

UNITED STATES BANKRUPTCY COURT  
 NORTHERN DISTRICT OF GEORGIA  
 ATLANTA DIVISION

IN RE:	)	CHAPTER 11
	)	
LAVIE CARE CENTERS, LLC, <i>et al.</i> , <sup>1</sup>	)	CASE NO. 24-55507-pmb
	)	
Debtors.	)	JOINTLY ADMINISTERED
_____	)	
	)	
FC ENCORE ST. CLOUD, LLC,	)	
	)	
Plaintiff,	)	
v.	)	Adv. Pro. No. 25-05008-pmb
	)	
WILLIAM BURNHAM,	)	
	)	
Defendant	)	
_____	)	

**MOTION FOR ENTRY OF DEFAULT JUDGMENT**

COMES NOW FC Encore St. Cloud, LLC (“FCE”), a Released Party<sup>2</sup> under the Plan (as defined herein) in the above-captioned Chapter 11 cases and the plaintiff in the above-captioned adversary proceeding (the “Adversary Proceeding”), by and through its undersigned attorneys, pursuant to Rule 55 of the Federal Rules of Civil Procedure and Rule 7055 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and files this Motion for Entry of Default

<sup>1</sup> The last four digits of LaVie Care Centers, LLC’s federal tax identification number are 5592. There are 282 debtors (the “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.kcellc.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.

<sup>2</sup> All capitalized terms not otherwise defined herein shall have the meanings ascribed to them in *Debtors’ Modified Second Amended Combined Disclosure Statement and Joint Chapter 11 Plan of Reorganization*, filed on December 4, 2024 [Dkt. No. 730] (the “Plan”).



Judgment (the “**Motion**”) against William Burnham (the “**Defendant**”). In support of the Motion, FCE shows the Court as follows:

### **BACKGROUND**

1. On January 7, 2025, FCE commenced an action against the Defendant by way of a complaint (the “**Complaint**”) filed in the Bankruptcy Court for the Northern District of Georgia (the “**Court**”) (Adversary No. 25-05008-pmb). *See* Adv. Pro. Dkt. No. 1. The Complaint seeks: (a) an extension of the automatic stay under Sections 105(a) and/or 362(a) of Title 11 of the United States Code (the “**Bankruptcy Code**”) to prohibit the continued prosecution of a state court action by the Defendant against FCE through and including the Effective Date of the Plan; or, in the alternative, (b) a preliminary injunction under Bankruptcy Code Section 105(a) and Rule 7065 of the Bankruptcy Rules to enjoin the continued prosecution of said state court action and all claims and causes of action set forth therein against FCE until the Effective Date of Plan, and (c) a permanent injunction upon the occurrence of the Effective Date of the Plan.

2. The Clerk of Court issued a summons in the Adversary Proceeding on January 10, 2025 (the “**Summons**”). *See* Adv. Pro. Dkt. No. 4.

3. FCE caused the Summons and Complaint to be served by mail service on January 13, 2025, as shown on the Certificate of Service filed with this Court on January 13, 2025. *See* Adv. Pro. Dkt. No. 5; *see also* Declaration of Matthew W. Levin (the “**Levin Declaration**”), attached hereto and made a part hereof as Exhibit A, Paragraph 2.

4. As of the date of this Motion, the Defendant has not filed an answer or other response, nor has the Defendant appeared or otherwise defended the causes of action asserted in the Complaint. *See* Levin Declaration, Paragraph 4.

5. On February 12, 2024, FCE filed a Request for Entry of Default. *See* Adv. Pro. Dkt. No. 6.

6. Pursuant to Bankruptcy Rule 7055(a), the Clerk of the Court entered default against the Defendant on February 13, 2025.

7. Furthermore, upon information and belief, the Defendant is not an infant or incompetent person and is not presently serving in the armed forces of the United States, and thus is not in active military service.

### **RELIEF REQUESTED**

8. FCE seeks the entry of a default judgment against the Defendant pursuant to Bankruptcy Rule 7055, which makes Fed. R. Civ. P. 55 applicable to adversary proceedings. Fed. R. Civ. P. 55(b)(2) authorizes the Court to enter default judgment upon application and after a hearing, if the Court deems it appropriate and necessary, where the relief sought is for anything other than a money judgment for a sum certain. *See* Fed. R. Civ. P. 55(b)(2). As noted above, the Complaint seeks injunctive relief and not a money judgment.

### **ARGUMENT AND AUTHORITY**

9. Prior to the Chapter 11 Cases, the Defendant commenced a Florida state court action against FCE and one of the above-captioned debtors (the “**Debtors**”), 4641 Old Canoe Creek Road Operations, LLC (“**OpCo Debtor**”) styled as *William Burnham v. FC Encore St. Cloud, LLC and 4641 Old Canoe Creek Road Operations, LLC*, Case No. 23-CA-004407 (the “**State Court Action**”), pending in the Circuit Court of the Ninth Judicial Circuit in and for Osceola County, Florida (the “**State Court**”), for damages allegedly sustained as a result of a fall on property owned at the time by FCE. However, at all times relevant to claims asserted in the State Court Action, FCE, as landlord, leased the subject facility to LVE Master Tenant 4, LLC

(“**Tenant Debtor**”), which in turned subleased the subject facility to OpCo Debtor and, as such, Tenant Debtor and OpCo Debtor were in complete possession and control of the property in question.

10. On June 24, 2024, OpCo Debtor filed a Suggestion of Bankruptcy in the State Court Action notifying the State Court and Burnham that the action was stayed pursuant to the Debtors’ bankruptcy filings in this case. See Exhibit A to the Complaint, which is a true and correct copy of the *Suggestion of Bankruptcy as to 4641 Old Canoe Creek Road Operations LLC*.

11. On October 16, 2024, Burnham appeared in the above-captioned bankruptcy cases by filing a Motion to Lift Stay in these bankruptcy proceedings and noticed it for hearing on December 16, 2024. See *Motion to Lift or Modify the Automatic Stay to (1) Liquidate Personal Injury Tort Claim in Pending Litigation, (2) Pursue Recovery to the Extent of Insurance Coverage, and (3) Grant Related Relief* [Bankr. Case Dkt. 564] (the “**Stay Relief Motion**”). Burnham thereafter filed an Amended Notice of Hearing on October 29, 2024, resetting the hearing on the Stay Relief Motion to December 10, 2024. See *Amended Notice of Hearing* [Bankr. Case Dkt. 599]. Subsequently, on December 9, 2024, Burnham withdrew the Motion. See *Notice of Withdrawal of Motion to Lift or Modify the Automatic Stay to (1) Liquidate Personal Injury Tort Claim in Pending Litigation, (2) Pursue Recovery to the Extent of Insurance Coverage, and (3) Grant Related Relief* [Bankr. Case Dkt. No. 743].

12. 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* [Bankr. Case Dkt. No. 480] (the “**Solicitation Procedures Order**”). On October 1, 2024, the Debtors filed the

*Notice of (I) Combined Hearing with Respect to the Debtors' Second Amended Combined Disclosure Statement and Joint Chapter 11 Plan of Reorganization and (II) Related Objection Deadline* [Bankr. Case Dkt. No. 483] (the “**Combined Hearing Notice**”).

13. Pursuant to the Solicitation Procedures Order, on or about October 7, 2024, the Debtors commenced solicitation of votes on the Plan. As reflected in the exhibits attached to and approved by the Solicitation Procedures Order, the Plan notice described how the Holder of a Claim could “opt-out” of the third-party release (the “**Third-Party Release**”) contained in Article X.D.2 of the Plan, along with a plain language disclaimer explaining the importance and implication of the Third-Party Release and stated, among other things:

**YOU HAVE THE CHOICE AS TO WHETHER YOU WILL BE BOUND BY THE THIRD-PARTY RELEASE, AND THE CHOICE IS YOURS ALONE. YOU WILL BE A RELEASING PARTY AND YOUR RIGHTS MAY BE COMPROMISED UNLESS YOU TAKE CERTAIN ACTIONS. IF YOU HOLD A CLAIM AGAINST THE DEBTORS AND WOULD LIKE TO OPT OUT OF THE THIRD-PARTY RELEASE, YOU MUST ELECT TO OPT OUT OF THE THIRD-PARTY RELEASE BY CHECKING THE OPT-OUT BOX ON THE BALLOT OR THE OPT-OUT NOTICE FORM THAT YOU RECEIVE. YOU MUST ALSO VOTE TO REJECT THE PLAN OR ABSTAIN FROM VOTING. IF YOU VOTE TO ACCEPT THE PLAN YOU WILL BE A RELEASING PARTY. IF YOU DO NOT RECEIVE EITHER A BALLOT OR OPT OUT NOTICE FORM YOU MUST OBJECT TO THE THIRD-PARTY RELEASE OR YOU WILL BE A RELEASING PARTY. OPTING OUT OF THE THIRD-PARTY RELEASE WILL NOT OTHERWISE MODIFY YOUR TREATMENT OR RECOVERY UNDER THE PLAN.**

14. As reflected in the certificate of service filed at Bankr. Case Docket No. 619, Burnham’s counsel in the State Court Action was served with the Plan Notice at the following address:

Morgan & Morgan  
Alicia Smith, Esq.  
20 North Orange Ave.  
Suite 1600  
Orlando, FL 32801

15. As such, the Combined Hearing Notice was sent to above-listed counsel via first class mail as part of the Creditor Matrix. *See* Bankr. Case Dkt. No. 619, Ex. N. Further, as noted above, Burnham appeared in the bankruptcy cases and filed a motion for relief from stay and an

amended notice of hearing regarding same (and then withdrew same) and, thus, was well aware of the Chapter 11 Cases and the Plan. Counsel for Burnham in the Chapter 11 Cases, David A. Geiger, is listed as an ECF recipient for the Chapter 11 Cases and, therefore, would have received notice of the Plan, the proposed Third Party Release and related issues.

16. Notwithstanding service on Burnham's counsel, no ballots, opt-out election, objections, or responses of any kind were received by the Debtors' claims and noticing agent from Burnham or his counsel. As a result, Burnham is now bound by the terms of the Third-Party Release, which provides, among other things:

each Releasing Party (other than the Debtors or the Reorganized Debtors), in each case on behalf of itself and its respective successors, assigns, and representatives, and any and all other entities who may purport to assert any Claim, Cause of Action, directly or derivatively, by, through, for, or because of a Releasing Party, is **deemed to have conclusively, absolutely, unconditionally, irrevocably, and forever released and discharged each Debtor, Reorganized Debtor, and each other Released Party from any and all claims, interests, obligations, rights, suits, damages, Causes of Action, remedies, and liabilities whatsoever, whether known or unknown, foreseen or unforeseen, existing or hereafter arising, in law, equity or otherwise, including any derivative claims**, asserted or assertable on behalf of any of the Debtors, their Estates or their Affiliates, that such Entity would have been legally entitled to assert (whether individually or collectively), based on or relating to (including the formulation, preparation, dissemination, negotiation, entry into, or filing of, as applicable), or **in any manner arising from, in whole or in part, the Debtors (including the management, ownership or operation thereof)**, the purchase, sale, or rescission of the purchase or sale of any security of the Debtors or the Reorganized Debtors, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the business or contractual arrangements between any Debtor and any Released Party, the Debtors' in- or out-of-court restructuring efforts, the decision to file the Chapter 11 Cases, any intercompany transactions, the Chapter 11 Cases, the Plan (including the Plan Supplement), the Disclosure Statement, the DIP Facility, the DIP Documents, the Disclosure Statement, the DIP Facility, the DIP Documents, the ABL Credit Agreement, the Omega Term Loan Credit Agreement, the Omega Master Lease, the Omega Note Agreement, the ABL Exit Facility, the ABL Exit Facility Credit Agreement, the pursuit of Confirmation and Consummation, the administration and implementation of the Plan, including the issuance or distribution of Securities pursuant to the Plan, or the distribution of property under the Plan or any other related agreement, but not, for the avoidance of doubt, any legal opinion effective as of the Effective Date requested by any Entity regarding

any transaction, contract, instrument, document, or other agreement contemplated by the Plan, or upon any other act, omission, transaction, agreement, event, or other occurrence taking place on or before the Effective Date, other than claims or liabilities arising out of or relating to any act or omission of a Released Party that constitutes willful misconduct, fraud or gross negligence.

Plan, Art. X.D.2 (emphasis added). As such, the Third-Party Release released all of Burnham's claims and causes of action against the following "Released Parties":

(a) the Debtors and the Reorganized Debtors; (b) the UCC 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) with respect to each of the foregoing Entities, each such Entity's **current and former affiliates**, subsidiaries, officers, directors, managers, principals, members, equity investors, employees, agents, advisory board members, financial advisors, partners, attorneys, accountants, investment bankers, consultants, representatives, and other professionals, each in their capacity as such . . .

Plan, § 1.243 (emphasis added). FCE is a Released Party under the Plan, as the term "Released Parties" includes "Omega." Plan, Article II (A), § 1.243. The term "Omega" includes the "Omega Note Agreement Lenders." *Id.*, § 1.170. The Omega Note Agreement Lenders are defined as "the list of lenders identified on Schedule 1 of the Omega Note Agreement." *Id.*, § 1.186. FCE is identified as a lender on Schedule 1 of the Omega Note Agreement. A true and correct copy of the Omega Note Agreement and Schedule 1 thereto is attached to the Complaint as Exhibit E.

17. On November 14, 2024, the Court held a hearing (the "**Combined Hearing**") on, among other things, confirmation of the *Debtors' Modified Second Amended Combined Disclosure Statement and Joint Chapter 11 Plan of Reorganization* [Bankr. Case Dkt. No. 680] (the "**Plan**"). On December 4, 2024, the Debtors filed a revised version of the Plan. *See* Bankr. Case Dkt. No. 730. On December 5, 2024, the Court entered its order confirming the Plan [Bankr. Case Dkt. No. 735] (the "**Confirmation Order**") and issued its memorandum opinion regarding the Third-Party Release [Bankr. Case Dkt. No. 736].

18. As the Court is aware, the Debtors are currently in the process of preparing to “go effective” on the confirmed Plan, with the goal of consummating the transactions set forth therein and emerging from Chapter 11 by May, 2025.

19. The Plan, as confirmed by the Confirmation Order, provides for the release of claims against non-debtors third parties, including FCE. The Defendant’s claims against FCE are released pursuant to the “Third-Party Releases” contained in Article X(D)(2) of the Plan. As shown above, FCE is a Released Party under the Plan.

20. Because FCE is a Released Party under the Plan, and Burnham did not opt out of such release, FCE will be released upon the occurrence of the Effective Date. Therefore, FCE hereby seeks entry of a default judgment against Burnham granting a preliminary injunction staying the claims and causes of action asserted against FCE in the State Court Action through the Effective Date of the Plan. Further, upon occurrence of the Effective Date, the preliminary injunction should automatically become permanent.

WHEREFORE, FCE respectfully requests that the Court enter a default judgment with prejudice against the Defendant, enjoining the Defendant from pursuing the State Court Action, and holding that FCE is released from any and all claims or causes of action asserted, or which could have been, therein upon the occurrence of the Effective Date, and grant such other and further relief as is just and proper.



This 18th day of February, 2025.

SCROGGINS, WILLIAMSON & RAY, P.C.

By: /s/ Matthew W. Levin

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*Counsel to FC Encore St. Cloud, LLC*

**EXHIBIT A**

**Declaration of Matthew W. Levin**

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

IN RE:	)	CHAPTER 11
	)	
LAVIE CARE CENTERS, LLC, <i>et al.</i> , <sup>1</sup>	)	CASE NO. 24-55507-pmb
	)	
Debtors.	)	JOINTLY ADMINISTERED
_____	)	
	)	
FC ENCORE ST. CLOUD, LLC,	)	
	)	
Plaintiff,	)	
v.	)	Adv. Pro. No. 25-05008-pmb
	)	
WILLIAM BURNHAM,	)	
	)	
Defendant	)	
_____	)	

**DECLARATION OF MATTHEW W. LEVIN**

I, MATTHEW W. LEVIN, declare under penalty of perjury as follows:

1. I am an attorney at law in the State of Georgia and am admitted to practice before the United States District Court for the Northern District of Georgia. I am counsel with the law firm of Scroggins, Williamson & Ray, P.C., attorneys for FC Encore St. Cloud, LLC (“FCE”), a Released Party<sup>2</sup> under the Plan (as defined herein) in the above-captioned Chapter 11 cases and

<sup>1</sup> The last four digits of LaVie Care Centers, LLC’s federal tax identification number are 5592. There are 282 debtors (the “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.kcellc.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.

<sup>2</sup> All capitalized terms not otherwise defined herein shall have the meanings ascribed to them in *Debtors’ Modified Second Amended Combined Disclosure Statement and Joint Chapter 11 Plan of Reorganization*, filed on December 4, 2024 [Dkt. No. 730] (the “Plan”).

the plaintiff in the above-captioned adversary proceeding (the “**Adversary Proceeding**”). I am fully familiar with the facts set forth herein.

2. On January 13, 2025, I caused FCE’s complaint seeking (a) an extension of the automatic stay under Sections 105(a) and/or 362(a) of Title 11 of the United States Code (the “**Bankruptcy Code**”) to prohibit the continued prosecution of a state court action by the Defendant against FCE through and including the Effective Date of the Plan; or, in the alternative, (b) a preliminary injunction under Bankruptcy Code Section 105(a) and Rule 7065 of the Bankruptcy Rules to enjoin the continued prosecution of said state court action and all claims and causes of action set forth therein against FCE until the Effective Date of Plan (the “**Complaint**”), and related summons to be served, by U.S. Postal Service First Class Mail, postage prepaid, upon William Burnham (the “**Defendant**”), as evidenced by the Certificate of Service of the Complaint filed with the United States Bankruptcy Court for the Northern District of Georgia (the “**Court**”) at Adversary Proceeding Docket No. 5.

3. The time within which the Defendant had to answer or otherwise respond to the Complaint has expired and has not been extended.

4. I have reviewed the electronic docket maintained by the Clerk of Court for the Adversary Proceeding and found no answer, response, defense or appearance by the Defendant or by any person on behalf of the Defendant. I have not been served with any such answer, response, defense or appearance by the Defendant or by any person on behalf of the Defendant.

5. The Defendant is an adult person, and thus, not an infant, and, upon information and belief, the Defendant is not an incompetent person.

6. Upon information and belief, the Defendant is not presently serving in the armed forces of the United States, and is not in active military service.

This 18th day of February, 2025.

/s/ Matthew W. Levin  
MATTHEW W. LEVIN

**EXHIBIT B**

**Proposed Default Judgment**

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

IN RE:	)	CHAPTER 11
	)	
LAVIE CARE CENTERS, LLC, <i>et al.</i> , <sup>1</sup>	)	CASE NO. 24-55507-pmb
	)	
Debtors.	)	JOINTLY ADMINISTERED
_____	)	
	)	
FC ENCORE ST. CLOUD, LLC,	)	
	)	
Plaintiff,	)	
v.	)	Adv. Pro. No. 25-05008-pmb
	)	
WILLIAM BURNHAM,	)	
	)	
Defendant	)	
_____	)	

**ORDER AND JUDGMENT AGAINST WILLIAM BURNHAM**

FC Encore St. Cloud, LLC (“FCE”), a Released Party<sup>2</sup> under the Plan (as defined herein) in the above-captioned Chapter 11 cases and the plaintiff in the above-captioned adversary proceeding, having filed a motion for default judgment, pursuant to Rule 55 of the Federal Rules of Civil Procedure and Rule 7055 of the Federal Rules of Bankruptcy Procedure, and the Court having considered the Motion, it is ORDERED and ADJUDGED as follows:

<sup>1</sup> The last four digits of LaVie Care Centers, LLC’s federal tax identification number are 5592. There are 282 debtors (the “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.kcellc.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.

<sup>2</sup> All capitalized terms not otherwise defined herein shall have the meanings ascribed to them in *Debtors’ Modified Second Amended Combined Disclosure Statement and Joint Chapter 11 Plan of Reorganization*, filed on December 4, 2024 [Dkt. No. 730] (the “Plan”).

1. With regard to the state court action styled as *William Burnham v. FC Encore St. Cloud, LLC and 4641 Old Canoe Creek Road Operations, LLC*, Case No. 23-CA-004407, pending in the Circuit Court of the Ninth Judicial Circuit in and for Osceola County, Florida (the “**State Court Action**”), William Burnham (the “**Defendant**”) is hereby preliminarily enjoined from pursuing the State Court Action, or prosecuting any of the claims asserted, or which could have been asserted, therein until the earlier to occur of (a) the Effective Date of the Plan, or (b) July 1, 2025.

2. Should the Effective Date of the Plan occur on or prior to July 1, 2025, the preliminary injunction granted above shall automatically become a permanent injunction without further order of this Court.

3. Upon the occurrence of the Effective Date, FCE is hereby released from any and all claims or causes of action asserted, or which could have been asserted, against it by the Defendant in the State Court Action.

**END OF ORDER AND JUDGMENT**



**CERTIFICATE OF SERVICE**

I hereby certify that on this date a true and correct copy of the foregoing document was served by the Court's CM/ECF system on all counsel of record registered in these Chapter 11 Cases through CM/ECF. I further certify that I have this day served a true and correct copy of the foregoing document via email and U.S. Mail upon the following parties:

Alicia Smith, Esq.  
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Justin M. Luna, Esq.  
Latham, Luna, Eden & Beaudine, LLP  
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Orlando, Florida 32801  
jluna@lathamluna.com

This 18th day of February, 2025.

SCROGGINS, WILLIAMSON & RAY, P.C.

By: /s/ Matthew W. Levin  
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