IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

In re:	)	Chapter 11
LAVIE CARE CENTERS, LLC,[1]	)	Case No. 24-55507 (PMB)
Debtors.	)	(Jointly Administered)
	)	**Related to Docket Nos. 481, 571, 593, 630**

DECLARATION OF MICHAEL KRAKOVSKY IN SUPPORT OF CONFIRMATION AND FINAL APPROVAL OF DEBTORS' SECOND AMENDED COMBINED DISCLOSURE STATEMENT AND JOINT CHAPTER 11 PLAN OF REORGANIZATION

I, Michael Krakovsky, pursuant to 28 U.S.C. § 1746, hereby declare under penalty of perjury the following is true and correct to the best of my knowledge and belief:

1. I am a Managing Director and Head of Special Situations with Stout Capital, LLC ("Stout"), which has its principal office at One South Wacker Dr., Chicago, IL 60606. I am a special situation and financial restructuring expert with over 23 years of experience in financial restructuring investment banking, primarily advising middle-market debtors and creditors in both in and out-of-court restructuring transactions. Prior to joining Stout in 2016 (where I launched the firm's Special Situations practice), I spent 13 years as a senior member of the Financial Restructuring Group at Houlihan Lokey. I was also previously a Managing Director of Levine Leichtman's Deep Value distressed debt fund. I began my career as a transactional attorney at

[1] The last four digits of LaVie Care Centers, LLC's federal tax identification number are 5592. There are 282 Debtors in these chapter 11 cases, which are being jointly administered for procedural purposes only. A complete list of the Debtors and the last four digits of their federal tax identification numbers are not provided herein. A complete list of such information may be obtained on the website of the Debtors' claims and noticing agent at https://www.veritaglobal.net/LaVie. The location of LaVie Care Centers, LLC's corporate headquarters and the Debtors' service address is 1040 Crown Pointe Parkway, Suite 600, Atlanta, GA 30338.

Irell & Manella LLP. I earned a J.D. from Columbia University School of Law and a B.S.E.E. from the University of Michigan.

2. Stout has been retained as investment bankers and financial advisors in a number of troubled company situations, including, among others, the following chapter 11 cases: Westlake Surgical L.P., Better 4 You Breakfast, Inc., Alliant Tech. L.L.C., Country Fresh Holding Co. Inc., LifeCare Holdings LLC., Goodrich Quality Theatres, Inc., Nuvectra Corp., Acadiana Mgmt. Grp., and, previously, I have worked on numerous debtor and creditor side engagements including Altegrity, Inc., Hawaiian Telcom Communications, Inc., Oriental Trading Co., EaglePicher Holdings, Inc., and Frontier Airlines Holdings, Inc.

3. I submit this declaration (this "Declaration") in support of confirmation of the *Debtors' Second Amended Combined Disclosure Statement and Joint Chapter 11 Plan of Reorganization*, filed on October 1, 2024 [Docket No. 481] (as may be amended, supplemented, or otherwise modified from time to time, the "Combined Disclosure Statement and Plan") and the *Debtors' Memorandum of Law in Support of Confirmation of Second Amended Combined Disclosure Statement and Joint Chapter 11 Plan of Reorganization and (II) Omnibus Reply to Objections to Confirmation and Motion to Dismiss* (the "Confirmation Brief"), filed concurrently herewith.[2]

4. Except as otherwise indicated, all statements set forth in this Declaration are based upon my personal knowledge, my review of relevant documents, information provided to me by members of the Debtors' management team or their advisors, or based on my experience, knowledge, and information. If called upon to testify, I would testify competently to the facts set forth in the Declaration.

[2] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Combined Disclosure Statement and Plan or the Confirmation Brief, as applicable.

THE DEBTORS' MARKETING AND SALE PROCESS

5. Pursuant to an engagement letter dated May 28, 2024, Stout was retained by the Debtors to run a comprehensive marketing and sale process for the Debtors' assets. Immediately upon engagement, Stout met with representatives of the Debtors and began assembling a virtual data room to launch the sale process in an efficient manner shortly after the Effective Date of the engagement letter. During this process, Stout assembled a potential buyer list, in consultation with its Healthcare Industry investment banking team, which included both strategic and financial purchasers, and ultimately was expanded to nearly 150 potential purchasers. In doing so, Stout included skilled nursing operators that also acted as operators in other portfolios for the Debtors' landlords. In addition, Stout solicited input for additional buyers from the UCC's financial advisor and counsel to the pre-petition Omega secured parties throughout the process.

6. On June 23, 2024, in advance of launching the sale and marketing process, the Debtors implemented certain transaction protocols (collectively, the "Transaction Protocol") to ensure that all aspects of the marketing and sale process and relevant procedures were fair and equitable for the benefit of all potential bidders. Among other things, the Transaction Protocol ensured that Stout, and Stout alone, would (a) handle all direct dialogue with potential bidders; (b) arrange any requested site visits with only facility-level employees in attendance; and (c) schedule presentations with the Debtors' management. The Transactions Protocol also ensured that no representatives from TIX 33433, LLC (the "TIX DIP Lender"), Pourlessoins, LLC d/b/a Synergy Healthcare Services ("Synergy Services"), or Zomleben, LLC d/b/a Synergy Healthcare Solutions ("Synergy Solutions") would have any direct dialogue with any potential bidders, nor would TIX DIP Lender, Synergy Services, or Synergy Solutions be involved in the Debtors' deliberations or decision-making process with respect to any evaluation or selection of bids or

proposals. In my opinion, the Transaction Protocol was reasonable and appropriate to ensure a level playing field across all potential bidders during the Debtors' sale and marketing process and helped ensure that the Debtors' information and analysis was shared in the same manner with all potential bidders.

7. Under my supervision, and pursuant to the approved Bidding Procedures [Docket No. 177], Stout launched the broad marketing process of the Debtors' skilled nursing facilities on June 24, 2024 by distributing a two-page "teaser" and non-disclosure agreement (each, an "NDA") to 147 prospective buyers. 34 parties executed NDAs and received the Confidential Information Memorandum (the "CIM"), which provided, among other things, additional detailed information regarding the Debtors' operations and historical and projected financial performance. In addition, 19 parties that received and reviewed the CIM were granted access to a virtual data room (the "VDR") maintained by my team at Stout, which contained, among other things, financial statements, asset listings, lease agreements and other contracts, information regarding the Debtors' facilities, and regulatory and other information relating to the Debtors' operations.

8. On July 9, 2024, Stout, under my supervision and at my direction, distributed a process letter to all active parties (*i.e.*, parties that had not confirmed they were a "pass") which requested submission of written, non-binding indications of interest (each, an "IOI" and collectively, the "IOIs") by August 5, 2024. My team advised prospective buyers that IOIs submitted after August 5, 2024 would still be considered so long as the prospective buyer could complete diligence and submit a definitive and binding final bid by the September 5, 2024 deadline as required by the Bidding Procedures Order.

9. Ultimately, only two parties submitted written IOIs, each of which expressed interest in acquiring only a subset of the Debtors' facilities. The three facilities leased by the

Debtors from the Elderberry Landlords were included in both IOIs, and one IOI included two additional facilities leased by the Debtors under the Omega Master Lease. The Stout team, at my direction, invited both prospective parties to conduct onsite diligence of the Elderberry Facilities, and site visits with each of these parties were conducted the week of August 19, 2024. Following the site visits, one of the parties submitted a revised IOI that proposed a reduced purchase price and excluded one of the Elderberry facilities. I, along with the Stout team, continued to facilitate diligence requests from other interested parties (including parties that did not submit written IOIs). Stout, at my direction, distributed a final process letter on September 3, 2024, reminding the prospective bidders of the September 5, 2024 final bid deadline and the requirements for submitting a qualified bid, including a markup of the form operations transfer agreement (a copy of which was provided to interested parties in the VDR).

10. Ultimately, neither of these parties submitted a formal bid, and each of them indicated to me that they were no longer interested. As a result, the Debtors did not receive any qualified bids on or after the September 5, 2024 deadline, other than a letter from the DIP Lenders (already deemed to be "Qualified Bidders" under the Bidding Procedures Order) that they intended to attend and participate at the auction. Accordingly, the Debtors, in their business judgment and after consultation with the Consultation Parties (as defined in the Bidding Procedures Order), canceled the auction and sale hearing.

LACK OF QUALIFIED BIDS EXPLANATION

11. I believe that several factors contributed to the lack of qualified bids submitted in connection with the Debtors' sale process. *First*, in my experience, the sale of a skilled nursing facility with leasehold interests generally attracts far less interest and generates far lower value from prospective bidders than the sale of a skilled nursing facility with real property interests.

Because the Debtors did not own the real property in which their facilities operate and only hold the leasehold interests, prospective bidders were less interested in submitting bids for the Debtors' facilities.

12. *Second*, I believe that the master lease structures limited the Debtors' flexibility in the sale process. Based on my interactions with prospective bidders, the facilities leased by the Debtors from the Omega Landlords and the Welltower Landlords were generally not attractive to such bidders because they were unable to bid for individual facilities governed by these master leases. Although one of the potential bidders wished to submit a bid on a subset of the facilities under the Omega Master Lease, the Debtors could only effectuate that sale with Omega's consent. I relayed the request to Omega, but given the relatively low purchase price (well below the cure amount under the Omega Master Lease), Omega was not receptive to carving out a subset of its facilities. Both of the parties that submitted IOIs were interested in the Elderberry portfolio, which was not subject to a master lease, one of whom was only interested in two of the three Elderberry facilities. However, despite the submitted IOIs, no "Qualified Bids" were received by the Debtors for the Elderberry facilities.

13. *Third,* operators of skilled nursing facilities face industry-wide headwinds as a result of a minimum staffing rule published by the Centers for Medicare and Medicaid Services ("CMS") which would result in increased labor costs for operators. While there is uncertainty regarding when the final rule will be implemented and the extent to which it will result in increased labor costs for operators, I believe that the expected impact of this CMS rule change had a negative impact on the level of interest in the Debtors' facilities. Furthermore, certain states in which the Debtors operate have similar regulatory challenges, most notably Pennsylvania (in which certain

of the Debtors' facilities under the Omega master lease are located) which has its own minimum staffing requirements similar to the new CMS rule.

14. *Fourth,* some bidders had concerns regarding the quality ratings for the Debtor's facilities. In particular, some of the Debtors' facilities have a recent history of poorer regulatory survey performance, which may have a negative impact on the reimbursement rates those Debtor facilities receive from Medicare and Medicaid for providing care to residents. Furthermore, some potential bidders determined that there was a significant amount of deferred capital expenditure which would be required to improve the facilities.

15. *Finally*, even if the IOIs actually were qualified bids, the amount of consideration ascribed to these facilities was not significant. Given that the bidders would be required to go through an auction process and a bankruptcy approval process, neither bidder was willing to dedicate substantial resources to this effort for, at most, three facilities.

THE PLAN IS IN THE BEST INTERESTS OF THE DEBTORS AND THEIR ESTATES

16. Because the Debtors' marketing and sale process did not result in the submission of any qualified bids, I believe that the Combined Disclosure Statement and Plan is in the best interests of the Debtors and their estates. The Plan Sponsor is the only party willing and able to provide a comprehensive solution for substantially all of the Debtors' facilities, when no alternative purchaser (or combination of purchasers) could do so. Accordingly, I believe that the Combined Disclosure Statement and Plan is in the best interests of creditors and complies with Bankruptcy Code section 1129(a)(7).

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Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Dated: November 12, 2024

/s/ Michael Krakovsky
Michael Krakovsky
Managing Director and Head of Special Situations
Stout Capital, LLC