

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.)	(Jointly Administered)
)	
)	Related to Docket Nos. 751, 767, 799, 800
)	

DEBTORS' MOTION FOR ENTRY OF ORDER (A) AUTHORIZING DEBTORS' ENTRY INTO, AND PERFORMANCE UNDER, ERC SETTLEMENT WITH INTERNAL REVENUE SERVICE, (B) APPROVING THE ERC SETTLEMENT, AND (C) 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")² for entry of an order, substantially in the form attached hereto as **Exhibit A** (the "Proposed Order"), granting the relief described below. In support of the Motion, the Debtors respectfully represent as follows:

PRELIMINARY STATEMENT

1. Pursuant to this Motion, the Debtors seek Court approval of a proposed settlement with the United States Department of Treasury – Internal Revenue Service (the "IRS") that will resolve a disputed \$29 million priority tax claim—raised just days prior to Confirmation—that had

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.

² Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the IRS Claim Objection or the Plan, as applicable and each as defined herein.



the potential to undue all of the progress reached to date, and ultimately placed the viability of the confirmed Plan, as well as the future of the Debtors' residents and employees in jeopardy. As the Court recently noted on the record at the January 17, 2025 discovery conference, "final resolution to this case is literally waiting on the resolution of this matter."³

2. As discussed in more detail below, the terms of the proposed settlement provide the IRS with an allowed general unsecured, ***non-priority*** claim, that will be subordinated in part to all other general unsecured claims and will receive a *pro rata* distribution with other allowed general unsecured claims as to the balance. The proposed settlement provides much-needed certainty and finality to the Debtors' estates as to the resolution of this disputed claim and will have a minimal impact on projected recoveries to unsecured creditors in this case (less than 0.8%), while removing an existential threat to the overall viability of the Plan. As such, the proposed settlement falls well within the range of reasonableness required for approval under Bankruptcy Rule 9019 and is unquestionably a proper exercise of the Debtors' business judgment.

3. The dispute regarding allowability of an asserted priority claim emanating from the Employee Retention Credits ("ERCs") raised an issue that has not yet been litigated in *any* court (let alone a bankruptcy court). Not only would a final determination by the Bankruptcy Court determine the fate of these Chapter 11 Cases, but it also had the potential to have ripple effects throughout the healthcare industry, as thousands of providers applied for, and received, ERCs under similar circumstances. And while the Debtors remain steadfast that their eligibility and calculation of the ERCs was correct and authorized under the law, the potential impact of any adverse ruling or even threat of appeal if the Debtors were successful, left the Debtors' cases in limbo.

³ Discovery Dispute Hr'g Tr. 24:24-25, *In re LaVie Care Centers, LLC*, Case No. 24-55507 (PMB) (Bankr. N.D. Ga. Jan. 17, 2025).

4. That is why, in the midst of substantial trial prep, discovery disputes, and additional depositions, the Debtors redoubled efforts to negotiate with the IRS in an effort to achieve consensus and avoid the uncertainty posed by the IRS ERC Claim (as defined herein). Setting aside the substantial uncertainty on the Debtors' residents and employees, it was also clear that, based on the uncontroverted evidence at the Confirmation Hearing, any alternative reorganization (including a chapter 7 conversion) would leave unsecured creditors with no recovery. And, like the Debtors, although the IRS has expressed confidence in its claims for erroneously refunded ERCs, the IRS has told the Debtors that it recognizes that a negotiated resolution is the best way to recover a portion of its claim given all of the circumstances. Accordingly, the Debtors and the IRS have agreed to a settlement (subject to the Final DOJ Approval Rights defined and described below) that recognizes these high stakes, and provides for a reduced claim amount—in both amount and priority—for the IRS. In the end, this result paves the way toward the Debtors going effective on the Plan that was confirmed in November 2024, and removes any remaining uncertainty on the Debtors' estates. The Debtors are now prepared to bring these Chapter 11 Cases to a successful conclusion.

5. The negotiated settlement requires approval both by the Court and at higher levels within the Department of Justice. To efficiently bring these issues to a successful conclusion, the Debtors respectfully request that the Court grant its approval while the DOJ simultaneously seeks expedited final approval of the settlement offer on behalf of the IRS. The Motion should be approved.

RELIEF REQUESTED

6. By the Motion, the Debtors respectfully request entry of the Proposed Order, approving the terms of the ERC Settlement (as defined below) with the IRS, as set forth herein.

JURISDICTION AND VENUE

7. 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. The legal predicates for the relief requested herein are section 105 of title 11 of the United States Code (the “Bankruptcy Code”) and Rule 9019 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

BACKGROUND

I. The Chapter 11 Cases

8. On June 2, 2024 (the “Petition Date”), each Debtor commenced a case by filing with the Court a petition for relief under chapter 11 of the Bankruptcy Code (collectively, the “Chapter 11 Cases”), which are being jointly administered for procedural purposes only. 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.

9. On June 13, 2024, the Office of the United States Trustee for Region 21, Atlanta Division (the “U.S. Trustee”) appointed an official committee of unsecured creditors (the “Committee”). *See* Docket No. 112. To date, no chapter 11 trustee or examiner has been appointed in the Chapter 11 Cases.

II. The ERC Dispute

10. On November 4, 2024, the IRS filed the *Objection to Debtors’ Second Amended Combined Disclosure Statement and Confirmation of the Joint Chapter 11 Plan of Reorganization* [Docket No. 626] (the “IRS Objection”). Among other things, the IRS indicated in the IRS Objection that it was currently evaluating the validity of the ERCs, including whether any previously allowed credits were allowed in error. *See* IRS Obj., ¶¶ 17–18. The IRS also indicated

that if it determined that certain ERC claims were allowed in error and asserts an erroneous refund claim, the erroneous refund claim would have the same priority status as would the underlying tax.

See id.

11. On November 14, 2024, the Court held a hearing on confirmation of the Plan (the “Confirmation Hearing”). 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* [Docket No. 735] (the “Confirmation Order”), confirming the Plan. The Confirmation Order provided that the IRS’s “Secured Tax Claims and/or Priority Tax Claims shall have been determined by Final Order prior to the Effective Date, the results of which shall be acceptable to the Plan Sponsor in its sole discretion.” *See* Docket No. 735 at ¶ 53(b). As part of confirming the Plan, the Court also entered the *Memorandum Decision on Opt Out Third-Party Releases Included in Debtors’ Joint Second Amended Plan of Reorganization* [Docket No. 736] (the “Confirmation Opinion”).

12. On November 29, 2024, the IRS filed Claim No. 5247 (the “IRS ERC Claim”), totaling \$31,866,380, which included \$29,043,355 as a Priority Tax Claim (as defined in the Plan). On December 10, 2024, the Debtors filed the *Debtors’ Objection to Claim No. 5247 Filed by the Internal Revenue Service or, in the Alternative, Debtors’ Motion for Entry of Order Determining Tax Liability Pursuant to 11 U.S.C. § 505(a)* [Docket No. 751] (the “IRS Claim Objection”). Through the IRS Claim Objection, the Debtors asserted entitlement to the ERCs they received from the IRS, disputed that the IRS is owed any amounts, and sought to have the IRS Claim disallowed in its entirety.

13. On December 12, 2024, the IRS served discovery requests (including requests for admission, production, and interrogatories) on the Debtors and Synergi Partners, Inc. (“Synergi”).

14. On December 18, 2024, the Court held a status conference regarding the Objection and entered an order setting forth applicable dates and deadlines in connection with the dispute. *See* Docket Nos. 767, 771.

15. On December 19, 2024, the Committee filed its joinder to the IRS Claim Objection (the “Joinder”). *See* Docket No. 766.

16. On December 30, 2024 and January 6, 2025, the Debtors responded to the IRS’ discovery requests. Synergi also produced documents responsive to the IRS’ requests in mid-January 2025. On January 17, the IRS took a 30(b)(6) deposition of Synergi, and a deposition of Mr. Jeremy Pyron of Pourlessoins, LLC d/b/a Synergy Healthcare Services (“Synergy”).

17. On January 17, 2025, the Court held a discovery conference with the IRS, the Debtors, and the Committee (the “Discovery Conference”). Following this conference, the IRS and the Debtors agreed to certain revised dates, as set forth in the amended order submitted at Docket No. 799, as well as additional discovery parameters. Later that day, the IRS filed *United States’ Response to Debtors’ Objection to Claim* [Docket No. 800] (the “IRS Response”). In addition, the IRS sought additional depositions scheduled for January 30 of the Debtors’ 30(b)(6) witness and a separate 30(b)(6) deposition of a Synergy representative. An evidentiary hearing on the IRS Claim Objection and the IRS Response was set for February 4, 2025 at 9:30 a.m. (prevailing Eastern Time).

18. In the weeks prior to the proposed evidentiary hearing on this matter, the IRS and the Debtors engaged in substantive settlement discussions, but those discussions did not bear fruit, and ultimately the parties’ efforts were focused on litigation as the trial neared. As part of the

agreements emanating from the Discovery Conference, the parties agreed to hold a settlement conference prior to a hearing. To that end, on January 22, 2025, the Debtors, the IRS, and the Plan Sponsor engaged in a settlement conference regarding resolution of the IRS ERC Claim. On January 23, 2025, the Debtors sent a letter to the IRS, apprising the IRS of workable settlement parameters regarding the IRS ERC Claim. On January 27, 2025, the IRS sent a response letter to the Debtors, acknowledging the proposed parameters with certain modifications. Numerous discussions occurred between the Debtors and the IRS during this time period. The Debtors apprised the Committee of the proposed settlement terms immediately upon acknowledgment by the IRS, and subsequently executed the acknowledgement letter.⁴

III. The Proposed ERC Settlement

19. Although both the Debtors and the IRS are each confident in their respective interpretations of the governing ERC provisions set forth in the CARES Act and calculation of the ERCs, both parties recognize that there is significant risk proceeding forward with the hearing on these issues on either side. Doing so would require litigating complicated tax issues of first impression (in *any* court, tax courts included). Additionally, proceeding with this litigation at this stage in the Chapter 11 Cases will only continue to add considerable legal expenses to the Debtors' estates at this critical juncture, which would be better spent preparing the Debtors to go effective on the Plan. Moreover, if the IRS ERC Claim is determined to be an allowed Priority Tax Claim, the Debtors will be unable to consummate the transactions set forth in the confirmed Plan and unsecured creditors will not receive the recoveries currently projected for under the Plan.

⁴ A true and correct copy of the executed acknowledgement letter is attached hereto as **Exhibit B**.

20. Given these factors, the Debtors and the IRS engaged in extensive arm's-length and good-faith negotiations to settle their dispute, resulting in the following proposed settlement terms (the "ERC Settlement"): ⁵

- (a) The Debtors shall withdraw the IRS Claim Objection.
- (b) For purposes of these Chapter 11 Cases only, the IRS ERC Claim will be allowed, in full, as an erroneous refund under 26 U.S.C. § 7405; *provided, however*, that such claim shall be treated as:
 - (i) an Allowed General Unsecured Claim in the aggregate amount of \$20.0 million; and
 - (ii) an Allowed General Unsecured Claim for the remaining amount which shall be subordinated in recovery to Holders of General Unsecured Claims unless and until such Holders receive a full recovery. The foregoing Allowed General Unsecured Claims shall be allocated between Class 6A and Class 6B under the Plan on a *pro rata* basis based upon the entities that claimed such ERCs, as follows:

Amount	Class 6A	Class 6B
Amount Treated & Paid as an Allowed General Unsecured Claim	\$6,347,685.47	\$13,652,314.53
Amount Treated as an Allowed General Unsecured Claim & Subordinated in Recovery to Other General Unsecured Claims	\$2,870,212.62, together with all pre-petition interest on claims against OpCo Debtors	\$6,173,123.34, together with all pre-petition interest on claims against DivestCo Debtors

- (c) The Debtors shall withdraw their remaining outstanding claimed ERCs in the amount of approximately \$3.7 million.

⁵ As discussed above, the terms of the proposed ERC Settlement have been heavily negotiated by Debtors and trial counsel for the IRS. The trial attorneys at the Department of Justice are prepared to recommend acceptance of the ERC Settlement, the individuals with the authority at the Internal Revenue Service to provide the IRS's views concur in that recommendation, and the Tax Division's Office of Review is also prepared to recommend acceptance. However, because this offer involves a concession of more than \$10 million, final authority to accept the proposed ERC Settlement rests with the Department of Justice's Office of the Associate Attorney General. See 28 C.F.R. §§ 0.160, 0.161. The Department of Justice is in the process of transmitting the settlement offer for review and final action, but given the Office's other responsibilities, the Tax Division cannot guarantee a date by which the Office will act on the offer; however, the Tax Division will emphasize the urgency of this case. As such, and as reflected in the Proposed Order, the ERC Settlement will not be effective unless and until it is approved by an authorized delegate of the Attorney General (the "Final DOJ Approval Rights").

- (d) The IRS shall not seek any amounts relating to the ERCs, including any applicable penalties or interest, against the Reorganized Debtors, and shall not otherwise seek any civil penalties or other damages against the Debtors or the Reorganized Debtors. To the extent any Governmental Entity seeks to bring an action against any other third-party in connection with the Debtors' ERCs, all such parties reserve all rights and remedies in connection therewith.
- (e) The ERC Settlement shall neither be an admission of invalidity by the Debtors nor an admission of validity by the IRS with respect to the ERCs claimed by the Debtors.
- (f) The ERC Settlement is contingent on obtaining any necessary approval from the Court.

21. Based upon the settlement terms described above, the entirety of the \$31 million IRS ERC Claim, approximately \$29 million of which was asserted as a Priority Tax Claim, would be allowed only as a general (not priority) unsecured claim, over \$9 million of which will be subordinated in recovery to holders of General Unsecured Claims. Thus, the ERC Settlement achieves a 100% reduction of the priority component of the IRS ERC Claim and subordinates over 30% of the IRS ERC Claim to other general unsecured creditor recoveries. Instead of receiving millions of dollars ahead of unsecured creditors as a priority claimant, the IRS will be an unsecured claimant in Class 6A and Class 6B, only modifying the projected recoveries for Class 6A from a projected 10.8% to approximately 10.0%, based upon the Debtors' recovery estimates set forth in the Plan and Disclosure Statement.⁶

⁶ The Debtors' Plan contained the below footnote (among other disclaimers) in connection with the recovery estimates, and nothing in this Motion or the proposed ERC Settlement would require a modification or amendment to the Plan. *See* Docket No. 730 at p.7 n.3: "The information set forth herein is provided in summary form for illustrative purposes only and is subject to material change based on certain contingencies, including those related to the Claims reconciliation process. Actual recoveries may widely vary within these ranges and any changes to any of the assumptions underlying these amounts could result in material adjustments to recovery estimates provided herein and/or the actual distributions received by Holders of Allowed Claims. The projected recoveries are based on information available to the Debtors as of the date hereof and reflect the Debtors' estimates as of the date hereof only. Additionally, the reconciliation of Claims remains ongoing and certain costs associated with such reconciliation (as well as other costs) will be borne by the GUC Trust, which will necessarily reduce the estimated amounts and projected recoveries reflected above. In addition to the cautionary notes contained elsewhere in the Second Amended Combined Disclosure Statement and Plan, it is underscored that the Debtors make no representation as to the accuracy of these recovery estimates. The Debtors expressly disclaim any

(\$ in thousands)	\$0.0M			\$20.0M			ERC Allocation
	Claim	Recovery		Claim	Recovery		
	\$	\$	%	\$	\$	%	
1. 6A (Non-IRS)	\$ 83,531	\$ 8,984	10.8%	\$ 83,531	\$ 8,350	10.0%	31.7%
2. 6A IRS	-	-	-%	6,348	635	10.0%	
3. 6A Claim Recovery	\$ 83,531	\$ 8,984	10.8%	\$ 89,879	\$ 8,984	10.0%	68.3%
4. 6B (Low Scenario)	284,634	3,500	1.2%	284,634	3,340	1.2%	
5. 6B IRS	-	-	-%	13,652	160	1.2%	
6. 6A Claim Recovery	\$ 284,634	\$ 3,500	1.2%	\$ 298,286	\$ 3,500	1.2%	
7. Grand Total	\$ 368,165	\$ 12,484	3.4%	\$ 388,165	\$ 12,484	3.2%	
8. IRS Recovery	\$ -	\$ -	-%	\$ 20,000	\$ 795	4.0%	

22. Accordingly, the Debtors believe that the ERC Settlement is in the best interests of the Debtors' estates and should be approved. The ERC Settlement ensures that (a) the Debtors are able to go effective on the Plan, as confirmed, (b) the IRS is able to participate in recoveries under the Plan as a General Unsecured Creditor rather than as a priority claimant, and (c) the IRS Priority Claim is addressed in a way that does not significantly disadvantage any unsecured creditors. Accordingly, the Debtors submit this Motion and respectfully request that the Court approve the ERC Settlement, pending review by the Department's Office of the Associate Attorney General on behalf of the government and subject to the DOJ Approval Rights.

THE ERC SETTLEMENT SHOULD BE APPROVED

23. Bankruptcy Rule 9019(a) grants the bankruptcy court the power to approve settlements and compromises. *See generally* Fed. R. Bankr. P. 9019(a); *see also In re Diplomat Construction, Inc.*, 454 B.R. 917, 920 (Bankr. N.D. Ga. 2011) (approving proposed settlement of adversary claims in the amount of \$40,000 in exchange for a release of all claims against the adversary defendant).

obligation to update any estimates or assumptions after the date hereof on any basis (including new or different information received and/or errors discovered)" (emphasis removed from original).

24. Approval of a settlement in bankruptcy proceedings is within the sound discretion of the court and will not be disturbed or modified on appeal unless approval or disapproval is an abuse of discretion. *See In re Chira*, 567 F.3d 1307, 1311 (11th Cir. 2009); *In re Grot*, 291 B.R. 204, 208 (M.D. Ga. 2003). In determining the reasonableness of a settlement, the test is whether the proposed settlement falls below the lowest point in the range of reasonableness. *See In re Diplomat Construction, Inc.*, 454 B.R. at 920.

25. The legal standard for approval of settlements in the Eleventh Circuit is set forth in *In re Justice Oaks, II, Ltd.*, 898 F.2d 1544, 1549 (11th Cir. 1990), *cert. denied*, 498 U.S. 959 (1990). *Justice Oaks* requires that the Court consider the:

- (a) probability of success in litigation;
- (b) difficulties, if any, to be encountered in the matter of collection;
- (c) complexity of the litigation involved and the expense, inconvenience, and delay necessarily attending it; and
- (d) paramount interest of the creditors and a proper deference to their reasonable views in the premises.

Id.

26. In applying these factors, the Debtors respectfully submit that the terms of the ERC Settlement fall well within the “range of reasonableness,” and satisfy the legal standard set forth in *Justice Oaks* as follows:

(a) Probability of Success in Litigation

27. *First*, in evaluating the ERC Settlement, the Debtors have assessed the relevant risk and the probability of success in resolving the IRS ERC Claim through litigation before this Court, as well as the uncertainty involved in connection with this matter. Although the Debtors maintain that the IRS ERC Claim lacks merit and were prepared to litigate the validity of the Debtors’

entitlement to the ERCs that they received, the Debtors recognize that this dispute involves complex factual and legal issues that the Debtors believe are issues of first impression in any court (including tax courts). Given these issues, there is no guaranty or certainty regarding likelihood of outcome in this matter. As such, continued litigation of these issues involves significant risk and uncertainty regarding probability of success, as it could potentially result in either (a) a determination that the IRS ERC Claim is an allowed \$30 million Priority Tax Claim that must be paid ahead of all unsecured creditors under the Plan or (b) a determination that the IRS ERC Claim is disallowed in part or in its entirety, likely resulting in protracted appellate litigation with the IRS for months (or even years) to come. Either of the foregoing options involves lengthy, costly, and time-consuming litigation that the Debtors' estates simply cannot afford at this juncture in the Chapter 11 Cases and could, depending on the outcome, result in substantial prejudice to all of the Debtors' stakeholders, including the Debtors' creditors, residents, and employees.

28. The ERC Settlement, in contrast, brings finality on favorable terms. The ERC Settlement achieves a 100% reduction of the priority tax claim component of the IRS ERC Claim and subordinates over 30% of the IRS ERC Claim to other unsecured creditor recoveries. Instead of receiving millions of dollars ahead of unsecured creditors, the IRS will now be a claimant in Class 6A and Class 6B, only slightly modifying the projected recoveries for other creditors in these classes. By modifying the treatment of the IRS ERC Claim, the ERC Settlement provides a fair and efficient resolution for the estates and allows the Debtors to proceed with their efforts to consummate the transactions contained in the Plan before exiting chapter 11. Accordingly, the Debtors believe this factor weighs in favor of approving the ERC Settlement.

(b) Likely Difficulties in Collection

29. *Second*, even if the Debtors were able to successfully litigate these issues before this Court, the Debtors recognize that the ultimate cost to their Estates may still be significant. For instance, if the Debtors are successful at this stage, the Debtors anticipate that the IRS may appeal. Continued, protracted litigation, particularly at the appellate level, will only serve to increase costs, delay effectiveness of the Plan, forcing the Debtors to languish in chapter 11 far longer than anticipated or budgeted under the DIP facility, and creating uncertainty for the Debtors' residents and employees. If the IRS is successful at this stage, it is unlikely to receive any recovery on its priority claim because the Plan will no longer be feasible, which would harm all constituents and preclude recovery for any unsecured creditors. By entering into the ERC Settlement, the Debtors are able to ensure that the Plan will go effective in the near term and the Reorganized Debtors will be able to prioritize continuity of care for the residents following emergence from chapter 11.

30. As discussed above, the ERC Settlement provides finality to the Debtors, their estates, and unsecured creditors alike and avoids the potential for further litigation, the costs of which would be borne by the Debtors' estates. Thus, the Debtors believe that entering into the ERC Settlement is in the best interests of the Debtors' estates and allows the Debtors to resolve the IRS ERC Claim in a manner that does not threaten the Debtors' contemplated reorganization. Thus, the Debtors believe this factor weighs in favor of approving the ERC Settlement.

(c) Complexity of Litigation Involved, and the Attendant Expense, Inconvenience, and Delay

31. *Third*, there is a great deal of attendant complexity, cost, and possible delay involved with this litigation. As noted above, litigation of the IRS ERC Claim would involve debating complicated tax issues that are issues of first impression, meaning that there is inherent complexity involved with proceeding in this matter.

32. Additionally, the Debtors have already incurred significant legal expenses in connection with this dispute since November 2024, which will only increase if the litigation continues given the nature of the dispute to date. Indeed, two full-day depositions have taken place and two more were scheduled for later this week, while a significant number of additional documents and communications have been produced. Further litigation efforts required absent the ERC Settlement, including preparing and exchanging exhibit lists, additional responsive pleadings, as well as preparing for a heavily contested trial, would (a) incur significant additional administrative expenses for the Debtors. In contrast, the ERC Settlement provides certainty and finality to the Debtors' estates.

33. Finally, to the extent that the IRS is unsuccessful, the IRS may seek an appeal, potentially delaying the Debtors' emergence from chapter 11 even further. As this Court has noted several times on the record, the Debtors' original projected case timeline contemplated emerging from bankruptcy in the fall of 2024 and the Debtors simply cannot afford further delay. The ERC Settlement allows the Debtors to refocus their efforts on emerging from chapter 11 as expeditiously as possible, to the benefit of the estates, residents, and creditors.

34. As such, the Debtors believe this factor weighs heavily in favor of approving the ERC Settlement and avoiding the significant expenses, inconveniences, and delay that would result from litigating the IRS ERC Claim.

(d) Paramount Interests of Creditors

35. *Finally*, the ERC Settlement is in the best interests of the Debtors' estates and stakeholders. The Debtors have been consistent and clear to all parties, including the IRS, and this Court that an allowed Priority Tax Claim in excess of \$30 million will render the confirmed Plan untenable. Continuing down this litigation path further jeopardizes the ability for the Debtors to

consummate their chapter 11 plan of reorganization that this Court confirmed almost two months ago. As such, approval of the ERC Settlement is in the best interests of the Debtors, their estates, and creditors alike because it resolves complex disputes between the Debtors and the IRS that would have involved costly and time-consuming litigation with uncertain outcomes by providing for the resolution of the IRS ERC Claim.

36. Further, the IRS' recovery will not have a material effect on unsecured creditor recoveries. As set forth above, the projected recoveries for Holders of Claims in Class 6A are only modified slightly, while projected recoveries for Holders of Claims in Class 6B remain largely unchanged. Furthermore, the ERC Settlement allows recoveries on such claims on a faster timeline than if litigation had been pursued to completion, as it allows the Debtors to focus on ensuring that the Plan goes effective rather than focusing on litigation efforts.

37. Based on the foregoing, the Debtors submit that the ERC Settlement satisfies the *Justice Oaks* factors and Bankruptcy Rule 9019 because it is fair, reasonable, and in the best interests of the Debtors, the estates, and the stakeholders. As a result, the Debtors respectfully request that the Court approve the ERC Settlement and authorize the Debtors to enter into the settlement.

NOTICE

38. 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) counsel to the Committee; (i) counsel to the

Debtors' prepetition lenders; (j) counsel to the 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

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

CONCLUSION

WHEREFORE, the Debtors respectfully request that the Court enter the Proposed Order, substantially in the form attached hereto as **Exhibit A**, granting the relief requested herein and such other and further relief as may be just and proper.

Dated: Atlanta, Georgia
January 29, 2025

MCDERMOTT WILL & EMERY LLP

/s/ Daniel M. Simon

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Counsel for the Debtors and Debtors-in-Possession

CERTIFICATE OF SERVICE

I hereby certify that all ECF participants registered in this case were served electronically with the foregoing document through the Court's ECF system at their respective email addresses registered with this Court, including counsel to the IRS. The Debtors' claims and noticing agent will be filing a supplemental certificate of service on the docket to reflect any additional service of the foregoing document via first-class mail, including on the Limited Service List.

Dated: Atlanta, Georgia
January 29, 2025

MCDERMOTT WILL & EMERY LLP

/s/ Daniel M. Simon

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Counsel for the Debtors and Debtors-in-Possession

EXHIBIT A

Proposed Order

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

In re:)	
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**ORDER (A) AUTHORIZING DEBTORS' ENTRY INTO, AND PERFORMANCE
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Upon the motion (the “Motion”)² of the Debtors, filed on January 28, 2025 at Docket No. ___, for entry of an order (this “Order”) approving the ERC Settlement (as defined herein) between the Debtors and the IRS with respect to the IRS ERC Claim, all as more fully set forth in the Motion; 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 opportunity to object to and for hearing on the Motion having been given under the particular circumstances; and the Court having considered the Motion and all other matters of record; and based on the foregoing, no further notice or hearing is required; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; 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 the Court having found that good and sufficient cause exists to grant the relief requested in the Motion; it is hereby

ORDERED, ADJUDGED, AND DECREED that:

1. The Motion is **GRANTED** as set forth herein.
2. The terms of the settlement by and among the Debtors and the IRS (the “ERC Settlement”) consist of the following, and are hereby **APPROVED**, subject to the Final DOJ Approval Rights:

- (a) The Debtors shall withdraw the IRS Claim Objection.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion or the Plan, as applicable.

- (b) For purposes of these Chapter 11 Cases only, the IRS ERC Claim will be allowed, in full, as an erroneous refund under 26 U.S.C. § 7405; *provided, however*, that such claim shall be treated as:
- (i) an Allowed General Unsecured Claim in the aggregate amount of \$20.0 million; and
 - (ii) an Allowed General Unsecured Claim for the remaining amount which shall be subordinated in recovery to Holders of General Unsecured Claims unless and until such Holders receive a full recovery. The foregoing Allowed General Unsecured Claims shall be allocated between Class 6A and Class 6B under the Plan on a *pro rata* basis based upon the entities that claimed such ERCs, as follows:

Amount	Class 6A	Class 6B
Amount Treated & Paid as an Allowed General Unsecured Claim	\$6,347,685.47	\$13,652,314.53
Amount Treated as an Allowed General Unsecured Claim & Subordinated in Recovery to Other General Unsecured Claims	\$2,870,212.62, together with all pre-petition interest on claims against OpCo Debtors	\$6,173,123.34, together with all pre-petition interest on claims against DivestCo Debtors

- (c) The Debtors shall withdraw their remaining outstanding claimed ERCs in the amount of approximately \$3.7 million.
- (d) The IRS shall not seek any amounts relating to the ERCs, including any applicable penalties or interest, against the Reorganized Debtors, and shall not otherwise seek any civil penalties or other damages against the Debtors or the Reorganized Debtors. To the extent any Governmental Entity seeks to bring an action against any other third-party in connection with the Debtors' ERCs, all such parties reserve all rights and remedies in connection therewith.
- (e) The ERC Settlement shall neither be an admission of invalidity by the Debtors nor an admission of validity by the IRS with respect to the ERCs claimed by the Debtors.
- (f) The ERC Settlement is contingent on obtaining any necessary approval from the Court.

3. The foregoing terms of the ERC Settlement are fair, reasonable, and in the best interests of the Debtors and their estates, and are hereby approved in their entirety pursuant to Bankruptcy Rule 9019(a). The IRS will file a notice in these Chapter 11 Cases on or before such date that is 30 days after entry of this Order indicating whether the IRS has received all requisite, final approvals necessary to effectuate the ERC Settlement. In the event that the IRS indicates to this Court that requisite approval was not obtained, all of the rights, remedies, claims, and objections of the Debtors and the IRS with respect to the ERCs, the IRS ERC Claim, or the Debtors' objection with respect thereto are fully preserved, and the Court shall schedule a status hearing to determine any issues relating to the ERC Settlement or otherwise.

4. All objections, if any, with regard to the relief granted herein that have not been withdrawn, waived, settled, or otherwise dealt with as expressly provided herein or on the record at the hearing to consider entry hereof are hereby overruled.

5. Nothing in this Order shall be interpreted as an indication that this Court, or any third-party has taken a position with respect to the ERCs, the IRS ERC Claim, or the Debtors' objection with respect thereto.

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

7. 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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U.S. Department of Justice
P.O. Box 14198
Washington, D.C. 20044

EXHIBIT B

Executed Acknowledgement Letter



U.S. Department of Justice

Tax Division

Trial Attorney: Jeremy A. Rill
Attorney's Direct Line: 202-307-0513
Fax No.: 202-514-4963 or 514-9868
Chase.Burrell@usdoj.gov

Please reply to: Civil Trial Section, Southern Region
P.O. Box 14198
Washington, D.C. 20044

DAH:AAF:CABurrell
DJ 5-18-26269
CMN 2025100050

January 27, 2025

Via Email

Daniel M. Simon
1180 Peachtree Street, NE
Suite 3350
Atlanta, GA 30309
United States of America

Re: *In re LaVie Care Centers, LLC, et al.*
Case No. 24-55507 (PMB) (lead case)
Acknowledgment of your offer to settle

Dear Mr. Simon:

You spoke with Trial Attorneys Hana Bilicki, Jeremy Rill, Chase Burrell, and Ward Benson on several occasions, including, January 22, 2025, concerning settlement of the IRS's Proof of Claim ("Claim") and LaVie Care Centers, LLC ("LaVie" or "Debtors") corresponding Objection to Claim ("Claim Objection"). ECF No. 751. On January 23, 2025, you submitted a letter containing Debtors' offer to settle the matter. Following our receipt of the letter, you engaged in further conversations with Mr. Rill on January 24 and 27, 2025, concerning the proposed settlement offer. This letter is to acknowledge the United States' receipt of the settlement offer and to clarify our understanding of the terms of the offer. We understand that the terms of your offer are as follows:

1. Debtors agree to withdraw their currently pending Claim Objection.
2. The Debtors agree that, for purposes of these Chapter 11 Cases only, the IRS Claim will be allowed, in full, as an erroneous refund under 26 U.S.C. § 7405; provided, however, that such claim shall be treated as: (i) an Allowed General Unsecured Claim in the aggregate amount of \$20.0 million; and (ii) and an Allowed General Unsecured Claim for the remaining amount which shall be subordinated in recovery to Holders of General Unsecured Claims unless and until such Holders receive a full recovery. The foregoing Allowed General Unsecured Claims shall be allocated between Class 6.A and Class 6.B on a pro rata basis based upon the entities that claimed such ERC, as follows:

	Class 6A	Class 6B
Amount Treated & Paid as an Allowed General Unsecured Claim	\$6,347,685.47	\$13,652,314.53
Amount Treated as an Allowed General Unsecured Claim & Subordinated in Recovery to Other General Unsecured Claims	\$2,870,212.62, together with all pre-petition interest on claims against OpCo Debtors	\$6,173,123.34, together with all pre-petition interest on claims against DivestCo Debtors

- Debtors agree to withdraw their remaining outstanding claimed ERCs of approximately \$3.7 million.
- The IRS agrees that it will not seek any amounts relating to the ERCs, including any applicable penalties or interest, against the Reorganized Debtors, and will not otherwise seek any civil penalties or other damages against the Debtors or the Reorganized Debtors. To the extent any Governmental Entity seeks to bring an action against any other third-party in connection with the Debtors' ERCs, all such parties reserve all rights and remedies in connection therewith.
- This settlement shall neither be an admission of invalidity by the Debtors nor an admission of validity by the IRS with respect to the ERCs claimed by the Debtors.
- This settlement is contingent on obtaining any necessary approval from the Court.

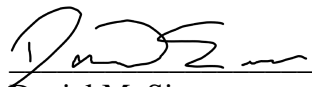
If these terms constitute your offer, please sign this letter where indicated below and return an electronic copy to Jeremy A. Rill (Jeremy.a.rill@usdoj.gov). **Please be advised that this letter is intended only to acknowledge and clarify the terms of your offer. No settlement agreement is final until approved in writing by the Attorney General of the United States or a duly authorized delegate.**

If you have any questions, please contact Mr. Rill. Thank you for your efforts to resolve this matter.



ANGELO A. FRATTARELLI
Section Chief
Civil Trial Section, Southern Region

On behalf of the Debtors and Debtors-in-Possession, I offer to settle on the terms set out above.



Daniel M. Simon

Dated: 1/27/2025