

**IN 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 (I) AUTHORIZING THE DEBTORS TO PAY CERTAIN PREPETITION CLAIMS OF FOREIGN VENDORS, (II) AUTHORIZING BANKS TO HONOR AND PROCESS CHECK AND ELECTRONIC TRANSFER REQUESTS RELATED THERETO, AND (III) GRANTING RELATED RELIEF

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”), pursuant to sections 105(a), 363(b), 503(b)(9), 1107(a) and 1108 of title 11 of the United States Code (the “Bankruptcy Code”), and Rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), (i) authorizing, but not directing, the Debtors, in their sole discretion, to pay, in the ordinary course of business the prepetition claims of certain foreign vendors and service providers located outside the U.S. and (ii) authorizing banks and other financial institutions (collectively, the “Banks”) to honor and process check and electronic transfer requests related to the foregoing. The facts and circumstances supporting this Motion are set forth in the concurrently filed *Declaration of Lawrence R. Perkins in Support of the Debtors’ Subchapter V Petitions and First Day Pleadings*

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.

(the “First Day Declaration”).² 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 pursuant to 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 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 are sections 105(a), 363(b), 503(b)(9), 1107(a) and 1108 of the Bankruptcy Code, Bankruptcy Rules 6003 and 6004, and Local Rule 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 subchapter V. Additional information about the Debtors’ businesses and the events leading to the

² Capitalized terms used herein but not otherwise defined herein shall have the meanings ascribed to such terms in the First Day Declaration.

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. Foreign Vendor Claims

7. As discussed in the First Day Declaration, the Debtors develop orphan drugs, which treat rare diseases and conditions impacting a small portion of the world's population. The operation of these businesses requires the Debtors to rely on third-party vendors and suppliers that provide the Debtors with, among other things, drug trial managers, essential manufacturing components, and distribution services. Given the international nature of the research and development of these particular pharmaceutical products and therapies, the Debtors regularly transact with key vendors located outside of the United States that are critical and necessary to the Debtors' operations (the "Foreign Vendors,"³ whose claims are identified herein collectively as the "Foreign Vendor Claims").

8. Although the scope of the automatic stay set forth under section 362 of the Bankruptcy Code is universal, the Foreign Vendors involved in the Debtors' international operations may not be subject to the jurisdiction of this Court. The Debtors have been informed

³ The term "Foreign Vendors" shall not include foreign vendors, service providers, or other non-governmental entities if such entities are known to have assets within the United States that would be subject to the jurisdiction of this Court and that would otherwise be available to satisfy a judgment entered by the Court if such entities were to violate the automatic stay provisions of section 362 of the Bankruptcy Code or take any actions contrary to an order of this Court. A complete list identifying the Foreign Vendors will be made available to the U.S. Trustee and the Court and will be made available on an "attorney's eyes only" basis to counsel to any official committee, if any, appointed in these subchapter V cases.

by their Swiss counsel that Switzerland retains exclusive jurisdiction over any bankruptcy proceeding in respect to Phoenixus AG and Orpha Labs AG (collectively, the “Swiss Debtors”) and a US bankruptcy proceeding concerning the Swiss Debtors will not be recognized in Switzerland. Similarly, Swiss counsel has advised the Debtors that this Court will not have jurisdiction over the claims of Swiss creditors⁴ which are subject to the exclusive jurisdiction of Switzerland. As a result, despite the commencement of these subchapter V cases and the imposition of the automatic stay, upon any nonpayment of prepetition Foreign Vendor Claims, the Foreign Vendors may take action against the Debtors in Switzerland or in another non-US jurisdiction. Absent enforcement of the automatic stay, the Foreign Vendors could, among other things, initiate a lawsuit in a foreign court, obtain a judgment against the Debtors, and attempt to collect upon prepetition amounts due and owing from the Debtors’ estates which would disrupt the orderly process commenced under these subchapter V cases.

9. Unsurprisingly, foreign vendors are often skeptical of the United States bankruptcy process and doubt a chapter 11 debtor’s ongoing ability to conduct business in the ordinary course throughout a bankruptcy proceeding. It follows that any nonpayment of prepetition claims may cause the Foreign Vendors to take other precipitous actions, including delaying supply until more certainty develops with respect to the Debtors’ subchapter V cases and commence foreign proceedings to recover the amounts owed by the Debtors.

10. In light of these consequences, the Debtors believe that payment of prepetition Foreign Vendor Claims on the terms set forth herein is necessary to avoid interruptions to the supply chain and disruptive foreign litigation during the initial phases of these subchapter V cases

⁴ Such entities are known to have no assets within the United States that would be subject to the jurisdiction of this Court and that would otherwise be available to satisfy a judgment entered by the Court if such entities were to violate the automatic stay provisions of section 362 of the Bankruptcy Code or take any actions contrary to an order of this Court.

which are critical. The quantum of estimated Foreign Vendor Claims pales in comparison to the potential cost to the Debtors' estate if the Debtors were required to defend multiple foreign actions during these subchapter V cases. Therefore, the Debtors, their estates, and their stakeholders would benefit from the relief requested herein.

11. As of the Petition Date, there are no known amounts that have been incurred and remain unpaid to the Foreign Vendors. However, there may be Foreign Vendors that have not submitted their invoices on account of their prepetition expenses to the Debtors prior to the Petition Date. Therefore, in an abundance of caution, by this Motion, the Debtors seek authority, but not direction, to pay any invoices received following the Petition Date which relate to prepetition amounts owed to the Foreign Vendors.

RELIEF REQUESTED

12. By this Motion, the Debtors request the Court enter an order, substantially in the form of the Proposed Order, pursuant to sections 105(a), 363(b), 503(b)(9), 1107(a) and 1108 of the Bankruptcy Code, and Bankruptcy Rules 6003 and 6004, (i) authorizing, but not directing, the Debtors, in their sole discretion, to pay, prepetition Foreign Vendor Claims, (ii) authorizing the Banks to honor and process check and electronic transfer requests related to the foregoing, and (iii) granting related relief.

13. The Debtors further request that they be authorized, but not directed, to condition the payment of all Foreign Vendor Claims on the agreement of each Foreign Vendor to continue to supply goods and/or services to the Debtors on terms that are consistent with the most favorable trade terms, practices, and programs in effect between the Foreign Vendor and the Debtors in the six months prior to the Petition Date (collectively, the "Customary Trade Terms"), or such other trade terms as are agreed to by the Debtors and the Foreign Vendor.

BASIS FOR RELIEF

A. The Court should authorize, but not direct, the Debtors, in their discretion, to pay the Foreign Vendor Claims.

I. Sections 105(a) and 363 of the Bankruptcy Code warrant the payment of the Foreign Vendor Claims.

14. The Court may authorize payment of the prepetition Foreign Vendor Claims pursuant to section 363 of the Bankruptcy Code. Section 363(b)(1) of the Bankruptcy Code provides that a debtor “after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate” 11 U.S.C. § 363(b)(1). “In determining whether to authorize the use, sale or lease of property of the estate under this section, courts require the debtor to show that a sound business purpose justifies such actions.” *Dai-Ichi Kangyo Bank, Ltd. v. Montgomery Ward Holding Corp. (In re Montgomery Ward Holding Corp.)*, 242 B.R. 147, 153 (D. Del. 1999). *See also In re Phx. Steel Corp.*, 82 B.R. 334, 335–36 (Bankr. D. Del. 1987) (requiring “good business reason” for use under section 363(b) of the Bankruptcy Code). This standard prohibits other parties from second-guessing the debtor’s business judgment if the debtor has shown that the proposed use will benefit the debtor’s estate. *See In re Johns-Manville Corp.*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986) (“Where the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor’s conduct.”); *see also In re Tower Air, Inc.*, 416 F.3d 229, 238 (3d Cir. 2005) (“Overcoming the presumptions of the business judgment rule on the merits is a near-Herculean task.”). Under this section, a court may authorize a debtor to pay certain prepetition claims. *See In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) (finding that a sound business justification existed to justify payment of certain claims); *In re Hancock Fabrics, Inc.*, Case No. 07-10353 (BLS) (Bankr. D. Del. Mar. 22, 2007) (pursuant to

section 363, authorizing payment of prepetition claims to certain vendors deemed critical by debtors).

15. Payment of the Foreign Vendor Claims as provided herein represents a sound exercise of the Debtors' business judgment. Recognizing the limitations of the Bankruptcy Code with respect to Foreign Vendors, the Debtors submit that payment of the Foreign Vendor Claims is essential to the business purpose of maintaining the flow of services, in particular, to the ORL-101 research program (further detailed in the First Day Declaration). As detailed above, the Debtors believe that many of the Foreign Vendors may be unfamiliar with the subchapter V process, particularly those in countries with liquidation-oriented insolvency regimes. The Debtors understand that the "debtor-in-possession" concept at the heart of chapter 11 does not exist in other countries where "bankruptcy" is equivalent to "liquidation." Absent prompt and full payment of the Foreign Vendor Claims, the Foreign Vendors may therefore refuse to provide the supplies, and services that are required by the Debtors during the pendency of these subchapter V cases.

16. The Debtors also believe that there is a serious risk that certain of the Foreign Vendors holding prepetition claims against the Debtors may consider themselves to be beyond the jurisdiction of the Court, disregard the automatic stay provisions of the Bankruptcy Code, and engage in conduct that would disrupt the Debtors' operations. Although the scope of the automatic stay set forth in section 362 of the Bankruptcy Code is universal, the Debtors have been informed by their Swiss counsel that Swiss law provides for exclusive jurisdiction over any form of bankruptcy proceedings with respect to the Swiss Debtors. Therefore, an order by this Court will not be automatically recognized in Switzerland. Thus, efforts by the Debtors to enforce this Court's orders and the applicable provisions of the Bankruptcy Code against them could be cost-

prohibitive, time-consuming, and, possibly, of little practical value as these Foreign Vendors are located in jurisdictions outside of the United States.

17. Additionally, section 105(a) of the Bankruptcy Code empowers a bankruptcy 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). Bankruptcy courts have invoked the equitable power of section 105 of the Bankruptcy Code to authorize the postpetition payment of prepetition claims of “critical vendors” and foreign vendors, where such payment is necessary to preserve the value of a debtor’s estate. *See, e.g., In re Jeans.com, Inc.*, 502 B.R. 250, 257 (Bankr. D.P.R. 2013) (“[A] bankruptcy court may utilize Section 105(a) together with Section 363 of the Bankruptcy Code to justify the grant of a critical vendor order under appropriate circumstances.”); *Tropical Sportswear Int’l Corp.*, 320 B.R. 15, 20 (Bankr. M.D. Fla. 2005) (“Bankruptcy courts recognize that section 363 is a source for authority to make critical vendor payments, and section 105 is used to fill in the blanks.”).

18. Courts have likewise acknowledged that “[u]nder [section] 105, the court can permit pre-plan payment of a prepetition obligation when essential to the continued operation of the debtor.” *In re NVR L.P.*, 147 B.R. 126, 127 (Bankr. E.D. Va. 1992) (citing *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 177 (Bankr. S.D.N.Y. 1989)); *see In re Just for Feet, Inc.*, 242 B.R. 821, 825 (D. Del. 1999) (citing *In re Penn Cent. Transp. Co.*, 467 F.2d 100, 102 n.1 (3d Cir. 1972)) (holding that the court is authorized under section 105(a) of the Bankruptcy Code to allow immediate payment of prepetition claims of vendors found to be critical to the debtor’s continued operation); *see also In re Chassix Holdings, Inc.*, Case No. 15-10578 (MEW) (Bankr. S.D.N.Y. Apr. 14, 2015) (authorizing debtors to pay foreign vendors pursuant to sections 363(b) and 105(a)); *In re Lear Corp.*, Case No. 09-14326 (ALG) (Bankr. S.D.N.Y. July 31, 2009) (same).

19. In a long line of well-established cases, federal courts consistently have permitted postpetition payment of prepetition obligations where necessary to preserve or enhance the value of a debtor's estate for the benefit of all creditors. *See, e.g., Miltenberger v. Logansport Railway Co.*, 106 U.S. 286, 312 (1882) (payment of pre-receivership claim permitted to prevent “stoppage of [crucial] business relations”); *In re Lehigh & New England Railway Co.*, 657 F.2d 570, 581 (3d Cir. 1981) (“If payment of a claim which arose prior to reorganization is essential to the continued operation of the [business] during reorganization, payment may be authorized even if it is made out of corpus”); *In re Boston & Maine Corp.*, 634 F.2d 1359, 1382 (1st Cir. 1980) (recognizing existence of a judicial power to authorize trustees to pay claims for goods and services that are indispensably necessary to debtors' continued operation).

20. The “doctrine of necessity” functions as a mechanism by which a bankruptcy court can exercise its equitable power to allow payment of critical prepetition claims not explicitly authorized by the Bankruptcy Code. *See In re Just for Feet, Inc.*, 242 B.R. at 826 (granting approval to pay prepetition claims of certain trade vendors which were critical to debtors' reorganization); *In re Columbia Gas Sys., Inc.*, 171 B.R. 189, 191–92 (Bankr. D. Del. 1994) (noting that debtors may pay prepetition claims that are essential to continued operation of business); *In re Ionosphere Clubs, Inc.*, 98 B.R. at 176 (stating that “necessity of payment” doctrine “recognizes the existence of the judicial power to authorize a debtor in a reorganization case to pay prepetition claims where such payment is essential to the continued operation of the debtor”); 2 Alan N. Resnick & Henry J. Sommer, *Collier on Bankruptcy* ¶ 105.02[4][a] (16th ed. 2016) (discussing cases in which courts have relied on the “doctrine of necessity” or the “necessity of payment” rule to pay prepetition claims immediately).

21. The doctrine of necessity is frequently invoked early in bankruptcy cases when preservation of the estate is most critical and often extremely difficult. For that reason, bankruptcy courts routinely invoke their equitable powers to authorize a debtor to pay certain critical prepetition claims under the doctrine of necessity where failure to make such payments threatens to disrupt a debtor's efforts to progress in their chapter 11 proceedings. *See, e.g., In re Eagle-Picher Indus., Inc.*, 124 B.R. 1021, 1023 (Bankr. S.D. Ohio 1991) (stating that "to justify payment of a pre-petition unsecured creditor, a debtor must show that the payment is necessary to avert a serious threat to the Chapter 11 process"); *In re Quality Interiors, Inc.*, 127 B.R. 391, 396 (Bankr. N.D. Ohio 1991) ("A general practice has developed . . . where bankruptcy courts permit the payment of certain pre-petition claims, pursuant to 11 U.S.C. § 105, where the debtor will be unable to reorganize without such payment.").

22. Payment of Foreign Vendor Claims is necessary to ensure continued operation of the Debtors' businesses in the United States and in Switzerland and enhance the value of the Debtors' estates. The Debtors require continuing performance from their Foreign Vendors to have access to a supply of services which are available from a limited number of suppliers. As explained above, it is also vital that the Foreign Vendors do not commence any claims against the Debtors in a foreign jurisdiction for unpaid prepetition Foreign Vendor Claims. Foreign litigation may cause the Debtors to enter into an uncontrolled freefall liquidation in a foreign jurisdiction where the Debtors are displaced from the management of the liquidation and is unlikely to result in a value maximizing process for stakeholders.

23. The Debtors submit that the total amount to be paid to the Foreign Vendors is minimal compared to the potential cost of defending foreign litigation commenced by the Foreign Vendors or commencement of a liquidation in Switzerland. The relief requested herein represents

a sound exercise of the Debtors' business judgment, is necessary to avoid potential irreparable harm to the Debtors' estates and is therefore justified under sections 105(a) and 363(b) of the Bankruptcy Code. Accordingly, the Debtors submit that the Court should exercise its equitable power to grant the relief requested herein.

II. The Court should authorize payment of the Foreign Vendor Claims as a valid exercise of the Debtors' fiduciary duties.

24. Authority for satisfying the Foreign Vendor Claims also may be found in sections 1107(a) and 1108 of the Bankruptcy Code. The Debtors, operating their business as a debtor in possession under sections 1107(a), 1108, and 1184 of the Bankruptcy Code, are fiduciaries "holding the bankruptcy estate[s] and operating the business[es] for the benefit of [their] creditors and (if the value justifies) equity owners." *In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002). Implicit in the duties of a chapter 11 debtor in possession is the duty "to protect and preserve the estate, including an operating business's going-concern value." *Id.*

25. Courts have noted that there are instances in which a debtor in possession can fulfill its fiduciary duty "only by the preplan satisfaction of a prepetition claim." *Id.* The *CoServ* court specifically noted that preplan satisfaction of prepetition claims would be a valid exercise of a debtor's fiduciary duty when the payment "is the only means to effect a substantial enhancement of the estate," and also when the payment was to "sole suppliers of a given product." *Id.* The court provided a three-pronged test for determining whether a preplan payment on account of a prepetition claim was a valid exercise of a debtor's fiduciary duty:

First, it must be critical that the debtor deal with the claimant. Second, unless it deals with the claimant, the debtor risks the probability of harm, or, alternatively, loss of economic advantage to the estate or the debtor's going concern value, which is disproportionate to the amount of the claimant's prepetition claim. Third, there is no practical or legal alternative by which the debtor can deal with the claimant other than by payment of the claim.

Id.

26. Payment of the Foreign Vendor Claims meets each element of the *CoServ* court's standard. As described above, the Debtors believe that the Foreign Vendors may erroneously believe that they are not subject to the automatic stay provisions of section 362(a) of the Bankruptcy Code and are likely to pursue a claim for their prepetition balances against the Debtors in a foreign jurisdiction which will need to be litigated separately by the Debtors. Such action would be a costly expense to the Debtors, would diminish estate value and frustrate the Debtors' chapter 11 efforts. The harm and economic disadvantage that would stem from any of the Foreign Vendors initiating a claim against the Debtors in a foreign jurisdiction is disproportionate to the amount of the Foreign Vendor Claims.

27. Finally, the Debtors have examined other options short of payment of the Foreign Vendor Claims and have determined that, to avoid the cost of defending potential claims brought against them by the Foreign Vendors in a foreign jurisdiction, there exists no practical alternative to their payment of the Foreign Vendor Claims. Therefore, the Debtors can only meet their fiduciary duties as debtors in possession under sections 1107(a), 1108, and 1184 of the Bankruptcy Code by payment of the Foreign Vendor Claims.

B. The Court should authorize the Banks to honor and process the Debtors' payments on account of the Foreign Vendor Claims.

28. The Debtors also request the Court to authorize the Banks, when requested by the Debtors, in their discretion, to honor and process checks or electronic fund transfers drawn on the Debtors' bank accounts to pay prepetition obligations described herein, whether such checks or other requests were submitted prior to, or after, the Petition Date, provided that sufficient funds are available in the applicable bank accounts to make such payments. The Debtors further request

that all of the Banks be authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved pursuant to this Motion.

SATISFACTION OF BANKRUPTCY RULE 6003(b)

29. Pursuant to Bankruptcy Rule 6003(b), any motion seeking to use property of the estate pursuant to section 363 of the Bankruptcy Code or to satisfy prepetition claims within twenty-one days of the Petition Date requires the Debtors to demonstrate that such relief "is necessary to avoid immediate and irreparable harm." For the reasons discussed above, the Debtors believe an immediate and orderly transition into chapter 11 is critical to the success of their section 363 sale process and may cause irreparable harm to the detriment and prejudice of all of the Debtors' stakeholders. The Debtors have experienced challenging market conditions and negative publicity associated with the Debtors' business, the Debtors cannot afford any further public litigation or present anything less than a "business as usual" appearance to potential buyers of the Debtors' assets.

30. Moreover, it is the Debtors' business judgment that continuation of their positive relationship with the Foreign Vendors is essential to avoid any disruption to their operations and increases the likelihood of successfully completing the asset sales through these subchapter V cases. Thus, if the relief requested herein is not granted, this would substantially diminish or impair the Debtors' efforts in these subchapter V cases to preserve and maximize the value of their estates.

31. For this reason and those set forth above, the Debtors respectfully submit that Bankruptcy Rule 6003(b) has been satisfied and the relief requested herein is necessary to avoid immediate and irreparable harm to the Debtors and their estates.

WAIVER OF STAY UNDER BANKRUPTCY RULE 6004(h)

32. Pursuant to Bankruptcy Rule 6004(h), “[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.” Fed. R. Bankr. P. 6004(h). As set forth throughout this Motion, any disruption to the Debtors’ subchapter V cases and proposed sale and/or plan process as a result of the Foreign Vendors commencing foreign litigation would be detrimental to the Debtors, their creditors and estates, and would impair the Debtors’ ability to maximize value for the estate at this critical time as they begin the subchapter V process.

33. For this reason and those set forth above, the Debtors submit that ample cause exists to justify a waiver of the fourteen-day stay imposed by Bankruptcy Rule 6004(h), to the extent applicable to the Proposed Order.

RESERVATION OF RIGHTS

34. Nothing contained in this Motion is intended or shall be construed as (i) an admission as to the validity of any claim against the Debtors; (ii) impair, prejudice, waive, or otherwise affect the rights of the Debtors or their estates to dispute the amount of, basis for, nature, validity, or priority of any claim against the Debtors; (iii) impair, prejudice, waive or otherwise affect the rights of the Debtors or their estates with respect to any and all claims or causes of action which may exist against any third party; (iv) be construed as an approval, assumption, adoption, or rejection of any agreement, contract, lease, program, or policy between any Debtor and any third party under section 365 of the Bankruptcy Code; or (v) create any rights in favor of, or enhance the status or nature of any claim held by, any person.

NOTICE

35. Notice of this Motion will be provided in accordance with the Local Rules to: (i) the Office of the United States Trustee for the District of Delaware; (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); (x) Foreign Vendors; and (xi) all parties requesting notice pursuant to 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.

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CONCLUSION

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

Dated: May 10, 2023
Wilmington, Delaware

Respectfully submitted,

DLA PIPER LLP (US)

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-and-

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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

Case No. 23-10605

(Jointly Administered)

**ORDER (I) AUTHORIZING THE DEBTORS TO PAY CERTAIN PREPETITION
CLAIMS OF FOREIGN VENDORS, (II) AUTHORIZING BANKS TO HONOR AND
PROCESS CHECK AND ELECTRONIC TRANSFER REQUESTS RELATED
THERE TO, AND (III) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”),² filed by the above-captioned debtors (collectively, the “Debtors”), for the entry of the order (this “Order”) (i) authorizing, but not directing, the Debtors, in their discretion, to pay Foreign Vendor Claims in the ordinary course of business, (ii) authorizing the Banks to honor and process check and electronic transfer requests related to the foregoing, 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

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 herein shall have the meanings ascribed to them 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. The Debtors are authorized, but not directed, to pay, honor or otherwise satisfy prepetition Foreign Vendor Claims without further Order of this Court.
3. The Debtors are authorized, but not directed, to condition the payment of a Foreign Vendor Claim on the agreement of the applicable Foreign Vendor to continue supplying goods and services to the Debtors on the Customary Trade Terms, or such other trade terms as are agreed to by the Debtors and the applicable Foreign Vendor.
4. The Banks are authorized, when requested by the Debtors, to honor and process checks or electronic fund transfers drawn on the Debtors' bank accounts to pay prepetition obligations authorized to be paid hereunder, whether such checks or other requests were submitted prior to, or after, the Petition Date, provided that sufficient funds are available in the applicable bank accounts to make such payments. The Banks may rely on the directions and representations of the Debtors with respect to whether any check or other transfer drawn or issued by the Debtors prior to the Petition Date should be honored and paid pursuant to this Order, and any such Bank

shall not have any liability to any party for relying on such representations by the Debtors, as provided for in this Order.

5. The Banks are authorized, at the direction of the Debtors, to honor and process all prepetition and postpetition checks and fund transfers on account of the Foreign Vendor Claims that had not been honored and paid as of the Petition Date, provided that sufficient funds are on deposit in the applicable accounts to cover such payments and any such Bank shall not have any liability to any party for relying on such direction by the Debtors as provided for in this Order or for inadvertently failing to follow such direction.

6. Nothing in this Order (a) is intended or shall be deemed to constitute an assumption of any agreement pursuant to section 365 of the Bankruptcy Code or an admission as to the validity of any claim against the Debtors and their estates, (b) shall impair, prejudice, waive or otherwise affect the rights of the Debtors and their estates with respect to the validity, priority or amount of any claim against the Debtors and their estates, or (c) shall be construed as a promise to pay a claim.

7. The Debtors are authorized to take any and all actions necessary to effectuate the relief granted herein.

8. Notwithstanding any applicability of Bankruptcy Rule 6004(h), the terms and conditions of this Order shall be effective immediately and enforceable upon its entry.

9. This Court shall retain jurisdiction with respect to all matters arising from or related to the interpretation or implementation of this Order.