimis*.

(collectively, the “Returned Items”) regardless of whether such items were deposited or transferred prepetition or postpetition and regardless of whether the Returned Items relate to prepetition or postpetition items or transfers.

**C. The Court should authorize the continued use of Intercompany Transfers in the ordinary course of business.**

35. As noted above, under the Cash Management System, in the ordinary course of business, the Debtors make transfers among other Debtors that are necessary to fund certain overhead expenses. Historically, the Debtors have documented each of these Intercompany Transfers pursuant to formalized loan documentation and have made requisite entries in the applicable Debtor’s books and records.

36. During the pendency of these subchapter V cases, the Debtors largely do not expect to make any significant postpetition Intercompany Transfers. In fact, under the proposed Plan, the Debtors are proposing to substantively consolidate the Debtors, for plan purposes only, which will result in the cancellation of all outstanding Intercompany Claims. However, in an abundance of caution, to the extent that the Debtors’ ongoing operations require the continuation of the Intercompany Transfer system, the Debtors request that this Court authorize the Debtors to continue to make Intercompany Transfers in the ordinary course of business on a postpetition basis. As done prepetition, each applicable Debtor will track and record any and all Intercompany Transfers or Intercompany Claims in such Debtor’s books and records.

**D. Cause exists for this Court to waive the U.S. Trustee Guidelines regarding authorized depositories and the requirements of section 345 of the Bankruptcy Code.**

37. To the extent that the Cash Management System does not comply strictly with the U.S. Trustee Guidelines or section 345 of the Bankruptcy Code, the Debtors seek a waiver of the deposit and investment requirements set forth therein.

38. Section 345(a) of the Bankruptcy Code governs a debtor's deposit and investment of cash during its bankruptcy case and authorizes such deposits or investments as "will yield the maximum reasonable net return on such money, taking into account the safety of such deposit or investment." 11 U.S.C. § 345(a). For deposits or investments that are not "insured or guaranteed by the United States or by a department, agency, or instrumentality of the United States or backed by the full faith and credit of the United States," section 345(b) of the Bankruptcy Code requires that the debtor obtain from the "entity with which the money is deposited or invested a bond in favor of the United States [that is] secured by the undertaking of a[n adequate] corporate surety . . . unless the court for cause orders otherwise." *Id.*

39. Courts may waive compliance with section 345 of the Bankruptcy Code and the U.S. Trustee Guidelines for "cause," recognizing that they are often impractical and potentially detrimental to a debtor's postpetition business operations and restructuring efforts. *See, e.g., In re Seger*, 444 B.R. 492, 493 (Bankr. D. Mass. 2011) (stating that, for cause the court can waive the requirements of 345(b) for chapter 7 and chapter 11 trustees); *see also In re Serv. Merch. Co., Inc.*, 240 B.R. 894, 896 (Bankr. M.D. Tenn. 1999) (finding that cause existed to waive the requirements of 345(b) for the debtor).

40. As set forth above, all of the Bank Accounts are maintained at well-capitalized, highly rated banks that are either insured by the FDIC or its Swiss-equivalent. Because the Bank Accounts are vital to the Cash Management System and the Debtors' ability to confirm the proposed Plan, and given the prepetition undertakings of the Debtors to open new, compliant Bank Accounts, requiring the Debtors to close their prepetition Bank Accounts or move certain Bank Accounts to different Banks—to, in effect, reestablish their Cash Management System—would be unduly burdensome to the Debtors' operations. Not only that, but such an undertaking would

distract the Debtors and their employees from the important task of continuing to operate the Debtors' businesses in the ordinary course and proceed toward an expeditious exit from subchapter V. Therefore, the Debtors submit that it is in the best interests of the Debtors, their estates, and all parties in interest for the Debtors to continue to maintain the Bank Accounts during the pendency of these subchapter V cases.

### **SATISFACTION OF BANKRUPTCY RULE 6003**

41. Bankruptcy Rule 6003 empowers a court to grant relief within the first 21 days after the Petition Date "to the extent that relief is necessary to avoid immediate and irreparable harm." For the reasons discussed above, authorizing the Debtors to maintain their Cash Management System and granting the other relief requested herein is integral to the Debtors' ability to transition its operations into these subchapter V cases. Failure to receive such authorization and other relief during the first 21 days of this chapter 11 case would severely disrupt the Debtor's ability to administer its estate at this critical juncture. For the reasons discussed herein, the relief requested is necessary in order for the Debtors to preserve and maximize the value of the Debtor's estates for the benefit of all stakeholders. Accordingly, the Debtors submit that they has satisfied the "immediate and irreparable harm" standard of Bankruptcy Rule 6003 to support granting the relief requested herein.

### **RESERVATION OF RIGHTS**

42. Nothing contained in this Motion or any actions taken by the Debtors pursuant to relief granted by this Court hereunder is intended or should be construed as: (a) an admission as to the validity of any particular claim against the Debtors; (b) a waiver of the Debtors' rights to dispute any particular claim on any grounds; (c) a promise or requirement to pay any particular claim; (d) an implication or admission that any particular claim is of a type specified or defined in



this Motion; (e) a request or authorization to assume any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) a waiver or limitation of the Debtors' rights under the Bankruptcy Code or any other applicable law; or (g) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) satisfied pursuant to this Motion are valid, and the Debtors expressly reserves their rights to contest the extent, validity, or perfection or seek avoidance of all such liens.

**WAIVER OF BANKRUPTCY RULE 6004(a) AND 6004(h)**

43. To implement the foregoing successfully, the Debtors seek a waiver of the notice requirements under Bankruptcy Rule 6004(a) and the fourteen-day stay of an order authorizing the use, sale or lease of property under Bankruptcy Rule 6004(h). As explained above and in the First Day Declaration, the relief requested in this Motion is necessary to avoid immediate and irreparable harm to the Debtors. Accordingly, ample cause exists to justify the waiver of the notice requirements under Bankruptcy Rule 6004(a) and the fourteen-day stay imposed by Bankruptcy Rule 6004(h), to the extent such notice requirements and such stay apply.

**NOTICE**

44. 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)**

/s/ R. Craig Martin  
R. Craig Martin (DE No. 5032)  
Matthew S. Sarna (DE No. 6578)  
1201 North Market Street  
Wilmington, Delaware 19801  
Tel: (302) 468-5700  
Fax: (302) 397-2336  
Email: craig.martin@us.dlapiper.com  
matthew.sarna@us.dlapiper.com

-and-

John K. Lyons (*pro hac vice* admission pending)  
444 West Lake Street, Suite 900  
Chicago, Illinois 60606-0089  
Tel: (312) 368-4000  
Fax: (312) 236-7516  
Email: john.lyons@us.dlapiper.com

*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.*,<sup>1</sup>

Debtors.

Chapter 11, Subchapter V

Case No. 23-10605

(Jointly Administered)

**ORDER (I) AUTHORIZING THE CONTINUED USE OF THE DEBTORS' CASH MANAGEMENT SYSTEM, (II) AUTHORIZING CONTINUED INTERCOMPANY TRANSFERS AMONG DEBTORS, AND (III) GRANTING RELATED RELIEF**

Upon the motion (the "Motion")<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the "Debtors") for entry of an order: (i) authorizing, but not directing, the Debtors to continue to use their current Cash Management System, existing Bank Accounts, and Business Forms, including authorizing the Debtors to open and close bank accounts in the ordinary course of business and authorizing all Banks participating in the Cash Management System to honor certain transfers and charge bank fees and certain other amounts; (ii) authorizing continued Intercompany Transfers; and (iii) granting related relief, all as more fully set forth in the Motion; and upon the First Day Declaration; this Court having found that (i) this Court has jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012, (ii) this Court may enter a final order herewith consistent with Article III of the United States Constitution; (iii) this is a core proceeding pursuant to 28 U.S.C.

---

<sup>1</sup> 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, 19<sup>th</sup> Floor, New York, NY 10016.

<sup>2</sup> Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.

§ 157(b)(2)(A); (iv) venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and (v) no further or other notice of the Motion is required under the circumstances; and having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted in this Order; 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. Except as otherwise provided herein, the Debtors are authorized, but not directed, to: (a) continue operating the Cash Management System; (b) honor its prepetition obligations related thereto; and (c) utilize existing business forms in the ordinary course of business, consistent with historical practice.
3. The Debtors are further authorized, but not directed, to: (a) continue to use, with the same account numbers, the Bank Accounts in existence as of the Petition Date, including those accounts identified on **Exhibit B** to the Motion; (b) use, in their present form, all existing correspondence and business forms (including letterhead and preprinted checks), as well as other documents related to the Bank Accounts existing immediately before the Petition Date, without reference to the Debtors' status as debtors in possession; *provided, however*, to the extent applicable, once the Debtors have exhausted its existing supply of checks and forms, the Debtors will reorder checks and forms with the designation "Debtor in Possession" and the corresponding bankruptcy number on all such checks and forms; *provided, further*, that within 14 days of the entry of this Order, the Debtors will update any electronically produced checks to reflect its status as debtor in possession; (c) treat the Bank Accounts for all purposes as accounts of the Debtors as debtor in possession; (d) deposit funds in and withdraw funds from the Bank Accounts by all

ordinary course of business means, including checks, wire transfers, and other debits; and (e) pay any ordinary course Bank Fees incurred in connection with the Bank Accounts, irrespective of whether such fees arose prior to the Petition Date, and to otherwise perform their obligations under the documents governing the Bank Accounts.

4. The Banks at which the Bank Accounts are maintained are authorized to continue to maintain, service, and administer the Bank Accounts as accounts of the Debtors as debtors in possession, without interruption and in the ordinary course, and to receive, process, honor, and pay, to the extent of available funds, any and all checks, drafts and wires issued and drawn on the Bank Accounts after the Petition Date by the holders or makers thereof, as the case may be.

5. Upon entry of this Order, the Debtors shall contact each Bank at which the Debtors maintain Bank Accounts that are party to a Uniform Depository Agreement with the Office of the U.S. Trustee for the District of Delaware and: (a) provide such bank with the Debtors' employer identification number; and (b) identify each of their bank accounts as being held by a debtor in possession. For Banks that are not party to a Uniform Depository Agreement with the U.S. Trustee, the Debtors shall use their good faith efforts to cause the Banks to execute a Uniform Depository Agreement in a form prescribed by the Office of the United States Trustee within thirty (30) days of entry of this Order.

6. To the extent that the Debtors are not in compliance with the requirements of section 345(b) of the Bankruptcy Code, the Debtors are granted a thirty (30) day extension of time to comply with the investment and deposit requirements of section 345 of the Bankruptcy Code, which extension is without prejudice to the Debtors seeking either a further extension of time to come into compliance or a waiver of compliance with the requirements of section 345(b).

7. All Banks provided with notice of this Order maintaining any of the Bank Accounts shall not honor or pay any bank payments drawn on the listed Bank Accounts, or otherwise issued before the Petition Date, absent further direction from the Debtors.

8. The Debtors are authorized, but not directed, subject to the conditions set forth in this Order, to keep open such Bank Accounts denominated in Swiss (CHF) currency, which, in the Debtors' business judgment, are required to pay certain foreign vendors.

9. In the course of providing cash management services to the Debtors, each of the Banks at which the Bank Accounts are maintained is authorized, without further order of this Court, to deduct the applicable fees and expenses associated with the nature of the deposit and cash management services rendered to the Debtors, whether arising prepetition or postpetition, from the appropriate accounts of the Debtors, and further, to charge back to the appropriate accounts of the Debtors any amounts resulting from returned checks or other returned items, including returned items that result from wire transfers or other electronic transfers of any kind, regardless of whether such items were deposited or transferred prepetition or postpetition and regardless of whether the returned items relate to prepetition or postpetition items or transfers.

10. Subject to the terms set forth herein, including without limitation Paragraph 8 hereof, each of the banks at which the Bank Accounts are maintained is authorized to debit the Debtors' accounts in the ordinary course and without further order of this Court on account of all checks drawn on the Debtors' accounts which have been cashed at such banks' counters or exchanged for cashier's or official checks by the payees thereof prior to the Petition Date.

11. Subject to the terms set forth herein, any bank may rely upon the representations of the Debtors with respect to whether any check, draft, wire, or other transfer drawn or issued by the Debtors prior to the Petition Date should be honored pursuant to any order of this Court, and no

bank that honors a prepetition check or other item drawn on any account that is the subject of this Order (a) at the direction of the Debtors, (b) in a good-faith belief that this Court has authorized such prepetition check or item to be honored, or (c) as a result of an innocent mistake made despite implementation of customary item handling procedures, shall be deemed to be nor shall be liable to the Debtors or their estates on account of such prepetition check or other item being honored postpetition, or otherwise deemed to be in violation of this Order.

12. Any and all banks are further authorized to (a) honor the Debtors' directions with respect to the opening and closing of any Bank Account and (b) accept and hold the Debtors' funds in accordance with the Debtors' instructions; *provided, however*, the Debtors' Banks shall not have any liability to any party for relying on such representations.

13. The Debtors are authorized to open any new Bank Accounts or close any existing Bank Accounts as it may deem necessary and appropriate in its sole discretion; *provided, however*, the Debtors shall give notice within fifteen (15) days to the U.S. Trustee of the opening or closing of any Bank Accounts; *provided, further*, that the Debtors shall open any such new bank account at banks that have executed a Uniform Depository Agreement with the U.S. Trustee, or at such banks that are willing to immediately execute such an agreement.

14. The requirement to establish separate accounts for cash collateral and/or tax payments is hereby waived.

15. The Debtors are authorized to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a consequence of these subchapter V cases with respect to prepetition amounts owed in connection with any Bank Fees.



16. Notwithstanding the relief granted in this Order and any actions taken pursuant to such relief, nothing in this Order shall be deemed: (a) an admission as to the validity of any prepetition claim against the Debtors; (b) a waiver of the Debtors' right to dispute any prepetition claim on any grounds; (c) a promise or requirement to pay any prepetition claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Order or the Motion; (e) a request or authorization to assume any prepetition agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) a waiver or limitation of the Debtors' rights or the rights of any other Person under the Bankruptcy Code or any other applicable law; or (g) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) satisfied pursuant to the Motion are valid, and the Debtors expressly reserves its rights to contest the extent, validity, or perfection or seek avoidance of all such liens.

17. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Order are effective immediately and enforceable upon its entry.

18. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Order in accordance with the Motion.

19. This Court retains jurisdiction with respect to all matters arising from or related to the interpretation and implementation of this Order.

**EXHIBIT B**

**Bank Account List**

<b>Account Holder</b>	<b>Bank</b>	<b>Account Number</b>	<b>Account Type</b>	<b>Amounts Held in Account</b>	<b>Address</b>	<b>Phone</b>
Vyera Pharmaceuticals, LLC	BCB Bank	****0325	Commercial Checking	\$7,757,001.25	591-595 Avenue C, Bayonne, NJ 07002	800-680-6872
Vyera Pharmaceuticals, LLC	BCB Bank	****0021	Money Market	\$50,474.37	591-595 Avenue C, Bayonne, NJ 07002	800-680-6872
Oakrum Pharma, LLC	BCB Bank	****0341	Commercial Checking	\$1,027,451.82	591-595 Avenue C, Bayonne, NJ 07002	800-680-6872
Oakrum Pharma, LLC	BCB Bank	****0047	Money Market	\$50,471.90	591-595 Avenue C, Bayonne, NJ 07002	800-680-6872
SevenScore Pharmaceuticals, LLC	BCB Bank	****0333	Commercial Checking	\$288,379.13	591-595 Avenue C, Bayonne, NJ 07002	800-680-6872
SevenScore Pharmaceuticals, LLC	BCB Bank	****0039	Money Market	\$50,471.90	591-595 Avenue C, Bayonne, NJ 07002	800-680-6872
Phoenixus AG	Credit Suisse	****4251	Brokerage Account	CHF \$0	Credit Suisse (Switzerland) Ltd, CH-8070 Zurich (0823)	031 358 64 90
Phoenixus AG	Credit Suisse	****2000	USD Account	\$733,718.22	Credit Suisse (Switzerland) Ltd, CH-8070 Zurich (0823)	031 358 64 90
Phoenixus AG	Credit Suisse	****1000	CHF Account	CHF \$364,742.12	Credit Suisse (Switzerland) Ltd, CH-8070 Zurich (0823)	031 358 64 90

Phoenixus AG (Orphan Star AG)	PostFinance AG	****9177	CHF Account	CHF \$30,037.65	CH-4808 Zofingen	41 848 888 900
Orpha Labs AG	Credit Suisse	****2000	USD Account	\$134,634.31	Credit Suisse (Switzerland) Ltd, CH-8070 Zurich (0823)	031 358 64 90
Orpha Labs AG	Credit Suisse	****1000	CHF Account	CHF \$28,261.98	Credit Suisse (Switzerland) Ltd, CH-8070 Zurich (0823)	031 358 64 90