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 JAMES D. DECKER IN SUPPORT OF CONFIRMATION AND FINAL APPROVAL OF DEBTORS' SECOND AMENDED COMBINED DISCLOSURE STATEMENT AND JOINT CHAPTER 11 PLAN OF REORGANIZATION

I, James D. Decker, 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. Since May 19, 2024, I have served as the independent manager (the "Independent Manager") of Debtor LV Operations I, LLC and each of its subsidiaries, as debtors and debtors-in-possession (collectively, the "Debtors" or the "Company") in the above-captioned chapter 11 cases (these "Chapter 11 Cases"). 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*

[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.

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]

2. 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. For the avoidance of doubt, I do not, and do not intend to, waive the attorney-client privilege or any other applicable privilege by submitting this Declaration.

EXPERIENCE AND QUALIFICATIONS

3. I am the founder of JDecker & Company, Inc., which focuses on providing corporate governance and transactional advisory services to distressed companies. I have served as an independent director on the boards of over 20 companies in varying industries, and have also served as board chairman and chair of special, audit, and restructuring committees of certain of those companies. I have significant expertise in distressed M&A, financings, restructurings, and creditor negotiations and am well versed in the fiduciary obligations of directors. Prior to founding JDecker & Company, Inc. in 2019, I was an investment banker at a variety of prominent institutions including Guggenheim Securities (2013-2019), Morgan Joseph (2008-2013), Alvarez & Marsal (2006-2008), and Houlihan Lokey (1997-2006). Over the course of my investment banking career, I originated and completed hundreds of transactions worth in excess of $30 billion, including restructurings, acquisitions, special situation financings, leveraged buyouts, recapitalizations, and valuations. I am a Fellow in the American College of Bankruptcy, a former

[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.

Director of the Association of Insolvency and Restructuring Advisors (AIRA), and a former Director of the Atlanta Chapter of the Turnaround Management Association (TMA). I received an MBA with a concentration in Finance from The Wharton School and a BS in Economics and Geology from Vanderbilt University.

4. On May 19, 2024, the Board of Directors of FC Investors XXI, LLC ("FC XXI"), the indirect parent entity of the Debtors, unanimously adopted resolutions (a) appointing me to serve as the independent manager (the "Independent Manager") of LV Operations I, LLC, the top-level Debtor in these Chapter 11 Cases, and (b) delegating certain powers and authority to the Independent Manager, including (as further described below), conducting an independent investigation of potential estate claims and causes of action (the "Independent Investigation"). As Independent Manager, I have sole authority for any restructuring actions, which include, without limitation, the formulation, negotiation, and implementation of any chapter 11 plan, and any analysis and determinations whether to pursue, settle or otherwise release any potential estate claims and causes of action.

5. Prior to my appointment as Independent Manager of the Debtors, to the best of my knowledge, I did not have any connections to the Debtors, any non-Debtor affiliates, or any members of the Board of Directors or investor group of FC XXI. As Independent Manager of the Debtors, I have been working closely with McDermott Will & Emery LLP ("McDermott") as lead restructuring counsel, Ankura Consulting Group ("Ankura"), and Stout Capital, LLC ("Stout") to advise on me on all matters in these Chapter 11 Cases. In addition, as Independent Manager, I engaged Chapman and Cutler LLP ("Chapman") as my selected independent counsel in connection with the Independent Investigation and to provide advice and legal services in connection with the exercise of my fiduciary duties in these Chapter 11 Cases.

THE DEBTORS' INVESTIGATION AND RELATED FINDINGS

6. Beginning shortly after my appointment, and at my direction, Chapman, with assistance from McDermott, conducted a thorough investigation into the transactions leading up to the Chapter 11 Cases. The Independent Investigation began prior to the Petition Date, commencing on or about May 24, 2024, and focused on the following key areas: (a) the Debtors' divestitures of skilled nursing facilities prior to the Petition Date, including facilities in Florida and consideration received in connection with those transactions; (b) the consideration received by the Debtors in connection with the sale by non-Debtors of real estate owned by such non-Debtors including, among others, Omega; (c) the settlement of litigation claims by the Debtors entered into prior to the Petition Date; (d) the circumstances around, and use of, additional infusions of capital into the Debtors in fall 2022, May 2023, and in connection with the receipt of employee retention tax credits received in the fall of 2023; (e) transfers by the Debtors made to non-Debtors, including Synergy; and (f) the conduct of the board of directors of FC XXI.[3] As part of these analyses, the Independent Investigation closely reviewed and analyzed the estate causes of action alleged as part of the Miami Action initiated by Healthcare Negligence Settlement Recovery Corp. ("Recovery Corp.") shortly before the Petition Date.

7. In furtherance of this extensive effort, the investigation team sought and obtained, among other things, relevant transaction documents, corporate governance documents, copies of board materials and presentations, financial and accounting information, relevant documentation associated with the facility divestitures, and intercompany transaction information. In addition, the investigation team met on numerous occasions with key individuals at the Debtors, Synergy, and Dias & Associates (who acted as counsel to the Debtors and certain affiliates of the Debtors),

[3] These categories are illustrative only and should not be interpreted as reflecting the entire scope of the investigation.

and obtained key financial analyses from Ankura. All told, the virtual data room that was accessed by the investigation team contained tens of thousands of documents and communications. I understand a virtual data room containing many of these documents and communications was also provided to the advisors to the Committee to ensure that its counsel received copies of documents and other information necessary for the Committee's parallel investigation of claims and causes of action. Both prior to, and during the Mediation (as defined and described below), I participated in multiple calls and meetings with counsel to the Committee to learn their perspectives on the potential causes of action, and to provide the Debtors' viewpoints based upon the Independent Investigation.

8. In addition to the factual issues underlying the potential causes of action, I understand that the investigation was guided by relevant legal considerations, many of which were alleged by the Committee during the course of its parallel investigation. These issues included, but were not limited to, among other things:

a. the viability of claims relating to the sale of real property, given that the Debtors did not own any such real property and were in default under their leases related to such real property;

b. the appropriateness of evaluating fraudulent transfer claims against the New Operators based upon purported value received by the New Operators in stepping in to a fully-functioning skilled nursing facility;

c. the ability to seek recovery from directors and officers of a non-Debtor affiliate, given the limitations of liabilities and waivers of fiduciary duties contained in the applicable organizational documents;

d. the ability to pursue successor liability claims against New Operators based upon the information provided regarding their supposed affiliation with the Debtors;

e. the ability for the Committee to seek standing to pursue or otherwise settle the causes of action, or the ability to transfer such claims to a litigation trustee to pursue or settle such claims, given recent case

law regarding the pursuit of derivative claims on behalf of limited liability corporations; and

f. the ability for the Debtors to reorganize around the existing facilities while, at the same time, pursuing causes of action on behalf of the "DivestCo" estates.

9. Throughout the Internal Investigation, I was routinely updated by the investigative team, culminating in numerous hours-long sessions to discuss and finalize the conclusions and recommendations prior to, and during the Mediation. I also personally reviewed documents and participated in interviews. On September 10, 2024, Chapman and McDermott formally met with me to explain the findings of the investigation and to provide me the opportunity to ask questions and raise concerns. During this hours-long meeting, Chapman and McDermott explained to me the viability of the claims and causes of action analyzed, including whether there were any viable or colorable claims against relevant parties to be released under the Plan, and if pursued, whether any such claims would likely result in proceeds flowing to the Debtors. On September 13, 2024, Chapman met again with me to explain its findings concerning the investigation and the transactions contemplated under the Plan. In connection with these meetings, counsel presented to me the findings contained in the 84-page report that Chapman prepared as part of its investigation. During the course of the Internal Investigation, I relied on Chapman's advice and counsel in connection with my analysis, but also made my own determination based upon the facts and analysis I learned during the course of the Internal Investigation.

10. Based upon the foregoing factors, and based in part on my own review of the factual record and Chapman's findings, I concluded that the facts did not support any material viable claims or causes of action that could be asserted by the Debtors against the Released Parties. From a pragmatic standpoint, in addition to the foregoing legal considerations discussed with counsel, I also considered the significant cost, time, uncertainty, and other inherent risks in connection with

litigating these claims and causes of action, which I believe are factually intensive and may likely require years of litigation and appeals, in addition to substantial litigation costs. Critical to this determination was the review and analysis provided by Ankura in connection with the "Waterfall" presented in Article III.C.2 in the Combined Disclosure Statement and Plan. The Waterfall indicated that in order for general unsecured creditors to receive any recovery, it is estimated that approximately $84 million in gross proceeds would need to be collected by the Debtors' estates. Thus, even if such causes of action were ultimately pursued successfully, and judgments were obtained and collected, I believe that it is unlikely that those judgments would be sufficient to actually provide any recovery to flow down to general unsecured creditors.

11. As discussed in the *Declaration of M. Benjamin Jones in Support of Confirmation and Final Approval of the Debtors' Second Amended Disclosure Statement and Joint Chapter 11 Plan of Reorganization*, filed contemporaneously herewith, I understand that the Debtors, with the assistance of Ankura, prepared a summary of consideration received by the Debtors in connection with their prepetition facility divestitures (the "Divestiture Transaction Consideration Summary"), which reflected, among other things, consideration received in the form of cash, rent forgiveness, and additional operational liquidity. In sum, the Divestiture Transaction Consideration Summary illustrated that the Debtors received **over $100 million** (excluding capital infusions from their equity owners) in connection with the facility divestitures that occurred in the two years prior to the Petition Date. The Debtors shared the Divestiture Transaction Consideration Summary with the Committee in advance of the Mediation and with Judge Cavender in connection with the Mediation.

12. Highly relevant to my analysis was that—despite certain affiliations between the Debtors and various third parties—all relevant transfers of cash related to the divestitures and

reflected in the Divestiture Transaction Consideration Summary were one way into the Debtors. No dividends were paid out to equity investors, but instead significant funds were invested **into** the Company to try to stave off bankruptcy, which were used to pay trade claims, tort claimants, and staffing agencies, until those funds ran out. I believed that the Debtors received more than reasonably equivalent value on many of the divestitures at issue, ***simply because affiliated entities and individuals were involved***, because those parties had a vested interest and desire in providing support to the Company so the Company could avoid bankruptcy and continue to operate as a going concern.

13. As Independent Manager, I also took my duty seriously to ensure that the Debtors' residents and employees would be protected, with continuity of care maintained during this process. Even if I concluded that these litigation alternatives provided enhanced value to the Debtors' estates as compared to settling them (which I did not), these alternatives did not provide me sufficient comfort regarding the critical preservation of resident care. It is likely that any such causes of action would likely need to be pursued through a chapter 7 conversion and, in that instance, there was no clear path toward a safe and smooth transition of the facilities.

14. For these and other reasons, I determined, based upon advice of counsel and in my reasonable business judgment, that the Debtors' likelihood of achieving a greater return for their creditors than the compromises embodied in the Plan was very low, and that pursuit of such claims and causes of action (even in a best-case scenario) would likely result in no recovery to unsecured creditors, particularly given the recovery waterfall in these Chapter 11 Cases. I further believe that pursuing such claims would have likely been value destructive and would have prolonged the amount of time that the Debtors remained in bankruptcy. Moreover, I believe the *de minimis* value,

if any, of such claims and causes of action is outweighed significantly by the value and benefits provided by the Plan.

THE DEBTORS' NON-CONSENSUAL PLAN, MEDIATION PROCESS, AND SUBSEQUENT SETTLEMENT

15. On September 13, 2024, I approved the compromises and settlement provided for in a prior iteration of the Plan, which occurred in the days following the multi-day, in-person mediation sessions before the Honorable Jeffery W. Cavender (the "Mediation"). *See* Docket No. 347. I, along with McDermott, Chapman, and Ankura, attended the Mediation and was an active participant at the Mediation. Following a full-day mediation session on September 11, 2024, it appeared that the parties were at an impasse, and based upon the results of the Independent Investigation, I authorized the filing of a "Non-Consensual Plan," which I believed—although it did not have the support of the Committee—provided a higher recovery for unsecured creditors than was likely in any other alternative scenario. *See* Docket No. 438. The Non-Consensual Plan provided $7 million in cash, plus Divested Accounts Receivable to Holders of General Unsecured Claims, but in the event that the Committee did not execute a plan support agreement, this amount would be reduced by excess professional fees incurred over the budget.

16. Following the filing of the Non-Consensual Plan, the Mediation continued, and culminated in Judge Cavender's circulation of a mediator's proposal to the parties. On September 20, 2024, following continued discussions in furtherance of the mediation and in response to the mediator's proposal, the parties agreed to the terms of a revised mediator's proposal (the "Settlement"), which provided enhanced recoveries to Holders of General Unsecured Claims over the Non-Consensual Plan that I previously approved, and significantly, was supported by the Committee.

17. On September 26, 2024, I approved the Debtors' filing of the *Debtors' Second Amended Combined Disclosure Statement and Joint Chapter 11 Plan of Reorganization* [Docket No. 461], which incorporated the terms of the Settlement and paved the way for a consensual Plan process with the Committee. On October 1, 2024, I understand that the Debtors filed the solicitation version of the Combined Disclosure Statement and Plan (the disclosure statement portion thereof, the "Disclosure Statement" and the chapter 11 plan portion thereof, the "Plan", as may be subsequently modified, amended, or supplemented from time to time) and subsequently commenced solicitation of the Combined Disclosure Statement and Plan on or about October 7, 2024.

THE RELEASES PROPOSED IN THE PLAN

18. Article X.D.1 of the Plan provides for the release (the "Debtor Release") of the Released Parties of any Claims and Causes of Action held by the Debtors, the Reorganized Debtors, and their Estates, subject to the terms of the Debtor Release. The Released Parties include, among others, (a) the Debtors and the Reorganized Debtors; (b) the Committee and each of its members (solely in their respective capacities as such); (c) Omega; (d) the ABL Secured Parties; (e) OHI DIP Lender, LLC; (f) TIX 33433 LLC; (g) the CRO; (h) the Independent Manager; and (i) the respective affiliates and related parties of each of the foregoing, including the current and former officers of the Debtors and the current and former directors of FC XXI (collectively, the "Released Parties"). The Debtor Release covers a wide range of matters related to the Debtors, their capital structure, these Chapter 11 Cases, and various transactions central to the restructuring process, including the DIP Facility and the implementation of the Plan.

19. Article X.D.2 of the Plan provides for a "third-party release" (the "Third-Party Release" and together with the Debtor Release, the "Releases"), described further below. Pursuant

to the Third-Party Release and subject to the ability for any creditor to reject the Plan and affirmatively opt-out of the Third-Party Release, the Released Parties will be deemed conclusively, absolutely, unconditionally, irrevocably, and forever released, to the maximum extent permitted by law, by the Releasing Parties (as defined in the Plan), in each case from any and all Claims and Causes of Action whatsoever (including any derivative claims, asserted or assertable on behalf of the Debtors, the Reorganized Debtors, or their Estates).

THE DEBTOR RELEASE IS APPROPRIATE

20. Within the context of the results of the Debtors' Independent Investigation, I determined that the granting of the Debtor Release was appropriate and constituted a sound exercise of the Debtors' business judgment because the costs and risks associated with pursuing any released claims would likely significantly outweigh any potential benefit to the Debtors' Estates. I believe that the Debtor Release is being provided in consideration for the support of the Plan and other important contributions as set forth above in the terms of the Settlement. These potential claims or causes of action are not simply being abandoned or released without consideration; rather, the Debtors have agreed to settle and resolve these potential claims for substantial value flowing to the Debtors' estates, which inure to the benefit of the Debtors' creditors. This Settlement was negotiated extensively, at arm's-length, and required the services of Judge Cavender, without which any settlement would have been unlikely.

21. I also believe that, absent the Debtor Release, it is highly unlikely that the Released Parties would have agreed to support the Plan, and in the absence of such support, I believe the Debtors would not be in a position to confirm the Plan or otherwise provided any recovery to Holders of General Unsecured Claims. Therefore, I believe that the Debtor Release (a) provides

significant value to the Estates and (b) is fair, equitable, and in the best interests of the Estates with respect to the transactions contemplated under the Plan.

THE THIRD-PARTY RELEASE IS APPROPRIATE

22. With respect to the Third-Party Release, it is my belief and understanding that the Third-Party Release is consensual, appropriately tailored, and applies only to parties that have been provided notice of, and have not opted out of, the Third-Party Release. Specifically, I understand that the Third-Party Release is applicable only to the "Releasing Parties," which was narrowly tailored in the Plan.

23. I believe that the Third-Party Release was an integral negotiated term of the Settlement. Further, I believe that the Third-Party Release was crucial to incentivizing parties-in-interest to support the Plan by providing critical concessions and cooperation, and to prevent costly and time-consuming litigation regarding various parties' respective rights and interests. I understand that the Third-Party Release is designed to provide finality for the Debtors and the Released Parties. As such, I believe that the Third-Party Release appropriately offers certain protections to parties who participated in the Debtors' restructuring. I believe that, without the Third-Party Release, it is unlikely that the Debtors' key stakeholders, including the Plan Sponsor, would have been willing to fund and otherwise support the Plan and enable the Debtors to exit these Chapter 11 Cases.

THE PLAN SATISFIES THE CONFIRMATION REQUIREMENTS OF GOOD FAITH AND BUSINESS JUSTIFICATION

24. Based upon my observations of the Plan process, including the extensive efforts of the Debtors, the Committee, the Plan Sponsor, and Omega in connection with the Mediation, I firmly believe that the Plan was proposed in good faith and with the goal of maximizing stakeholder recoveries and the best interest of the Estates. It reflects extensive, arm's-length

negotiations among the Debtors and key constituencies. I conducted a thorough and diligent review of the Plan, ensuring that it was fair and equitable to all parties involved, and ultimately approved the Plan. This process involved extensive mediation discussions, frequent consultations with advisors, and careful consideration of the potential risks and benefits of the Plan, including the likelihood of achieving a successful resolution of these Chapter 11 Cases, the impact on creditors and the Debtors' residents, and the overall feasibility of the proposed transaction.

25. As noted above, I was appointed as Independent Manager to consider, evaluate, develop, negotiate, and ultimately select the best option of various strategic alternatives. I consistently exercised oversight of the Debtors' business and restructuring process both before the commencement of the Chapter 11 Cases and throughout the restructuring process and participated extensively in these Chapter 11 Cases in my capacity as Independent Manager. At all stages of these Chapter 11 Cases, I was guided by my fiduciary duty to seek to maximize the value of the Debtors' Estates and I believe that I did so in good faith throughout this process, acting at all times in the best interests of the Debtors' Estates and stakeholders.

CONCLUSION

26. The Plan (and the Settlement embodied therein) paves the way for an efficient and largely consensual reorganization of the Debtors' Estates around the Debtors' existing facilities. The Plan achieves the best outcome with respect to each of its constituencies, as is demonstrated by the overwhelming support demonstrated by the Debtors' key stakeholders, namely the Committee, the Plan Sponsor, the DIP Lenders, and the Omega Parties.

27. In light of the foregoing, I believe that: (a) the Plan and the transactions embodied therein have been structured to accomplish the Debtors' goal of maximizing returns to stakeholders and successfully restructuring the Debtors' capital and corporate structures through chapter 11,

(b) the Plan has been proposed by the Debtors in good faith, (c) confirmation and consummation of the Plan is in the best interests of Holders of Claims, (d) the Releases provided therein were appropriate, and were in the best interests of the Debtors' Estates and were appropriately tailored under the facts and circumstances of these Chapter 11 Cases, and (e) the Plan satisfies the applicable provisions of the Bankruptcy Code as such provisions have been explained to me.

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: November 12, 2024

/s/ James D. Decker
James D. Decker
Independent Manager
LV Operations I, LLC