

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' EMERGENCY MOTION FOR ENTRY OF ORDER
SHORTENING NOTICE AND SCHEDULING EXPEDITED HEARING ON
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:

RELIEF REQUESTED

1. By this Motion, the Debtors respectfully request entry of the order shortening the applicable notice period for the *Debtors' Motion for Entry of Order (A) Authorizing Debtors' Entry*

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 9019 Motion (as defined herein).



24555072501290000000000004

into, and Performance Under, ERC Settlement with Internal Revenue Service, (B) Approving the ERC Settlement, and (C) Granting Related Relief (the “9019 Motion”), filed contemporaneously herewith, so that it can be heard, considered, and ruled upon by this Court at the hearing currently scheduled for February 4, 2025 at 9:30 a.m. (prevailing Eastern Time) (the “Hearing”).

JURISDICTION AND VENUE

2. 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”); Rule 9006(c)(1) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), Local Rule 9006-2 of the Bankruptcy Court Rules for the Northern District of Georgia (the “Local Rules”), and Complex Case Procedure (E)(4) of the *General Order 26-2019, Procedures for Complex Chapter 11 Cases*, dated February 6, 2023 (the “Complex Case Procedures”).

BACKGROUND

I. The Chapter 11 Cases

3. 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.

4. 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

5. 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).

6. 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.

7. On January 17, 2025, the Court held a discovery conference with the IRS, the Debtors, and the Committee. 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”).

8. An evidentiary hearing on the IRS Claim Objection and the IRS Response is currently set for February 4, 2025 at 9:30 a.m. (prevailing Eastern Time).

III. The ERC Settlement

9. As set forth in the 9019 Motion, which is incorporated fully herein by reference, the Debtors now seek authority to enter into a proposed settlement with the IRS, resolving the IRS ERC Claim (the “ERC Settlement”).

BASIS FOR RELIEF REQUESTED AND APPLICABLE AUTHORITY

10. Bankruptcy Code section 102(1) explains that the phrase “after notice and a hearing” requires only such notice and opportunity for a hearing as may be appropriate under the circumstances. 11 U.S.C. § 102(1). Further, Bankruptcy Code section 105(a) provides that “[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” “The basic purpose of section 105(a) is to assure the bankruptcy court’s power to take whatever action is appropriate or necessary in aid of the exercise of their jurisdiction.” 2 Collier on Bankruptcy ¶ 105.01 (16th ed. 2015). Thus, Bankruptcy Code section 105(a) essentially codifies the bankruptcy court’s inherent equitable powers. *See Mgmt. Tech. Corp. v. Pardo (In re Mgmt. Tech. Corp.)*, 56 B.R. 337, 339 (Bankr. D.N.J. 1985) (holding that a court’s equitable power is derived from section 105).

11. Under Bankruptcy Rule 9006(c)(1), the Court may order time periods set by the Bankruptcy Rules to be reduced “for cause shown.” Fed. R. Bank. P. 9006(c)(1). More specifically, that bankruptcy rule provides, in pertinent part: “when an act is required or allowed to be done at or within a specified time by these rules or by a notice given thereunder or by order of court, the court for cause shown may in its discretion with or without motion or notice order the period reduced.” *Id.* Local Rule 9006-2 and Complex Case Procedure E(4) permit shortened notice and hearing with regard to an emergency matter requiring immediate attention or a matter requiring expedited consideration upon written motion and for good cause shown. *See, e.g.*, Bankr. L.R. 9006-2; Complex Case Procedure E(4).

12. The Debtors respectfully request that good cause exists here to shorten the notice period and scheduling an expedited hearing with respect to the 9019 Motion. As this Court has previously recognized, time is of the essence with respect to resolving the IRS ERC Claim, as

“final resolution to this case is literally waiting on the resolution of this matter.”³ As set forth in the 9019 Motion, after weeks of substantial discovery efforts, trial preparation, and good faith negotiations, the Debtors and the IRS have ultimately agreed to the ERC Settlement, which requires a substantial contribution from the Debtors (on an asset that would ultimately be realized by the Plan Sponsor) and provides for a reduced claim amount—in both amount and priority—for the IRS. If approved, the ERC Settlement resolves the primary gating issue to the Plan’s effectiveness, paves the way toward the Debtors finally consummating the transactions set forth in the Plan that was confirmed almost two months ago, and 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. 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, further meriting expedited notice and hearing on this matter.

13. Moreover, the Debtors do not believe that any party-in-interest will be unfairly prejudiced by the shortening of the notice period with respect to the 9019 Motion. The Court has already reserved time for the Hearing, which was originally noticed and scheduled as one of the Debtors’ omnibus hearings [Docket No. 728] and subsequently set by this Court as the hearing on the IRS ERC Claim [Docket No. 799], meaning that the IRS, the Committee, and other key stakeholders are already scheduled to attend. Accordingly, the Debtors submit that good and sufficient cause exists to shorten the notice period with respect to the 9019 Motion so that it can be heard, considered, and ruled upon at the Hearing currently scheduled for February 4, 2025 at 9:30 a.m. (prevailing Eastern Time). A copy of the proposed notice of hearing with respect to the 9019 Motion is attached to the Proposed Order as **Exhibit 1**.

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).

NOTICE

14. 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

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

[Remainder of Page Intentionally Left Blank]

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

Daniel M. Simon (Georgia Bar No. 690075)
1180 Peachtree St. NE, Suite 3350
Atlanta, Georgia 30309
Telephone: (404) 260-8535
Facsimile: (404) 393-5260
Email: dsimon@mwe.com

- and -

Emily C. Keil (admitted *pro hac vice*)
Catherine Lee (admitted *pro hac vice*)
444 West Lake Street, Suite 4000
Chicago, Illinois 60606
Telephone: (312) 372-2000
Facsimile: (312) 984-7700
Email: ekeil@mwe.com
clee@mwe.com

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

Daniel M. Simon (Georgia Bar No. 690075)
1180 Peachtree St. NE, Suite 3350
Atlanta, Georgia 30309
Telephone: (404) 260-8535
Facsimile: (404) 393-5260
Email: dsimon@mwe.com

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:)	
)	Chapter 11
)	
LAVIE CARE CENTERS, LLC, <i>et al.</i> ¹)	Case No. 24-55507 (PMB)
)	
Debtors.)	(Jointly Administered)
)	
)	Related to Docket No. __

**ORDER SHORTENING NOTICE AND SCHEDULING EXPEDITED HEARING ON
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**

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.

Upon consideration of the motion (the “Motion”)² filed by the Debtors on January 28, 2025 at Docket No. [] for entry of an order (this “Order”) shortening the notice period and scheduling an expedited hearing with respect to the *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* (the “9019 Motion”), all as more fully set forth in the Motion; and the Court having jurisdiction over the Motion pursuant to 28 U.S.C. §§ 1334 and 157(b), the Motion being a core matter pursuant to 28 U.S.C. § 157(b)(2), and the Court being able to enter a final order consistent with Article III of the United States Constitution; the Court having found that notice of the Motion was appropriate; and, it appearing that the relief requested in the Motion is in the best interests of the Debtors, their estates, and their creditors, and that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation thereon, it is hereby

ORDERED, ADJUDGED, AND DECREED that:

1. The Motion is **GRANTED** as set forth herein.
2. A hearing (the “Hearing”) shall be held on the 9019 Motion **on February 4, 2025 at 9:30 a.m. (prevailing Eastern Time)** at the United States Bankruptcy Court for the Northern District of Georgia, 75 Ted Turner Dr. SW, Courtroom 1202, Atlanta, Georgia 30303, which may be attended in person or via the Court’s Virtual Hearing Room. You may join the Virtual Hearing Room through the “Dial-in and Virtual Bankruptcy Hearing Information” link at the top of the homepage of the Court’s website, www.ganb.uscourts.gov, or link on the judge’s webpage, <https://www.ganb.uscourts.gov/content/honorable-paul-m-baisier>. Please also review the “Hearing Information” tab on the Court’s webpage for further information about the hearing.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

You should be prepared to appear at the hearing via video, but you may leave your camera in the off position until the Court instructs otherwise. Unrepresented persons who do not have video capability may use the telephone dial-in information on the judge's webpage.

3. Any party objecting to the 9019 Motion must file an objection with the Court by **12:00 p.m. (prevailing Eastern Time) on February 3, 2025** (the "Objection Deadline") and serve such objection on counsel to the Debtors, counsel to the IRS, and any other requisite parties by the Objection Deadline.

4. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Order in accordance with the Motion.

5. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation and enforcement of this Order.

END OF ORDER

Prepared and presented by:

/s/ Daniel M. Simon

Daniel M. Simon (Georgia Bar No. 690075)

MCDERMOTT WILL & EMERY LLP

1180 Peachtree Street NE, Suite 3350

Atlanta, Georgia 30309

Telephone: (404) 260-8535

Facsimile: (404) 393-5260

Email: dsimon@mwe.com

- and -

Emily C. Keil (admitted *pro hac vice*)

Catherine Lee (admitted *pro hac vice*)

MCDERMOTT WILL & EMERY LLP

444 West Lake Street, Suite 4000

Chicago, Illinois 60606

Telephone: (312) 372-2000

Facsimile: (312) 984-7700

Email: ekeil@mwe.com

clee@mwe.com

Counsel for the Debtors and Debtors-in-Possession

Distribution List

LaVie Care Centers, LLC
c/o Ankura Consulting Group, LLC,
485 Lexington Avenue, 10th Floor,
New York, NY 10017
Attn: M. Benjamin Jones

Daniel M. Simon
McDermott Will & Emery LLP
1180 Peachtree Street NE, Suite 3350
Atlanta, GA 30309

Emily C. Keil
McDermott Will & Emery LLP
444 West Lake Street, Suite 4000
Chicago, IL 60606

Kurtzman Carson Consultants LLC
222 N. Pacific Coast Highway, 3rd Floor
El Segundo, CA 90245

Jonathan S. Adams
Office of the United States Trustee
362 Richard Russell Federal Building
75 Ted Turner Drive, SW
Atlanta, GA 30303

Hana Bilicki
Chase A. Burrell
Jeremy A. Rill
Ward W. Benson
U.S. Department of Justice
P.O. Box 14198
Washington, D.C. 20044

EXHIBIT 1

Form of Notice

**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, []
)	

**NOTICE OF HEARING AND DEADLINE TO OBJECT TO 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**

On January 29, 2025, LaVie Care Centers, LLC and certain of its affiliates and subsidiaries, as debtors and debtors-in-possession in the above-captioned chapter 11 case (collectively, the “Debtors”), filed (a) the *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* [Docket No. []] (the “9019 Motion”) and (b) the *Debtors’ Emergency Motion for Entry of Order Shortening Notice and Scheduling Expedited Hearing for 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* [Docket No. []] (the “Motion to Shorten”).

On January [], 2025, the Court entered an order granting the Motion to Shorten notice and schedule an expedited hearing for the 9019 Motion. *See* Docket No. [].

The Court shall hold a hearing (the “Hearing”) on the 9019 Motion on **February 4, 2025 at 9:30 a.m. (prevailing Eastern Time) at the United States Bankruptcy Court for the Northern District of Georgia, 75 Ted Turner Dr. SW, Courtroom 1202, Atlanta, Georgia 30303**, which may be attended in person or via the Court’s Virtual Hearing Room. You may join the Virtual Hearing Room through the “Dial-in and Virtual Bankruptcy Hearing Information” link at the top of the homepage of the Court’s website, www.ganb.uscourts.gov, or link on the judge’s webpage, <https://www.ganb.uscourts.gov/content/honorable-paul-m-baisier>. Please also review

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.

the “Hearing Information” tab on the Court’s webpage for further information about the hearing. You should be prepared to appear at the hearing via video, but you may leave your camera in the off position until the Court instructs otherwise. Unrepresented persons who do not have video capability may use the telephone dial-in information on the judge’s webpage.

If you object to the relief requested in this pleading, you must timely file your objection by February 3, 2025 at 12:00 p.m. (prevailing Eastern Time) with the Bankruptcy Clerk at the United States Bankruptcy Court for the Northern District of Georgia, Atlanta Division, 75 Ted Turner Dr. SW, Suite 1340, Atlanta, GA 30303 and serve a copy on the Debtor’s attorney, McDermott Will & Emery LLP, 1180 Peachtree St. NE, Suite 3350, Atlanta, GA, Attn: Daniel M. Simon (dsimon@mwe.com) and any other appropriate persons by the objection deadline. The response or objection must explain your position and be actually received by the Bankruptcy Clerk within the required time.

Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. If you do not have an attorney, you may wish to consult one.

Dated: Atlanta, Georgia
January [], 2025

MCDERMOTT WILL & EMERY LLP

/s/ DRAFT

Daniel M. Simon (Georgia Bar No. 690075)
1180 Peachtree St. NE, Suite 3350
Atlanta, Georgia 30309
Telephone: (404) 260-8535
Facsimile: (404) 393-5260
Email: dsimon@mwe.com

- and -

Emily C. Keil (admitted *pro hac vice*)
Catherine Lee (admitted *pro hac vice*)
444 West Lake Street, Suite 4000
Chicago, Illinois 60606
Telephone: (312) 372-2000
Facsimile: (312) 984-7700
Email: ekeil@mwe.com
clee@mwe.com

Counsel for the Debtors and Debtors-in-Possession