

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>,</p> <p>Debtors.</p>	<p>Chapter 11 Case No. 24-55507 (PMB) Jointly Administered</p> <p>Re: Docket Nos. 273, 316, 356</p>
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**OBJECTION OF AFSCME TO DEBTORS' DISCLOSURE STATEMENT AND
RESERVATION OF RIGHTS WITH RESPECT TO POTENTIALLY ASSUMED
COLLECTIVE BARGAINING AGREEMENTS**

American Federation of State, County and Municipal Employees, AFL-CIO, on behalf of itself, its affiliated District Councils 86 and 87 (collectively, "AFSCME"), and the bargaining unit employees they represent, hereby object to approval of the disclosure statement contained in the *Debtors' Combined Disclosure Statement and Joint Chapter 11 Plan of Reorganization* [Docket No. 273] (the disclosure statement portion thereof, the "Disclosure Statement" and the chapter 11 plan portion thereof, the "Plan"), reserve all rights with respect to the *Notice of Revised List of Potentially Assumed Executory Contracts and Unexpired Leases and Related Cure Costs* [Docket No. 356] (the "Revised Cure Notice"), and in support thereof, respectfully state as follows:

BACKGROUND

1. AFSCME and the above-captioned debtors (the "Debtors") are parties to three (3) collective bargaining agreements (collectively, the "AFSCME CBAs") in these consolidated cases.

2. AFSCME District Council 86 is party to one of the AFSCME CBAs, a collective bargaining agreement with Locust Grove Retirement Village Operations, LLC, d/b/a Locust Grove Retirement Village (the "Locust Grove CBA"). The term of the Locust Grove CBA is from July 1, 2023 to June 30, 2026. It was fully executed by the parties as of January 5, 2024. On July 11, 2024, the parties to the CBA agreed to a modification in writing to increase all bargaining



unit employee wages by 2% across the board.

3. AFSCME District Council 87 is party to two of the AFSCME CBAs, each of which is signed with both Manor at St. Luke Village Facility Operations, LLC, d/b/a The Manor at St. Luke Village (“Manor”) and Pavilion at St. Luke Village Facility Operations LLC, d/b/a the Pavilion at St. Luke Village (“Pavilion”) (collectively, the “St. Luke Village CBAs”). Each of the St. Luke Village CBAs was fully executed by the parties as of August 8, 2024. One of the St. Luke Village CBAs covers a bargaining unit including all full-time and regular part-time Licensed Practical Nurses and has a term of August 1, 2023 to July 31, 2026 (the “St. Luke Village LPN Unit CBA”). The other St. Luke Village CBA covers a bargaining unit including all full-time and regular part-time restorative aides, activity aides, beauticians and Certified Nursing Assistants and has a term of August 23, 2023 to August 22, 2027 (the “St. Luke Village CNA Unit CBA”).

4. Each of the three AFSCME CBAs contains a No-Strike Clause that applies “during the term of this Agreement.”

5. On June 10, 2024, the Debtors filed the *Debtors’ Motion for Entry of an Order (I) Approving Bidding Procedures and Bid Protections, (II) Scheduling Certain Dates and Deadlines With Respect Thereto, (III) Approving Form and Manner of Notice Thereof; (IV) Establishing Notice and Procedures for the Assumption and Assignment of Contracts and Leases, (V) Authorizing the Assumption and Assignment of Assumed Contracts, and (VI) Authorizing the Sale of Assets* [Docket No. 104] seeking this Court’s approval of procedures (the “Sale Procedures”) governing the sale of substantially all or a portion of the Debtors’ assets (the “Sale”) to a to-be-determined purchaser (the “Purchaser”).

6. By its June 27, 2024 *Order (I) Approving Bidding Procedures and Bid Protections, (II) Scheduling Certain Dates and Deadlines With Respect Thereto, (III) Approving Form and Manner of Notice Thereof, (IV) Establishing Notice and Procedures for the Assumption and*

Assignment of Contracts and Leases, (V) Authorizing the Assumption and Assignment of Assumed Contracts, and (VI) Authorizing the Sale of Assets [Docket No. 177] (the “Procedures Order”), this Court approved the Sale Procedures, including procedures for the assumption and assignment of certain of Debtors’ executory contracts as part of the Sale.

7. Pursuant to the Procedures Order, the Debtors filed the *Notice to Contract Parties to Potentially Assumed Executory Contracts and Unexpired Leases* [Docket No. 274] (the “Cure Notice”). The Cure Notice did not include any of the AFSCME CBAs.

8. On July 23, 2024, the Debtors filed the Disclosure Statement and Plan. On August 7, 2024, the Debtors filed *Debtors’ Motion for Entry of Order (I) Approving Disclosure Statement, (II) Scheduling Confirmation Hearing, (III) Establishing Procedures for Solicitation and Tabulation of Votes on Plan, (IV) Approving Certain Forms and Notices, and (V) Granting Related Relief* [Docket No. 316] (the “Motion”) seeking, *inter alia*, an order “approving the proposed Disclosure Statement as containing adequate information.”

9. Under the Plan, on the Effective Date, all executory contracts will be deemed rejected, except for, *inter alia* “Assumed Executory Contracts and Unexpired Leases.” Plan, VII.A. The Plan further states that an “Assumed Executory Contracts and Unexpired Leases List” (the “Assumption Schedule”) “will be included in preliminary form in the Plan Supplement.” Plan, II.A.1.27. The Plan Supplement, in turn, will only be filed prior to the Plan confirmation hearing “to the extent available,” and the Debtors “shall have the right to alter, amend, modify, or supplement the documents contained in the Plan Supplement up to the Effective Date.” Plan II.A.1.173.

10. The Plan also proposes the filing of an Assumption Notice seven (7) days prior to the deadline to object to the Plan, but the inclusion of a contract on that Notice will “not obligate the Debtors to assume” that contract. Plan, VII.B. And “[n]otwithstanding anything to the

contrary in the Plan, the Debtors or the Reorganized Debtors, as applicable, with the consent of the DIP Lenders, the Omega Secured Parties, and the ABL Lenders, reserve the right to alter, amend, modify or supplement the Assumed Executory Contracts and Unexpired Leases List and Reject Executory Contracts and Unexpired Leases at any time up to forty-five (45) days after the Effective Date.” Plan, VII.A. Thus, counterparties will not know whether their executory contracts will be assumed or rejected under the Plan until after the Plan is confirmed and after the Plan has gone Effective.

11. The Plan does not mention the term “collective bargaining agreement” explicitly, however, the Plan includes a single paragraph on “Employee Matters” which states that “subject to Article VII of the Plan, the Reorganized Debtors, with the prior written consent . . . of the DIP Lenders, the Omega Secured Parties, the ABL Lenders, and the Plan Sponsor, shall (a) assume all employment agreements . . . or other agreements with current or former employees . . . or (b) enter into new agreements with such persons on terms and conditions acceptable to the Reorganized Debtors, the DIP Lenders, the Omega Secured Parties, the ABL Lenders, and the Plan Sponsor, and such person.” Plan, VI.B.3.

12. On August 28, 2024, the Debtors filed the Revised Cure Notice. On the final page, the Revised Cure Notice lists each of the AFSCME CBAs with a proposed cure settlement amount of “Undetermined.”

OBJECTION AND RESERVATION OF RIGHTS

13. To warrant this Court’s approval, the Disclosure Statement must contain information adequate to permit AFSCME, as a creditor and party-in-interest, to make an informed judgment about the Plan. 11 U.S.C. § 1125(b). Adequate information is that which would enable a hypothetical reasonable investor typical of holders of claims or interests of the relevant class to make an informed judgment about the Plan. 11 U.S.C. § 1125(a)(i). As set forth below, the

Disclosure Statement cannot be approved because it contains insufficient information regarding the Plan's treatment of the AFSCME CBAs.

14. Under the Plan, all executory contracts will be rejected as of the Effective Date, unless such contracts are listed on the Assumption Schedule. However, the Assumption Schedule may not be filed, if at all, until after the deadline to object to the Plan. Further, under the Plan as proposed, the list of contracts to be assumed may be altered by the Debtors after the deadline to object to the Plan, and after the Plan confirmation hearing.

15. To the extent that the Plan's one-paragraph section on "Employee Matters" is intended to commit to assumption of the AFSCME CBAs or the execution of new CBAs with AFSCME that are acceptable to all parties thereto—and to not rejecting any of the AFSCME CBAs in the event a mutually agreeable modification cannot be reached—the Disclosure Statement must be modified to make that intent explicit and refer to "collective bargaining agreements" by name. *See* 11 U.S.C. § 1113 (addressing assumption or rejection of "collective bargaining agreements" specifically). Or, if that is not the intent, then the specific intent with respect to treatment of the AFSCME CBAs—each of which was either executed or modified by mutual consent post-petition—should be stated clearly, including the plans (if any) with respect to Section 1113 of the Bankruptcy Code. Regardless, a modification to the Disclosure Statement must be made to inform AFSCME definitively whether its collective bargaining agreements are proposed to be assumed or rejected prior to AFSCME's opportunity to object and be heard on such proposed treatment and on the Plan itself. Without such information, the Disclosure Statement is inadequate.

16. The treatment of the AFSCME CBAs under the Plan will significantly impact all stakeholders in these cases, especially including patients and employees at the Locust Grove and St. Luke Village facilities, and the failure of the Disclosure Statement to provide adequate, definitive notice of that disposition is concerning. As the Plan recognizes, a labor shortage is among the

circumstances giving rise to these Chapter 11 Cases; when sufficient employees cannot be retained full-time, the use of staffing agencies can result “in a more than 50% premium” over regular wage levels. Plan, III.B.2. The AFSCME CBAs help to ameliorate those labor issues significantly, and to promote quality care for the patients whom the AFSCME-represented employees have dedicated their lives to caring for, by fostering a stable workforce covered by long-term agreements that have been mutually negotiated to provide terms and conditions of employment acceptable to both management and employees at the covered facilities. The AFSCME CBAs are also affordable, as reflected by the Debtors’ characterization of Pennsylvania, which is the only state where AFSCME CBAs apply, as a “favorable operating state.” Plan, III.B.3.

17. As noted, each of the AFSCME CBAs also includes a No-Strike Clause that applies during the term of the agreement, and each of these agreements is in effect long-term: the Locust Grove CBA expires on June 30, 2026, the St. Luke Village LPN Unit CBA expires on July 31, 2026, and the St. Luke Village CNA Unit CBA expires on August 22, 2027.

18. Therefore, the value of the estate’s assets would be undermined should the AFSCME CBAs be rejected, and the Disclosure Statement must be modified.

19. AFSCME further urges, in the interests of all stakeholders in these cases, especially including patients and the AFSCME-represented employees whose mission is to provide those patients exceptional and compassionate care, that the Reorganized Debtors, the DIP Lenders, the Omega Secured Parties, the ABL Lenders, and the Plan Sponsor together state clearly that the AFSCME CBAs are proposed to be assumed and assigned.

19. Finally, AFSCME reserves all its rights with respect to the Revised Cure Notice, which was only recently filed on August 28, 2024 and ascribes an “undetermined” value to the AFSCME CBAs.

WHEREFORE, AFSCME respectfully requests that this Court enter an order that: (i) approves the Disclosure Statement only to the extent consistent with the foregoing; and (ii) grants AFSCME such additional relief as this Court deems just and equitable.

Dated: September 4, 2024

Respectfully submitted,

/s/ Matthew Stark Blumin

Matthew Stark Blumin (admitted *pro hac vice*)

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the above and foregoing was filed with the Clerk of the Bankruptcy Court via the CM/ECF system on this 4th day of September, 2024, and that a duplicate copy was sent via the CM/ECF system to all persons registered on the ECF system in this case.

/s/ Nicolas M. Stanojevich
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