

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

In re:)	
)	Chapter 11
LAVIE CARE CENTERS, LLC, <i>et al.</i> ¹)	Case No. 24-55507 (PMB)
)	
Debtors.)	(Joint Administration Requested)
)	

DEBTORS’ EMERGENCY MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS (I) AUTHORIZING THE DEBTORS TO MAINTAIN AND CONTINUE RESIDENT PROGRAMS AND HONOR PREPETITION OBLIGATIONS RELATED THERETO, AND (II) GRANTING RELATED RELIEF

LaVie Care Centers, LLC (“LaVie”) and certain of its affiliates and subsidiaries, as debtors and debtors-in-possession in the above-captioned chapter 11 cases (collectively, the “Debtors”), hereby move (the “Motion”) for entry of interim and final orders, substantially in the forms attached hereto as **Exhibit A** and **Exhibit B** (the “Interim Order” and the “Final Order,” respectively), granting the relief described below. In support thereof, the Debtors rely upon the *Declaration of M. Benjamin Jones in Support of Chapter 11 Petitions and First Day Pleadings* (the “First Day Declaration”),² filed contemporaneously herewith. In further support of the Motion, the Debtors respectfully represent as follows:

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, for which the Debtors have requested joint administration. 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’ proposed claims and noticing agent at <https://www.kccllc.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.

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



RELIEF REQUESTED

1. By the Motion, the Debtors respectfully request entry of the Interim Order and the Final Order, authorizing, but not directing, the Debtors to (a) maintain, administer, and modify their Resident Programs (as defined below) and honor certain prepetition obligations to their residents and certain other third-party payors pursuant to the Resident Refunds, Resident Trust Accounts, or Resident Care Cost Accounts (each as defined herein) (collectively, the “Resident Programs”), and (b) continue, replace, modify, or terminate the Resident Programs in the ordinary course of business.

2. The Debtors also request that the Interim Order and the Final Order authorize the Debtors’ banks and other financial institutions (collectively, the “Banks”) to receive, process, honor, and pay any and all checks and other forms of payment drawn on the Debtors’ bank accounts, including fund transfers and electronic payment requests, to the extent they relate to any of the foregoing and to rely on the Debtors’ direction to pay amounts authorized under the Motion, provided that sufficient funds are available in the applicable accounts to make such payments.

JURISDICTION AND VENUE

3. The Court has jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b). Venue of these cases and the Motion in this District is proper under 28 U.S.C. §§ 1408 and 1409.

4. The legal predicates for the relief requested herein are sections 105(a), 363(b), 503(b)(1), and 507(a) 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”), Rules 9006-2, 9013-1, and 9013-2 of the Local Rules of Practice for the United States Bankruptcy Court for the Northern District of Georgia (the “Local Rules”), and the *Second Amended and Restated General*

Order 26-2019, Procedures for Complex Chapter 11 Cases, dated February 6, 2023 (the “Complex Case Procedures”).

BACKGROUND

I. The Chapter 11 Cases

5. On the date hereof (the “Petition Date”), each Debtor commenced a case by filing a petition for relief under chapter 11 of the Bankruptcy Code (collectively, the “Chapter 11 Cases”) in the United States Bankruptcy Court for the Northern District of Georgia, Atlanta Division (the “Court”). The Debtors continue to operate their business and manage their property as debtors and debtors-in-possession pursuant to Bankruptcy Code sections 1107(a) and 1108.

6. To date, the Office of the United States Trustee for Region 21 (the “U.S. Trustee”) has not appointed an official committee in the Chapter 11 Cases, nor has any trustee or examiner been appointed.

7. As discussed in greater detail in the First Day Declaration, in the ordinary course of business, certain of the Debtors in the Chapter 11 Cases manage and/or operate 43 licensed facilities (each, a “Facility” and, collectively, the “Facilities”) providing a variety of acute care and rehabilitative services to primarily elderly residents (the “Residents”), with approximately 4,300 beds across North Carolina, Mississippi, Florida, Pennsylvania, and Virginia. Additional information regarding the Debtors and these Chapter 11 Cases, including the Debtors’ business operations, capital structure, financial condition, and the reasons for and objectives of these Chapter 11 Cases, is set forth in the First Day Declaration.

II. The Debtors’ Refund Practices

8. In the ordinary course of business, the Debtors bill Residents as well as certain third-party payors (the “Third-Party Payors” and, together with the Residents, the “Payors”) for

services provided to the Residents. The Third-Party Payors include, among others, government programs such as Medicare and Medicaid, certain insurance companies, guardians, power of attorney, nursing homes, and other organizations involved with resident care payments, workers compensation carriers, hospice companies, hospitals, Social Security, and Veterans Administration.

9. In the ordinary course of business, the Debtors bill the Payors for services they provide to the Residents. The case-by-case nature of the myriad services that the Debtors provide to their Residents makes the process of determining each Resident's insurance coverage particularly complex. Thus, in certain instances, the Debtors may receive excess funds on account of a particular bill, resulting in an overpayment. For example, overpayments arising from coordination-of-benefits issues among multiple Payors could result in Resident accounts—once fully processed and reconciled—containing credit balances. Overpayments may also result, when, (a) a Resident is discharged early after a private Payor prepays for services, (b) necessary billing adjustments are discovered during post-payment audits, (c) retroactive rate reductions occur for services that have already been paid for, or (d) services are invalidated due to pre-authorization issues or other billing technicalities.

10. Thus, after identifying a credit balance with respect to a Resident's account, the Debtors return the amount of the overpayment to the appropriate Payor, typically in the form of a check remittance, although the Debtors or the Payors may instead offset credit balances against future bills in the case of some online transactions (such remittances or offsets owed to Residents, the "Resident Refunds" and such remittances or offsets owed to Third- Party Payors, the "Third-Party Refunds" and with the Resident Refunds, the "Refund Practices"). This process is routine and typical for healthcare businesses and is required by federal and state law. The Debtors average

approximately \$350,000 in total Resident Refunds of which approximately \$150,000 in Third-Party Refunds are recouped by, or issued to, Third-Party Payors in a typical month. However, the Refund Practices have ranged from as high as \$600,000 in Resident Refunds and \$250,000 in Third-Party Refunds per month.³ Given the historic variability of the foregoing amounts, the Debtors estimate that, as of the Petition Date, as much as \$1,800,000 is outstanding on account of the Refund Practices, of which approximately \$1,200,000 will be due and payable in the first 30 days of the Chapter 11 Cases. The Debtors seek authority to pay all amounts related to Refund Practices in the ordinary course of business consistent with past practices, including prepetition amounts.

11. Maintaining the Refund Practices is of critical importance to the Debtors' business. Continuing the Refund Practices helps to ensure that the Debtors will continue to be paid for the services they provide. If the Third-Party Payors do not believe that the Debtors will appropriately reconcile Resident accounts and return funds or issue credits with respect to overpayments, they may begin withholding payments owed to the Debtors. In addition, the Refund Practices allow billing issues to be resolved ex post, thus ensuring that inherent uncertainties regarding ultimate Payor liability do not interrupt the flow of payments to the Debtors. Furthermore, failing to continue the Refund Practices would significantly erode the Debtors' goodwill and business relationships with existing Residents and Third-Party Payors. Finally, failing to maintain the Refund Practices could give rise to potential legal liability and jeopardize the Debtors' ability to bill for certain services under applicable laws relating to Medicare and Medicaid. Given the potential consequences of failing to maintain the Refund Practices, the Debtors believe that the

³ Amounts related to the Refund Practices may vary significantly based on when Payors make their refund claims, so Resident Refunds and/or Third-Party Refunds may be substantially higher or lower throughout these Chapter 11 Cases, and the Debtors request authority, but not direction, to pay these amounts in the ordinary course.

relief they seek with respect to the Refund Practices is necessary for maximizing the value of the Debtors' estates.

12. Accordingly, by this Motion, the Debtors seek authority, but not direction, to (a) continue the Refund Practices and (b) pay any Resident Refunds or Third-Party Refunds in the ordinary course of business, regardless of whether such amounts relate to the prepetition period.

III. Cost Report Settlement Process

13. In the ordinary course of business, the Debtors submit annual cost reports (each, a "Cost Report") to Medicare, summarizing facility characteristics, utilization data, costs and charges by cost center, and other applicable financial information. To the extent amounts are owed by the Debtors with respect to a Cost Report, such amounts are either submitted by the Debtors on an annual basis to Medicare or recouped by Medicare in the ordinary course of business. As of the Petition Date, the Debtors estimate that they owe approximately \$2,400,000 in amounts related to Cost Reports for 2023, of which approximately \$2,100,000 will be due and payable in the first 30 days of the Chapter 11 Cases. Accordingly, by this Motion, the Debtors seek authority, but not direction, to continue to submit amounts related to Cost Reports in the ordinary course of business, consistent with past practice, including those related to prepetition amounts.

IV. Resident Trust Accounts

14. In the ordinary course of business, each of the Debtors' Facilities maintain trust accounts on behalf of their respective Residents (collectively, the "Resident Trust Accounts") for the Resident's personal use. Residents may deposit funds in the Resident Trust Accounts in a number of ways, including Social Security payments and check deposits from Residents and their families. Funds in the Resident Trust Accounts may be used by Residents to (a) pay for services they receive from the Debtors or outside providers of medical or dental care, (b) fund insurance

premiums, purchase medical equipment or personal items, and (c) otherwise pay for discretionary expenses. To account for funds held and disbursed on each Resident's behalf, each Resident is assigned a ledger account within the relevant Resident Trust Account (each such account, a "Resident Ledger Account"). As of the Petition Date, the Debtors estimate that they hold approximately \$3,200,000 in the Resident Trust Accounts, and weekly disbursements from the Resident Trust Accounts are approximately \$530,000 on average.⁴ As discussed in the Debtors' cash management motion filed contemporaneously herewith, the Resident Trust Accounts are held by the Debtors for the benefit of the Residents, and as such, the funds contained therein do not constitute property of the Debtors' estates. Out of an abundance of caution, the Debtors are seeking authority, not direction, to continue to maintain the Resident Trust Accounts for the Residents.

15. When a Resident desires to use Resident Trust Account funds, money is transferred from the account to either the applicable Debtors' care cost account (each, a "Care Cost Account") or resident petty cash account (each, a "Resident Petty Cash Account"), depending on the desired use. The Care Cost Accounts are used to pay for costs of care provided by the respective Debtor to the Residents, and amounts transferred from Resident Trust Accounts into the Care Cost Accounts are swept into the applicable Debtor's deposit accounts. The Resident Petty Cash Accounts are used to pay for payments to third parties or for personal discretionary expenses, and funds transferred from Resident Trust Accounts into the Resident Petty Cash Accounts are disbursed to their recipients by check, wire, or other transfer method.

⁴ As discussed in the First Day Declaration, the Debtors recently divested certain of their facilities to new operators. In certain circumstances, the Resident Trust Accounts with respect to those divested facilities are in the process of being closed and/or transferred, as applicable. Accordingly, the Debtors seek authority to maintain such Resident Trust Accounts while the closure or transfer process with respect to recent facility divestitures remains ongoing.

16. The Resident Trust Accounts are administered through National Datacare, a third-party vendor that specializes in providing resident fund management services, pursuant to a services agreement. National Datacare specifically provides the accounting and funds transfer services required to maintain the Resident Trust Accounts, which includes booking entries in the Resident Ledger Accounts. The Debtors together pay approximately \$20,000 on a monthly basis to National Datacare for maintaining the Resident Trust Accounts. As of the Petition Date, approximately \$20,000 is outstanding under the Debtors' services agreement with National Datacare, all of which will be due and owing in the next 30 days.

17. The Resident Trust Accounts are an important service provided to the Residents of the Debtors' Facilities, as they allow the Residents to manage their money safely and conveniently and facilitate access to services that are critical for their well-being. Moreover, maintenance of the Resident Trust Accounts is required by and subject to certain federal regulations, and the services provided by National Datacare help ensure compliance with such regulations. Maintaining the Resident Trust Accounts in-house would require the Debtors to dedicate significant personnel to ensure that funds are accounted for and transferred appropriately and in accordance with applicable regulations. The expertise and software offered by National Datacare streamlines this process and optimizes costs.

18. Accordingly, by this Motion, the Debtors seek authorization, but not direction, to (a) maintain the Resident Trust Accounts in the ordinary course of business, including continuing to retain the services of National Datacare and (b) pay any amounts due and owing to National Datacare, regardless of whether such amounts relate to the prepetition period.

BASIS FOR RELIEF REQUESTED

I. Continuation of the Resident Programs is Appropriate Under Bankruptcy Code Sections 363(b) and 105(a) and Under the Doctrine of Necessity.

19. The Court may grant the relief requested herein pursuant to Bankruptcy Code sections 363(b) and 105(a). Bankruptcy Code section 363(b)(1) authorizes the trustee to use property of the estate other than in the ordinary course of business after notice and a hearing. *See* 11 U.S.C. § 363(b)(1). Further, pursuant to section 105(a), “the court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [title 11 of the Bankruptcy Code].” 11 U.S.C. § 105(a).

20. Courts have authorized payment of prepetition obligations under section 363(b) of the Bankruptcy Code where a sound business purpose exists for doing so. *See, e.g., 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); *see also Armstrong World Indus., Inc. v. James A. Phillips, Inc.*, (*In re James A. Phillips, Inc.*), 29 B.R. 391, 397 (S.D.N.Y. 1983) (relying on section 363 to allow contractor to pay prepetition claims); *In re 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.”).

21. Courts also have authorized payment of prepetition obligations under the doctrine of necessity, which “recognizes the existence of the judicial power to authorize a debtor in a reorganization case to pay pre-petition claims where such payment is essential to the continued operation of the debtor.” *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 176 (Bankr. S.D.N.Y. 1989).⁵

⁵ *Accord In re Pers. Commc’ns Devices, LLC*, 588 B.R. 661, 666 (Bankr. E.D.N.Y. 2018); *see also In re Friedman’s Inc.*, No. 09-10161 (CSS), 2011 WL 5975283, at *3 (Bankr. D. Del. Nov. 30, 2011) (“Normally, a debtor only pays pre-petition, unsecured claims through a confirmed plan of reorganization . . . [h]owever, most courts will allow such payments under the ‘doctrine of necessity,’ if the debtor establishes that in its business judgment making such payments is critical to the survival of the debtor’s business.”); *In re Just for Feet, Inc.*,

Although the “doctrine of necessity” pre-dates the Bankruptcy Code, *see Miltenberger v. Logansport C. & S.W. R.Co.*, 106 U.S. 286 (1882), the modern application of the doctrine of necessity is grounded in specific provisions of the Bankruptcy Code, including sections 105(a), 1107(a), and 1108. *See In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002) (fiduciary duties implicit in Bankruptcy Code section 1107(a) justify the “preplan satisfaction of a prepetition claim” where necessary to preserve going concern value); *In re Just for Feet*, 242 B.R. 821, 824 (Bankr. D. Del. 1994) (indicating that “courts have used their equitable power under section 105(a) of the Code to authorize the payment of pre-petition claims when such payment is deemed necessary to the survival of a debtor in a chapter 11 reorganization”).

22. As discussed above, each of the Resident Programs has unique importance to the Debtors’ business operations. Ceasing to provide the Resident Programs or failing to satisfy obligations arising on account of the Resident Programs would greatly erode the Debtors’ ability to attract Residents and maintain good relationships with their Third-Party Payors. Because the Resident Programs provided by the Debtors are typical for their industry, the relief requested by this Motion is necessary to remaining competitive with other skilled nursing providers. As such, any disruption with respect to the Resident Programs could severely disrupt the Debtors’ efforts to maximize value in the Chapter 11 Cases. Thus, even if the Debtors could avoid payment of certain obligations accrued under the Resident Programs, the collateral consequences on the

242 B.R. 821, 825 (D. Del. 1999) (“The Supreme Court, the Third Circuit and the District of Delaware all recognize the court’s power to authorize payment of pre-petition claims when such payment is necessary for the debtor’s survival during chapter 11.”); *In re C.A.F. Bindery, Inc.*, 199 B.R. 828, 835 (Bankr. S.D.N.Y. 1996), *corrected* (Sept. 4, 1996); *In re NVR L.P.*, 147 B.R. 126, 127 (Bankr. E.D. Va. 1992) (“[T]he court can permit the pre-plan payment of a prepetition obligation when essential to the continued operation of the debtor.”); *In re Eagle-Picher Indus., Inc.*, 124 B.R. 1021, 1023 (Bankr. S.D. Ohio 1991) “[T]o justify payment of a prepetition unsecured creditor, a debtor must show that the payment is necessary to avert a serious threat to the chapter 11 process.”).

Debtors' go-forward business would exceed whatever modest short-run cost savings the Debtors might achieve.

23. Furthermore, the funds paid out in accordance with the Refund Practices and held in the Resident Trust Accounts are held in trust for Residents and other Third-Party Payors and accordingly do not constitute property of the Debtors' estates under Bankruptcy Code section 541. *See* 11 U.S.C. § 541(d); *Begier v. IRS*, 496 U.S. 53, 58–59 (1990) (“Because the debtor does not own an equitable interest in property he holds in trust for another, that interest is not ‘property of the estate.’”). Accordingly, the Debtors do not believe that they need permission to continue their Resident Programs and seek authority under this Motion out of an abundance of caution.

24. Moreover, failing to timely process overpayments pursuant to the Refund Practices or properly manage the Resident Trust Accounts could result in regulatory violations, leading to costly and/or disruptive enforcement actions from the applicable governmental authorities. Indeed, if such obligations are not honored, the Debtors may face legal sanctions or be liable for fines in the jurisdictions in which they operate. For instance, in 2010, the Patient Protection and Affordable Care Act (“ACA”) enacted new rules governing overpayments made by Medicare and Medicaid. Pursuant to the ACA, a person has “60 days after the date on which the overpayment was identified” to report and return such overpayment. 42 U.S.C. § 18001. Under the ACA, any overpayment retained after the 60-day deadline is an “obligation” subject to liability under the False Claims Act (“FCA”). *Id.* The FCA states in relevant part that “any person who . . . knowingly makes, uses, or causes to be made or used, a false record or statement material to an obligation to pay or transmit money or property to the Government . . . is liable to the United States Government for a civil penalty . . . *plus 3 times the amount of damages which Government sustains because of the act of that person.*” 31 U.S.C. § 3729 (a)(1)(G) (emphasis added); *see*

also 31 U.S.C. § 3279(b)(3) (the term “obligation” means an “established duty, whether or not fixed, arising from an express or implied contractual, grantor-grantee, or licensor-licensee relationship, from a fee-based or similar relationship, from statute or regulation, or from the retention of any overpayment”). Accordingly, if the Debtors fail to obtain the relief sought by the Motion, and are unable to “report and return” any overpayments by the 60-day deadline set forth by the ACA, the Debtors may be subject to penalties and treble damages under the FCA.

25. At bottom, the necessity of the Resident Programs in the healthcare services industry cannot be overstated. In addition to the incurrence of penalties and treble damages described above, failure to honor the Resident Programs and obligations related thereto likely would cause the Debtors to lose payors and residents, which would damage the Debtors’ business and interfere with the objectives of these cases. Third-Party Payors also may seek to exercise their setoff or recoupment rights to offset future amounts they would owe the Debtors, leading to undue accounting reconciliations or wasteful litigation. Thus, the Resident Programs are necessary for the Debtors to preserve their business and maintain their resident base at this critical juncture.

26. Courts have routinely granted the same or similar relief as requested in this Motion to chapter 11 debtors. *See, e.g., In re Sientra, Inc.*, Case No. 24-10245 (JTD) (Bankr. D. Del. Mar. 11, 2024) [Docket No. 161] (authorizing debtors to continue to maintain and administer refund program for overpayments in healthcare context); *In re Cano Health, Inc.*, Case No. 24-10164 (KBO) (Bankr. D. Del. Mar. 5, 2024) [Docket No. 260] (same); *In re Genesis Care Pty Ltd.*, Case No. 23- 90614 (DRJ) (Bankr. S.D. Tex. June 1, 2023) [Docket No. 81] (same); *In re Gulf Coast Health Care, LLC*, Case No. 21-11336 (KBO) (Bankr. D. Del. Nov. 10, 2021) [Docket No. 221] (same); *In re CMC II, LLC*, Case No. 21-10461 (JTD) (Bankr. D. Del. Apr. 1, 2021) [Docket No. 143] (same); *In re Quorum Health Corp.*, Case No. 20-10766 (KBO) (Bankr. D. Del. May 1, 2020)

[Docket No. 241] (same); *In re Cedar Haven Acquisition, LLC*, Case No. 19-11736 (CSS) (Bankr. D. Del. Sept. 9, 2019) (same).

II. Cause Exists to Authorize the Debtors' Financial Institutions to Honor Checks and Electronic Fund Transfers.

27. The Debtors also request that all applicable banks and other financial institutions be authorized to receive, process, honor, and pay all checks presented for payment, and to honor all electronic payment requests made by the Debtors, related to the obligations described herein, whether such checks were presented or electronic requests were submitted prior to or after the Petition Date. The Debtors further request that all such banks and financial institutions be authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved pursuant to the Motion. The Debtors represent that they have sufficient availability of funds to pay any amounts described herein.

EMERGENCY CONSIDERATION

28. The Debtors respectfully request emergency consideration of this Motion pursuant to Bankruptcy Rule 6003, which empowers a court to grant relief within the first 21 days after the commencement of a chapter 11 case "to the extent that relief is necessary to avoid immediate and irreparable harm." Fed. R. Bankr. P. 6003. Here, the Debtors believe an immediate and orderly transition into chapter 11 is critical to the viability of their operations and that any delay in granting the relief requested could hinder the Debtors' operations and cause irreparable harm. Furthermore, the failure to receive the requested relief during the first 21 days of these Chapter 11 Cases would severely disrupt the Debtors' operations at this critical juncture. Accordingly, the Debtors submit that it has satisfied the "immediate and irreparable harm" standard of Bankruptcy Rule 6003 and, therefore, respectfully request that the Court approve the relief requested in this Motion on an emergency basis.

WAIVER OF ANY APPLICABLE STAY

29. The Debtors seek a waiver of any stay of the effectiveness of the order granting this Motion. Pursuant to Bankruptcy Rule 6004(h), any “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.” The Debtors submit that the relief requested in this Motion is necessary to avoid immediate and irreparable harm to the Debtors for the reasons set forth herein. Accordingly, the Debtors submit that ample cause exists to justify a waiver of the 14-day stay imposed by Bankruptcy Rule 6004(h), to the extent applicable.

RESERVATION OF RIGHTS

30. Nothing in the Motion should be construed as (a) authority to assume or reject any executory contract or unexpired lease of real property, or as a request for the same; (b) an admission as to the validity, priority, or character of any claim or other asserted right or obligation, or a waiver or other limitation on the Debtors’ ability to contest the same on any ground permitted by bankruptcy or applicable non-bankruptcy law; (c) a promise or requirement to pay any claim or other obligation; or (d) granting third-party-beneficiary status, bestowing any additional rights on any third party, or being otherwise enforceable by any third party.

NOTICE

31. The Debtors will provide notice of the Motion to: (a) the U.S. Trustee; (b) the Internal Revenue Service; (c) the United States Attorney for the Northern District of Georgia; (d) the Attorney General for the State of Georgia; (e) the Georgia Department of Revenue; (f) the Centers for Medicare and Medicaid Services; (g) the states attorneys general for states in which the Debtors conduct business; (h) the parties included on the Debtors’ list of their 30 largest unsecured creditors; (i) counsel to the Debtors’ prepetition lenders; (j) counsel to

the proposed DIP Lenders; and (k) all parties entitled to notice pursuant to Bankruptcy Rule 2002. The Debtors submit that no other or further notice is required.

NO PRIOR REQUEST

32. No previous request for the relief sought herein has been made to this or any other court.

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WHEREFORE, the Debtors respectfully request that the Court enter the Interim and Final Orders, substantially in the forms attached hereto as **Exhibit A** and **Exhibit B**, respectively, granting the relief requested herein and such other and further relief as may be just and proper.

Dated: Atlanta, Georgia
June 2, 2024

MCDERMOTT WILL & EMERY LLP

/s/ Daniel M. Simon

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*Proposed Counsel for the Debtors and
Debtors-in-Possession*

CERTIFICATE OF SERVICE

I hereby certify that on this date a true and correct copy of the foregoing Motion was served by the Court's CM/ECF system on all counsel of record registered in these Chapter 11 Cases through CM/ECF. Subject to the Court's approval of their retention and access to filing privileges, the Debtors' proposed claims and noticing agent, Kurtzman Carson Consultants LLC, will be filing a supplemental certificate of service on the docket to reflect any additional service of the foregoing Motion.

Dated: Atlanta, Georgia
June 2, 2024

MCDERMOTT WILL & EMERY LLP

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*Proposed Counsel for the Debtors and
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EXHIBIT A

Proposed Interim Order

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

<p>In re:</p> <p>LAVIE CARE CENTERS, LLC, <i>et al.</i>¹</p> <p style="text-align: center;">Debtors.</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>Chapter 11</p> <p>Case No. 24-55507 (PMB)</p> <p>(Jointly Administered)</p> <p>Related to Docket No. ____</p>
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**INTERIM ORDER (I) AUTHORIZING THE DEBTORS TO MAINTAIN
AND CONTINUE RESIDENT PROGRAMS AND HONOR PREPETITION
OBLIGATIONS RELATED THERETO, AND (II) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”)² of the Debtors for entry of an interim order (this “Order”) and a Final Order, authorizing, but not directing, the Debtors to honor certain prepetition

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, for which the Debtors have requested joint administration. 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’ proposed claims and noticing agent at <https://www.kccllc.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.

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

obligations to their residents and certain third-party payors pursuant to certain Resident Programs, and to otherwise continue the Resident Programs in the ordinary course, all as more fully set forth in the Motion; and upon consideration of the First Day Declaration; and the Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and the matter being a core proceeding within the meaning of 28 U.S.C. § 157(b)(2); and venue of this proceeding and the Motion in this District being proper pursuant to 28 U.S.C. §§ 1408 and 1409; and the Court being able to issue a final order consistent with Article III of the United States Constitution; and due and sufficient notice of the Motion having been given under the particular circumstances; and the Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the “Hearing”); and the Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and it appearing that no other or further notice is necessary; and it appearing that the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors, and other parties in interest; and after due deliberation thereon; and good and sufficient cause appearing therefor; it is hereby

ORDERED, ADJUDGED, AND DECREED that:

1. The Motion is granted on an interim basis as set forth herein.
2. The Debtors are authorized, but not directed, to (a) continue their Resident Programs (including the Refund Practices, Cost Report settlements, and the Resident Trust Accounts) in the ordinary course of business and (b) perform and honor all prepetition obligations thereunder in the ordinary course of business consistent with past practices, including refunds for overpayments made prepetition or resulting from prepetition services.

3. The Debtors are authorized, but not directed, to continue, renew, replace, modify, and/or terminate the Resident Programs as they deem appropriate, in their sole discretion, and in the ordinary course of business, without further application to the Court.

4. The final hearing (the “Final Hearing”) on the Motion shall be held on _____, 2024, at __:__.m. (prevailing Eastern Time). Any objections or responses to the entry of the proposed Final Order shall be filed with the Court and served on the following no later 4:00 p.m. (prevailing Eastern Time) on _____, 2024: (a) LaVie Care Centers, LLC, c/o Ankura Consulting Group, LLC, 485 Lexington Avenue, 10th Floor, New York, NY 10017 (Attn: M. Benjamin Jones); (b) proposed counsel to the Debtors, McDermott Will & Emery LLP, 1180 Peachtree St. NE, Suite 3350, Atlanta, GA 30309 (Attn: Daniel M. Simon), and 444 West Lake Street, Suite 4000, Chicago, IL 60606 (Attn: Emily C. Keil); (c) counsel to the Prepetition Omega Secured Parties and proposed DIP Lenders, Scroggins & Williamson, P.C., 4401 Northside Parkway, Suite 450, Atlanta, GA 30327 (Attn: Matthew W. Levin), and Goodwin Proctor LLP, The New York Times Building, 620 Eighth Avenue, New York, NY 10018 (Attn: Robert J. Lemons), and Ferguson Braswell Fraser Kubasta PC, 2500 Dallas Parkway, Suite 600, Plano, TX 75093 (Attn: Leighton Aiken); (d) counsel to the Debtors’ prepetition ABL lender, Proskauer LLP, One International Place, Boston, MA 02110 (Attn: Charles A. Dale) and Vedder Price LLP, 222 North LaSalle Street, Chicago, IL 60601 (Attn: Kathryn L. Stevens); (e) counsel to the Debtors’ proposed DIP Lenders, DLA Piper LLP, 1900 N. Pearl St., Suite 2200, Dallas, TX 75201 (Attn: James Muenker) and 1251 Avenue of the Americas, New York, NY 10020 (Attn: Kira Mineroff); (f) the Office of the United States Trustee Region 21, 362 Richard Russell Building & U.S. Courthouse, 75 Ted Turner Drive, S.W., Room 362, Atlanta, GA 30303 (Attn: Jonathan S. Adams); (g) counsel to the official committee of unsecured creditors (if any) appointed in these Chapter 11 Cases; and

(h) any party that has requested notice pursuant to Bankruptcy Rule 2002. If no objections to entry of the Final Order are filed and served, the Court may enter such Final Order without further notice or hearing.

5. The banks and financial institutions on which checks were drawn or electronic payment requests made for payment of the prepetition obligations approved herein are authorized to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Order without any duty of further inquiry and without liability for following the Debtors' instructions.

6. 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 the Chapter 11 Cases with respect to the relief granted herein.

7. Notwithstanding anything to the contrary contained in the Motion or this Order, any payment to be made and any relief or authorization granted hereunder shall be limited by, and shall be subject to, the requirements imposed on the Debtors in the Interim DIP Order, including, for the avoidance of doubt, the Approved DIP Budget. To the extent of any conflict (but solely to the extent of such conflict) between the terms of this Order and the terms of the Interim DIP Order, the terms of the Interim DIP Order will govern.

8. Nothing in the Motion, this Order, or the relief granted herein (including any actions taken or payments made by the Debtors pursuant thereto) shall be construed as (a) authority to assume or reject any executory contract or unexpired lease of real property, or as a request for the same; (b) an admission as to the validity, priority, or character of any claim or other asserted right or obligation, or a waiver or other limitation on the Debtors' ability to contest the same on any

ground permitted by bankruptcy or applicable non-bankruptcy law; (c) a promise or requirement to pay any claim or other obligation; or (d) granting third-party-beneficiary status, bestowing any additional rights on any third party, or being otherwise enforceable by any third party.

9. The Court finds and determines that the requirements of Bankruptcy Rule 6003 are satisfied and that the relief requested in the Motion is necessary to avoid immediate and irreparable harm.

10. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a), the Local Rules, and the Complex Case Procedures are satisfied by such notice.

11. Notwithstanding Bankruptcy Rule 6004(h), this Order shall be effective and enforceable immediately upon entry hereof.

12. All time periods set forth in this Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

13. The Debtors are authorized to take all actions necessary to implement the relief granted in this Order.

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

END OF ORDER

Prepared and presented by:

/s/ Daniel M. Simon

Daniel M. Simon (Georgia Bar No. 690075)

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EXHIBIT B

Proposed Final Order

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

<p>In re:</p> <p>LAVIE CARE CENTERS, LLC, <i>et al.</i>¹</p> <p style="text-align: center;">Debtors.</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>Chapter 11</p> <p>Case No. 24-55507 (PMB)</p> <p>(Jointly Administered)</p> <p>Related to Docket No. ____</p>
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**FINAL ORDER (I) AUTHORIZING THE DEBTORS TO MAINTAIN
AND CONTINUE RESIDENT PROGRAMS AND HONOR PREPETITION
OBLIGATIONS RELATED THERETO, AND (II) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”)² of the Debtors for entry of an Interim Order and a final order (this “Order”) authorizing, but not directing, the Debtors to honor certain prepetition

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, for which the Debtors have requested joint administration. 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’ proposed claims and noticing agent at <https://www.kccllc.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.

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

obligations to their residents and certain third-party payors pursuant to certain Resident Programs, and to otherwise continue the Resident Programs in the ordinary course, all as more fully set forth in the Motion; and upon consideration of the First Day Declaration and the Interim Order entered on __, 2024; and the Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and the matter being a core proceeding within the meaning of 28 U.S.C. § 157(b)(2); and venue of this proceeding and the Motion in this District being proper pursuant to 28 U.S.C. §§ 1408 and 1409; and the Court being able to issue a final order consistent with Article III of the United States Constitution; and due and sufficient notice of the Motion having been given under the particular circumstances; and the Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the “Hearing”); and the Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and it appearing that no other or further notice is necessary; and it appearing that the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors, and other parties in interest; and after due deliberation thereon; and good and sufficient cause appearing therefor; it is hereby

ORDERED, ADJUDGED, AND DECREED that:

1. The Motion is granted on a final basis as set forth herein.
2. The Debtors are authorized, but not directed, to (a) continue their Resident Programs (including the Refund Practices, Cost Report settlements, and the Resident Trust Accounts) in the ordinary course of business and (b) perform and honor all prepetition obligations thereunder in the ordinary course of business consistent with past practices, including refunds for overpayments made prepetition or resulting from prepetition services.

3. The Debtors are authorized, but not directed, to continue, renew, replace, modify, and/or terminate the Resident Programs as they deem appropriate, in their sole discretion, and in the ordinary course of business, without further application to the Court.

4. The banks and financial institutions on which checks were drawn or electronic payment requests made for payment of the prepetition obligations approved herein are authorized to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Order without any duty of further inquiry and without liability for following the Debtors' instructions.

5. 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 the Chapter 11 Cases with respect to the relief granted herein.

6. Notwithstanding anything to the contrary contained in the Motion or this Order, any payment to be made and any relief or authorization granted hereunder shall be limited by, and shall be subject to, the requirements imposed on the Debtors in the Interim DIP Order, including, for the avoidance of doubt, the Approved DIP Budget. To the extent of any conflict (but solely to the extent of such conflict) between the terms of this Order and the terms of the Interim DIP Order, the terms of the Interim DIP Order will govern.

7. Nothing in the Motion or this Order or the relief granted (including any actions taken or payments made by the Debtors pursuant thereto) shall be construed as (a) authority to assume or reject any executory contract or unexpired lease of real property, or as a request for the same; (b) an admission as to the validity, priority, or character of any claim or other asserted right or obligation, or a waiver or other limitation on the Debtors' ability to contest the same on any

ground permitted by bankruptcy or applicable non-bankruptcy law; (c) a promise or requirement to pay any claim or other obligation; or (d) granting third-party-beneficiary status, bestowing any additional rights on any third party, or being otherwise enforceable by any third party.

8. The Court finds and determines that the requirements of Bankruptcy Rule 6003 are satisfied and that the relief requested in the Motion is necessary to avoid immediate and irreparable harm.

9. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a), the Local Rules, and the Complex Case Procedures are satisfied by such notice.

10. Notwithstanding Bankruptcy Rule 6004(h), this Order shall be effective and enforceable immediately upon entry hereof.

11. All time periods set forth in this Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

12. The Debtors are authorized to take all actions necessary to implement the relief granted in this Order.

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

END OF ORDER

Prepared and presented by:

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