

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

IN RE:)	CASE NO. 24-55507-PMB
)	
LAVIE CARE CENTERS, LLC, <i>et. al.</i> ,)	JOINTLY ADMINISTERED
)	
DEBTORS.)	CHAPTER 11

**UNITED STATES TRUSTEE’S MOTION TO AMEND MEMORANDUM
DECISION**

Mary Ida Townson, United States Trustee for Region 21, acting in furtherance of her responsibilities under 28 U.S.C. § 586, files this Motion to Amend the Memorandum Decision entered by the Court on December 5, 2024 (Dkt. No. 736), and requests that the Court amend its finding that the United States Trustee approved the precise form of ballot used by Debtors when soliciting votes for Debtors’ plan.

COURSE OF PROCEEDING

1.

On June 2 and June 3, 2024, LaVie Care Centers, LLC, and 281 related entities (“Debtors”) filed petitions for relief under chapter 11 of the United States Bankruptcy Code.¹

¹ A complete list of the debtors and the last four digits of their federal tax identification numbers are included in the *Order (I) Authorizing Joint Administration of Related Chapter 11 Cases and (II) Granting Related Relief* (Dkt. No. 20) and is incorporated by reference.



2.

On July 23, 2024, Debtors filed the *Debtors' Combined Disclosure Statement and Joint Chapter 11 Plan of Reorganization*. (Dkt. No. 273) On September 17, 2024, Debtors filed *Debtors' Combined Disclosure Statement and Joint First Amended Chapter 11 Plan of Reorganization*. (Dkt. No. 438) On October 1, 2024, Debtors filed *Debtors' Second Amended Combined Disclosure Statement and Joint Chapter 11 Plan of Reorganization* (Dkt. No. 481) (the disclosure statement portion thereof, the "Second Amended Disclosure Statement," and the chapter 11 plan portion thereof, the "Second Amended Plan," including all exhibits and supplements).

3.

On September 20, 2024, the United States Trustee timely filed her *Objection to Debtors' Amended Disclosure Statement and Form of Ballots*. (Dkt. No. 445) (the "Disclosure Statement Objection")

4.

On October 1, 2024, the Court entered the *Order (I) Conditionally Approving Disclosure Statement, (II) Scheduling Combined Hearing for November 14, 2024, at 9:30 A.M. (Prevailing Eastern Time), (III) Establishing Procedures for Solicitation and Tabulation of Votes on Plan, (IV) Approving Certain Forms and Notices, and (V) Granting Related Relief*. (Dkt. No. 480) (the "Disclosure Statement Order") In the Disclosure Statement Order, the Court conditionally approved the use of the Second Amended Disclosure Statement for solicitation of votes for the Second Amended Plan, but specifically indicated that any objections to the adequacy of the information contained in

the Second Amended Disclosure Statement would be reserved for consideration at the plan confirmation hearing. (Dkt. No. 480, Pg. 3) The Disclosure Statement Order set the deadline for filing an objection to confirmation of the Second Amended Plan for November 4, 2024.

5.

On November 4, 2024, the United States Trustee filed her *Objection to Debtors' Second Amended Combined Disclosure Statement and Joint Chapter 11 Plan of Reorganization*. (Dkt. No. 623) (the "Plan Objection")

6.

On November 14, 2024, the Court held a hearing on confirmation of Debtors' Second Amended Plan. During the confirmation hearing, the Court heard oral argument from Debtors and the United States Trustee regarding the Plan Objection. In addition, during the hearing, the Debtors, various creditors, and other parties-in-interest also announced agreements that resolved all other objections to confirmation of Debtors' Second Amended Plan.

7.

On November 22, 2024, the Court issued an oral ruling, approving the third-party releases in the Second Amended Plan. On December 4, 2024, the Debtors filed *Further Modifications to Debtors' Modified Second Amended Combined Disclosure Statement and Joint Chapter 11 Plan of Reorganization*, which incorporated the agreements between Debtors and creditors announced during the confirmation hearing. (Dkt. No. 730) On December 5, 2024, the Court entered the *Findings of Fact, Conclusions of Law, And Order*

Approving on Final Basis and Confirming Debtors' Modified Second Amended Combined Disclosure Statement and Joint Chapter 11 Plan of Reorganization. (Dkt. No. 735) (the “Confirmation Order”) That same day, the Court also entered the *Memorandum Decision on Opt Out Third-Party Releases Included in Debtors' Joint Second Amended Plan of Reorganization.* (Dkt. No. 736) (the “Memorandum Decision”)

CITATION OF AUTHORITY

8.

Federal Rule of Bankruptcy Procedure 9014 (c) states that Federal Rule of Bankruptcy Procedure 7052, which incorporates Federal Rule of Civil Procedure 52, applies in contested matters. Federal Rule of Civil Procedure 52(b) states: “On a party’s motion... the court may amend its findings- or make additional findings- and may amend the judgement accordingly.”

9.

The purpose of a motion under Federal Rule of Bankruptcy Procedure 7052 is to allow the court to correct errors of law or fact. *See Sony Corp. of Am. v. Bagdan (In re Bagdan)*, 1994 Bankr. LEXIS 2443 at *2 (Bank. M.D. Fl. 1994); *See also In re Kress Road Partnership*, 134 B.R. 309, 311 (Bankr. N.D. Ill. 1991). This procedural process is not designed to afford a party “another bite at the apple”; a party seeking relief must provide new evidence or reference a manifest error of law or fact. *See Bagdan*, 1994 Bankr. LEXIS 2443, at *3-4.

10.

Federal Rule of Bankruptcy Procedure 7052 states that “a motion under Fed. R. Civ. P. 52(b) to amend or add findings must be filed within 14 days after the judgment is entered.”

ARGUMENT

11.

The Memorandum Decision should be amended, because it finds that the United States Trustee approved the precise form of ballot utilized by Debtors.

12.

The Memorandum Decision included the following finding of fact:

1. The opt out mechanism used here is clear and conspicuous in the Plan and the associated notices and ballots. The notices and ballots are clear and conspicuous, and those are the shorter documents most creditors are likely to read. **The precise form of ballot was approved by, and included revisions recommended by, the U.S. Trustee.** (Dkt. No. 736, Pg. 30) (emphasis added)

13.

The United States Trustee did not approve the precise form of ballot utilized by Debtors during the balloting process. In the Disclosure Statement Objection, the United States Trustee specifically objected to the form of ballot proposed by Debtors. (Dkt. No. 445, Pgs. 23-24) Further, in the Plan Objection, the United States Trustee referenced and incorporated all allegations and arguments made in the Disclosure Statement Objection. (Dkt. No. 623, Pg. 3)

14.

In addition, during oral argument regarding the Plan Objection, counsel for the United States Trustee explicitly argued that the size and language of the form of ballot rendered the ballots difficult for an average creditor to understand. Accordingly, the United States Trustee argued that the Court should not find that creditors who failed to opt-out of the third-party releases consented to the third-party releases.

15.

The United States Trustee acknowledges that, prior to the hearing on the Disclosure Statement Objection, counsel for Debtors and the United States Trustee conferred regarding the Debtors' proposed form of ballot. At the hearing on the Disclosure Statement Objection, counsel for Debtors announced changes to the form of ballot, which comported with certain concerns expressed by the United States Trustee. However, the United States Trustee never waived any portion of the Disclosure Statement Objection, which included an explicit objection to the Debtors' form of ballot, and never approved the precise form of ballot utilized by Debtors.

16.

The United States Trustee does not seek reconsideration of the Court's ruling in the Memorandum Decision. Instead, the United States Trustee merely requests that the Court strike the final sentence of paragraph numbered 1 on page 30, and replace it with the following:

1. The opt out mechanism used here is clear and conspicuous in the Plan and the associated notices and ballots. The notices and ballots are clear and conspicuous, and those are the shorter documents most creditors are likely to read. *At the suggestion of the U.S. Trustee, Debtors included a plain statement regarding the impact of the third-party release within the notices and ballots.* (emphasis added)

WHEREFORE, the United States Trustee respectfully requests that the Court grant the United States Trustee's Motion to Amend Memorandum Decision, and grant such further relief as the Court deems fair and equitable.

Respectfully submitted this 19th day of December, 2024.

MARY IDA TOWNSON
UNITED STATES TRUSTEE
REGION 21

s/ Jonathan S. Adams
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CERTIFICATE OF SERVICE

This is to certify that I have on this day electronically filed the foregoing *United States Trustee's Motion to Amend Memorandum Decision* using the Bankruptcy Court's Electronic Case Filing program, which sends a notice of this document and an accompanying link to this document to the following party who has appeared in this case under the Bankruptcy Court's Electronic Case Filing program:

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I further certify that on this day, I caused a copy of this document to be served via United States First Class Mail, with adequate postage prepaid on the following parties at the address shown for each.

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Dated: December 19, 2024.

s/ Jonathan S. Adams

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