

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

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

**DECLARATION OF MICHAEL KRAKOVSKY IN SUPPORT OF  
DEBTORS’ EMERGENCY MOTION FOR ENTRY OF INTERIM AND  
FINAL ORDERS (I) AUTHORIZING THE DEBTORS TO (A) OBTAIN  
POSTPETITION FINANCING AND (B) UTILIZE CASH COLLATERAL,  
(II) GRANTING ADEQUATE PROTECTION TO PREPETITION SECURED  
PARTIES, (III) MODIFYING THE AUTOMATIC STAY, (IV) SCHEDULING A  
FINAL HEARING, AND (V) GRANTING RELATED RELIEF**

I, Michael Krakovsky, hereby declare under penalty of perjury as follows:

1. I submit this declaration (this “Declaration”) in support of the *Debtors’ Emergency Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Obtain Postpetition Financing and (B) Utilize Cash Collateral, (II) Granting Adequate Protection to Prepetition Secured Parties, (III) Modifying the Automatic Stay, (IV) Scheduling a Final Hearing, and (V) Granting Related Relief* (the “Motion”),<sup>2</sup> which seeks approval of the Debtors’ \$20,000,000 proposed postpetition DIP Facility and the postpetition use of Cash Collateral.<sup>3</sup>

<sup>1</sup> 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.

<sup>2</sup> Capitalized terms used but not defined herein have the meanings given to such terms in the Motion.

<sup>3</sup> The material terms of the proposed DIP Facility are set forth in detail in the Motion. For the avoidance of doubt, any description of the proposed terms of the DIP Facility herein or in the Motion is qualified in its entirety by reference to the DIP Term Sheet.



2. The statements in this Declaration are, except where specifically noted, based on my personal knowledge or opinion, on information that I have obtained from the above-captioned debtors and debtors-in-possession's (collectively, the "Debtors") management and employees of Stout Capital, LLC ("Stout") working directly with me and under my supervision, direction, or control. Specifically, I have overseen a Stout team that has been directly involved in certain of the matters leading up to the Debtors' chapter 11 filings. I am over 18 years of age and authorized to submit this Declaration on behalf of the Debtors. If I were called upon to testify, I could and would competently testify to the facts set forth herein.

### **BACKGROUND AND QUALIFICATIONS**

3. I am a Managing Director with Stout, and, in that role, provide broad restructuring, and investment banking services to parties in a broad variety of distressed corporate settings. I have more than 23 years of financial restructuring and investment banking experience. Stout and its senior professionals have extensive expertise providing investment banking services to financially distressed companies, creditors, committees, equity holders, asset purchasers, and other constituencies in reorganization proceedings and complex financial restructurings, both in and out of court. Stout has extensive experience in reorganization cases and has an excellent reputation for services it has rendered in large and complex chapter 11 cases on behalf of debtors, creditors, and creditors' committees throughout the United States. I have advised on the following chapter 11 cases, among others: LifeCare Holdings, Altegrity, Inc., Hawaiian Telcom, Chemtura Corporation, Oriental Trading Company, Inc., Frontier Airlines, Acadiana Management Group, Better For You Foods, Fresh Food Group, Goodrich Quality Theatres, Alliant Technologies LLC, Inc., Baxano Surgical, Inc., Nuvectra Corporation, and many other transactions.

4. Prior to joining Stout in 2016 (where I launched the firm's Special Situations practice), I spent thirteen (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.

5. I began my career as a transactional attorney at Irell & Manella LLP. I earned my J.D. from Columbia University School of Law, and a B.S.E.E. from the University of Michigan.

### **STOUT RETENTION**

6. On May 28, 2024, the Debtors engaged Stout to serve as their investment banker under an engagement letter in connection with the Debtors' restructuring initiatives.

7. Pursuant to the Motion, the Debtors seek entry of the Interim Order and the Final Order approving the Debtors' entry into the DIP Facility and consensual use of Cash Collateral. The *Declaration of M. Benjamin Jones In Support of Chapter 11 Petitions and First Day Pleadings* (the "First Day Declaration"), filed contemporaneously herewith, provides an overview of the Debtors' businesses, pre-petition capital structure, and the developments leading up to these chapter 11 cases. As explained in the First Day Declaration, the Debtors have an immediate need to access liquidity.

### **ALTERNATIVE SOURCES OF FINANCING ARE NOT ACTIONABLE**

8. My understanding is that beginning in May 2024, the Debtors and their advisors engaged in efforts to negotiate and obtain postpetition financing and immediately upon our engagement on May 28, 2024, Stout led an expedited marketing outreach for DIP financing. In this case, obtaining access to postpetition financing from third parties that were not already part of the Debtors' capital structure was difficult because, as I understand, all or substantially all of the Debtors' assets are encumbered by valid and perfected prepetition liens. Moreover, I also

understand that the Debtors were already overdrawn under their Prepetition ABL Facility (i.e., the amount of outstanding loans exceeded the borrowing base). Therefore, the outcome of Stout's marketing outreach was reflective of the practical realities of the Debtors' existing capital structure and the timing constraints as the Debtors need access to DIP financing over the next several days.

9. Notwithstanding these hurdles, I understand the Debtors evaluated the possibility of obtaining the consent of the Prepetition Secured Parties to the priming of their liens and due to the unwillingness of such parties to be primed, the Debtors and Stout attempted to source a third-party lender willing to provide post-petition financing on a junior or unsecured basis. My team and I approached several parties that Stout believed, in our experience and judgment, were most likely to fund a postpetition debtor-in-possession financing facility given the exigent circumstances of the case. Given the short time frame, along with the complexities of the Debtors' businesses and ongoing operating losses, it was impractical to approach a broad range of traditional financing sources. I, and others on my team under my supervision, solicited interest from parties that we identified based on the type of financing required and the known healthcare lenders for this sector. In its solicitation, Stout provided potential lenders an overview of the situation and described the financing opportunity.

10. In total, Stout contacted six potential alternative financing sources. Five of the six parties contacted by Stout responded, and each declined to propose a DIP facility under the facts and circumstances facing the Debtors. The feedback from these parties was conclusive: no party was willing to provide postpetition DIP financing based upon the inability of the Debtors to offer a priming lien, a lack of unencumbered collateral, and the required timing to consummate a financing.

11. I believe that there are no alternative sources of financing reasonably available on both better and executable terms than those being provided by the DIP Facility. No party that Stout communicated with as part of the marketing process, and no other party that Stout is aware of, was interested in providing, or willing to provide postpetition financing in the time frame required (recognizing that any such financing would either require the consent of the Prepetition ABL Lenders, the Omega Term Loan Lenders, and the Omega Landlords, or would have subjected the Debtors to a protracted and expensive priming dispute) because the extent of repayment of any such obligations remains uncertain.

**THE FEES IN CONNECTION WITH THE DIP FACILITY ARE REASONABLE**

12. The Debtors have agreed, subject to Court approval, to pay certain interest and fees to the DIP Lenders pursuant to the DIP Term Sheet. Specifically, the Debtors have agreed to pay to each DIP Lender:

- a) an upfront fee, payable-in-kind (i.e., by adding such fee to the aggregate principal amount of the DIP Loans) equal to 3.00% of such DIP Lender's DIP Commitment under the DIP Facility, which shall be fully earned, non-refundable, and due and payable upon the Closing Date; and
- b) a payable-in-cash exit fee (the "Exit Fee") equal to 3.00% of such DIP Lender's initial DIP Commitment, which shall be fully earned and non-refundable on the Closing Date, and payable on the DIP Termination Date; provided, however, if the DIP Termination Date has occurred solely as a result of the occurrence and continuation of an Event of Default under the DIP Loan Documents, then the Exit Fee shall not be payable until the DIP Obligations have been accelerated by the DIP Lenders.

13. Under the Debtors' circumstances, I believe that the fees reflected in the DIP Facility are reasonable. As described above, the marketing process did not produce an alternative financing option with terms superior to those provided in this DIP Facility. Considering the marketing and negotiation process described herein, it is my view that the proposed DIP Facility represents the best presently available financing option for the Debtors.

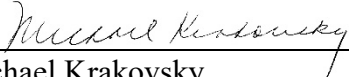
**CONCLUSION**

14. In sum, based on my experience and my involvement in assisting the Debtors with the marketing and negotiation of the DIP Facility in this matter, it is my view that the DIP Facility represents the best presently available postpetition financing option for the Debtors and contains terms that are reasonable given the circumstances. The Debtors' marketing efforts, with the assistance of Stout, led me to believe that there is no other potential financing option that would satisfy the Debtors' objectives on better terms.

*[Remainder of Page Intentionally Left Blank]*

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

Dated: June 2, 2024  
Los Angeles, California

By:   
Name: Michael Krakovsky  
Title: Managing Director, Stout Capital, LLC